*State of Iowa*

# Iowa Administrative Code

The permanent rules of general application promulgated
by the state agencies

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# ADMINISTRATIVE SERVICES DEPARTMENT[11]

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TITLE I
*GENERAL DEPARTMENTAL PROCEDURES*

# CHAPTER 1
# DEPARTMENT ORGANIZATION

**11—1.1(8A) Creation and mission.** The department of administrative services (DAS) is established in Iowa Code chapter 8A. The department manages and coordinates the major resources of state government, including the human, financial, physical and informational resources. The department was created to implement a world-class, customer-focused organization that provides a complement of valued products and services to the internal customers of state government.

The mission of the department is to provide high-quality, affordable infrastructure products and services to its customers—Iowa state government and other government entities—in a manner that allows them to provide better service to the citizens of Iowa and to support the state of Iowa in achieving economic growth.

**11—1.2(8A) Location.** The department's primary office is located in the Hoover State Office Building, Third Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0150; telephone (515)242-5120. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The department's Web site at www.das.iowa.gov provides information about all department organizational units and services.

**1.2(1)** *General services enterprise location.* The general services enterprise's primary office is located in the Hoover State Office Building, Level A-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)242-5120. Office hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

**1.2(2)** *Human resources enterprise location.* The human resources enterprise's primary office is located in the Hoover State Office Building, Level A, 1305 East Walnut Street, Des Moines, Iowa 50319-0150; telephone (515)281-3351. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

**1.2(3)** *Information technology enterprise location.* The information technology enterprise is located in the Hoover State Office Building, Level B, Des Moines, Iowa 50319. The general office telephone number is (515)281-5503. Hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

**1.2(4)** *State accounting enterprise location.* The state accounting enterprise's primary office is located in the Hoover State Office Building, Third Floor, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-4877. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

**11—1.3(8A) Director.** The chief executive officer of the department is the director, who is appointed by the governor with the approval of two-thirds of the members of the senate. The director serves at the pleasure of the governor.

The director has the statutory authority to designate an employee of the department to carry out the powers and duties of the director in the absence of the director, or due to the inability of the director to do so.

Specific powers and duties of the department, its director, boards, task forces, advisory panels, and employees are set forth in Iowa Code chapters 8A, 19B, 20, 70A, and 509A and these administrative rules.

**11—1.4(8A) Administration of the department.** In order to carry out the functions of the department, the following enterprises and bureaus have been established:

**1.4(1)** *General services enterprise.* The mission of the general services enterprise is to act as the state's business agent to meet agencies' needs for quality, timely, reliable and cost-effective support services and provide a work environment that is healthy, safe, and well maintained. The chief operating

officer, appointed by the director, heads the general services enterprise. The following bureaus have been established within the general services enterprise:

*a. Capitol complex maintenance.* The capitol complex maintenance bureau is responsible for the maintenance, appearance, and facility sanitation of the capitol complex buildings and grounds, including environmental control (heating, ventilation and cooling) and all support features including, but not limited to, parking lot maintenance, main electrical distribution, water supply, wastewater removal, on-site safety consultation, and major maintenance projects associated with the capitol complex.

*b. Design and construction.* The design and construction bureau is responsible for vertical infrastructure management; building and monument restoration; management of leases and office space on and off the capitol complex; assignment of office space on the capitol complex; utilities management; and management of capital projects, including architectural, engineering, and construction management services for state agencies except for the board of regents, the department of transportation, the national guard, the natural resource commission and the Iowa public employees' retirement system.

*c. Fleet and mail.* The fleet and mail bureau is responsible for the management of vehicular risk and travel requirements for state agencies not exempted by law and for the processing and delivering of mail for state agencies on the capitol complex and in the Des Moines metropolitan area.

*d. Service delivery.* The service delivery bureau is responsible for the following functions for the enterprise: parking and building access, collection of fines and other payments, coordination of special events, general information, and work requests for the capitol complex; statewide purchasing and electronic procurement, including managing procurement of commodities, equipment and services for all state agencies not exempted by law; and administration of surplus property.

**1.4(2)** *Human resources enterprise.* The human resources enterprise is responsible for human resource management in the executive branch of Iowa state government and provides limited services to the judicial and legislative branches. The mission of the human resources enterprise is to support state agencies in their delivery of services to the people of Iowa by providing programs that recruit, develop, and retain a diverse and qualified workforce, and to administer responsible employee benefits programs for the members and their beneficiaries. The director appoints the chief operating officer of the enterprise. The following bureaus have been established within the human resources enterprise:

*a. Benefits.* The benefits bureau administers and coordinates the provision of health, dental, life, and disability insurance programs; employee leave programs; workers' compensation, return to work, and loss control and safety programs; 457 deferred compensation; 403(b) tax-sheltered annuity and 401(a) employer match programs; unemployment insurance; and flexible spending and premium conversion programs for state employees.

*b. Employment.* The employment bureau provides application, referral, recruitment, selection, EEO/AA and diversity services related to state employment; administration of the state classification and compensation programs; and audit of personnel and payroll transactions.

*c. Program delivery services.* The program delivery services bureau is responsible for employment relations between the state and the certified employee representative; provides consultative services to state departments, boards, and commissions on human resource program matters; provides organization and employee development services including workforce planning and performance evaluation; and represents the state in contested case matters regarding such programs.

**1.4(3)** *Information technology enterprise.* The mission of the information technology enterprise is to provide high-quality, customer-focused information technology services and business solutions to government and to citizens. The director appoints the chief information officer for the state, who also serves as the chief operating officer of the enterprise. The following bureaus have been established within the information technology enterprise:

*a. Application and E-government services.* The application and E-government services bureau is responsible for support of departmental information technology services; providing software applications development, support, and training; and providing advice and assistance in developing and supporting business applications throughout state government.

*b. Infrastructure services.* The infrastructure services bureau is responsible for providing server systems, including mainframe and other server operations, desktop support, printing and printing procurement services.

*c. Integrated Information for Iowa (I/3) project.* The I/3 project office provides the strategic direction, functional deployment, and technical support for the I/3 system, including the enterprise accounting, procurement, budget preparation, human resources and payroll functions for the state of Iowa. I/3's vision is to provide greater responsiveness to customers, improved productivity, increased accountability and efficient delivery of services across state government, and consistent and accurate information that Iowans want.

*d. Advisory groups.*

(1) Technology governance board. The technology governance board operates pursuant to 2005 Iowa Acts, House File 839.

(2) IOWAccess advisory council. The IOWAccess advisory council is established within the department for the purpose of creating and providing to the citizens of this state a gateway for one-stop electronic access to government information and transactions, whether federal, state, or local.

**1.4(4)** *State accounting enterprise.* The state accounting enterprise was created to provide for the efficient management and administration of the financial resources of state government. The chief operating officer, appointed by the director, heads the enterprise. The following functional units have been established within the state accounting enterprise:

*a. Accounting and daily processing.* The accounting and daily processing bureau includes the functions of daily processing, income offset, and financial systems.

*b. Other sections.* The state accounting enterprise also includes the financial reporting section, the I/3 program team, and the centralized payroll section.

**1.4(5)** *Central administration.*

*a. Director's office.* The director is the chief executive officer for the department. The director's central administration area provides support to the director and to the governmental and business operations of the department and its enterprises. The following functions are included in this area: general counsel; legislative liaison; rules administrator; strategic, performance, and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development.

*b. Information security office.* The information security office is responsible for developing, implementing and maintaining information security policies, standards, and practices that enhance the confidentiality, integrity and availability of computer systems and electronic data resources, and for ensuring enterprise-wide compliance with security requirements. This office includes the chief information security officer for state government.

*c. Marketing, communications and council support.* Marketing, communications and council support supplies the department's media, public relations, and employee communications services; supports product and service marketing within each of the department's enterprises; and coordinates customer council activities for the department.

**1.4(6)** *Customer management, finance and internal operations.* This division provides customer management, finance and internal operations oversight, administration, and support in a manner that provides accurate and timely information, safeguards assets, and facilitates fiscally responsible, employee-centered and customer-focused decision making for the department. The functional units of the customer management, finance and internal operations division are:

*a.* Activity-based costing;

*b.* Accounts payable, purchasing, human resources, and administrative support;

*c.* Financial reporting and budget; and

*d.* Accounts receivable, billing, collections, and customer resource management.

These rules are intended to implement Iowa Code chapter 8A and sections 7E.1 through 7E.5 and 17A.3, and 2005 Iowa Acts, House File 776 and House File 839.

**11—1.5** and **1.6** Reserved.

**11—1.7(68B) Selling of goods or services.** Rescinded IAB 8/16/06, effective 9/20/06.

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CHAPTERS 2 and 3
Reserved

# CHAPTER 4
# PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

**11—4.1(8A,22) Definitions.** As used in this chapter:

*"Confidential record"* means a record that 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 department 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"* means the department, director, or another person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

*"Department"* means the department of administrative services.

*"Open record"* means a record other than a confidential record.

*"Personally identifiable information"* or *"individual identifiers"* means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

*"Record"* means the whole or a part of a "public record" as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

*"Record system"* means any group of records under the control of the department 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.

**11—4.2(8A,17A,22) Statement of policy, purpose and scope.** The purpose of this chapter is to facilitate broad public access to open records by establishing rules, policies and procedures to implement the fair information practices Act, Iowa Code chapter 22. Chapter 4 seeks to facilitate sound department determinations with respect to the handling of confidential records. The department is committed to complying with Iowa Code chapter 22; department staff shall cooperate with members of the public in implementing the provisions of that chapter.

**11—4.3(8A,22) Requests for access to records.**

**4.3(1)** *Location of record.* A request for access to a record under the jurisdiction of the department shall be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319. The department will forward the request appropriately. If a request for access to a record is misdirected, department personnel will forward the request to the appropriate person within the department.

**4.3(2)** *Office hours.* Open records shall be made available during all customary office hours, which are from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

**4.3(3)** *Request for access.* Requests for access to open records may be made in writing, by telephone or in person. Requests shall identify the particular records sought by name or other personal identifier and description in order to facilitate the location of the record. Requests shall include the name and address of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

**4.3(4)** *Response to requests.* The custodian of records under the jurisdiction of the department is authorized to grant or deny access to a record according to the provisions of this chapter and directions from the department. The decision to grant or deny access may be delegated to one or more designated employees.

Access to an open record shall be granted upon request. Unless the size or nature of the request requires time for compliance, the custodian shall respond to the request as soon as feasible. However,

access to an open record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall promptly inform the requester of the reason for the delay and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that a denial is warranted under Iowa Code subsection 22.8(4) or 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 4.4(8A,17A,22) and other applicable provisions of law.

**4.3(5)** *Security of record.* No person may, without permission from the custodian, search or remove any record from department files. The custodian or a designee of the custodian shall supervise examination and copying of department records. Records shall be protected from damage and disorganization.

**4.3(6)** *Copying.* A reasonable number of copies of an open record may be made in the department's office unless printed copies are available. If copying equipment is not available in the 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, subject to costs.

**4.3(7)** *Fees.*

*a. When charged.* The department is authorized to charge fees in connection with the examination or copying of records in accordance with Iowa Code section 22.3. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

*b. Copying and postage costs.* Price schedules for regularly published records and for copies of records supplied by the department shall be posted in the department. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost, as determined by and posted in department offices by the custodian. A charge assessed to a current employee for copies of records in the employee's own official personnel file shall not exceed $5 per request. When the mailing of copies of records is requested, the actual costs of mailing may be charged to the requester.

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

*d. Search fees.* If the request requires research or if the record or records cannot reasonably be readily retrieved, the requester will be advised of this fact. Reasonable search fees may be charged when appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may 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. Upon completion, the actual fee will be calculated and the difference refunded or collected.

(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 or pending request for access to records from that requester.

**11—4.4(8A,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 or 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 4.3(8A,22).

**4.4(1)** *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority satisfactory to the custodian to secure access to the record.

**4.4(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 alleged to justify access to the confidential record and to provide any proof necessary to establish relevant facts.

**4.4(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 that 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 shall give the subject of that 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 that record the specified period of time during which disclosure will be delayed for that purpose.

**4.4(4)** *Request denied.* When the custodian denies a request for access to a confidential record, in whole or in part, the custodian shall promptly notify the requester in writing. The denial shall be signed by the custodian of the record and shall include:

*a.* The name and title of the person responsible for the denial; and

*b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record; or

*c.* A citation to the statute vesting discretion in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

**4.4(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 shall indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

**11—4.5(8A,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.

**4.5(1)** *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record under the jurisdiction of the department to members of the public 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. Failure of a person to request confidential record treatment for all or part of a record does not preclude the department from designating it and treating it as a confidential record.

**4.5(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 director. 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 in which portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department 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.

**4.5(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 information to the department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6) for all or part of that information, the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**4.5(4)** *Timing of decision.* A decision by the custodian with respect to the disclosure of all or part of a record under its jurisdiction 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.

**4.5(5)** *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record in which the material 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.

**4.5(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, in good faith, reasonably delay 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.

**11—4.6(8A,22) Procedure by which a person who is the subject of a record may have additions, dissents, or objections entered into a record.** 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 department 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 requester, and shall include the current address and telephone number of the requester or the requester's representative.

**11—4.7(8A,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 under the jurisdiction of the department may consent to have a copy of the portion of that record concerning the subject disclosed to a third party except as provided in subrule 4.12(1). The consent must be in writing and must identify the particular record that may be disclosed, 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 subject and, where applicable, the person to whom the record is to be disclosed, must provide proof of identity.

**11—4.8(8A,17A,22) Notice to suppliers of information.** When a person is requested to supply information about that person that will become part of a record under the jurisdiction of the department, the department shall notify that person of the use that will be made of the information, which persons outside the department might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of not providing the information requested. This notice may be given in 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.

**11—4.9(8A,22) Disclosures without the consent of the subject.**

**4.9(1)** Open records are routinely disclosed without the consent of the subject.

**4.9(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 4.10(8A,22) or in any notice for a particular record system.

*b.* To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

*c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the 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 following a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

*e.* To the legislative services agency.

*f.* Disclosures in the course of employee disciplinary proceedings.

*g.* In response to a court order or subpoena.

**11—4.10(8A,22) Routine use.**

**4.10(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. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

**4.10(2)** To the extent allowed by law, the following uses are considered routine uses of all records under the jurisdiction of the department:

*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 department.

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

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

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

*g.* Distribution of lists of state employees to other than governmental entities.

*h.* Distribution of represented employees' payroll records to unions.

**11—4.11(8A,22) Consensual disclosure of confidential records.**

**4.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rule 4.7(8A,17A,22).

**4.11(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves a record under the jurisdiction of the department 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.

**11—4.12(8A,22) Release to subject.**

**4.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 4.6(8A,22). However, the department need not release the following records to the subject:

*a.* The identity of a person providing information to the department when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

*b.* Records that are the work product of an attorney or are otherwise privileged.

*c.* Peace officers' investigative reports except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

*d.* As otherwise authorized by law.

**4.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to other subjects in the record.

**11—4.13(8A,22) Availability of records.**

**4.13(1)** *Open records.* Department records are open for public inspection and copying unless otherwise provided by rule or law.

**4.13(2)** *Confidential records.* The following records under the jurisdiction of the department may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* The department is a depository for the records of other public bodies. Records are maintained on paper, audiotape, microform, and electronic information storage and media systems. Although these records are in the physical possession of the department, the responsibility for compliance with Iowa Code chapter 22 remains with the "lawful custodian." The public body requesting creation or storage of the record by the department is the lawful custodian (see Iowa Code section 22.1, definition of "lawful custodian"). All such records are confidentially maintained while in the possession of the department. Requests for access to any such records must be directed to the lawful custodian. Any records maintained by the department concerning the content, location, or disposition of such records are confidential in order to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

*b.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

*c.* Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (11—subrule 105.19(3), Iowa Administrative Code)

*d.* Tax records made available to the department. (Iowa Code sections 422.20 and 422.72)

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

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

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

*h.* Those portions of department staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by department 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 of 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 department. (See Iowa Code sections 17A.2 and 17A.3.)

*i.* 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), 602.10112, 622.10 and 622.11, Iowa R. Civ. P. 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law.

*j.* Reports to government agencies which, if released, would give advantage to competitors and serve no public purpose. (Iowa Code section 22.7)

*k.* Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code section 321.271)

(1) However, access shall be granted to those persons authorized by Iowa Code section 321.271.

(2) Pursuant to Iowa Code section 22.7, the lawful custodian may release the following information from peace officers' accident reports even though the reports are confidential: date, time, and location of accident; names of parties to the accident; owners and descriptions of the motor vehicles involved; name of investigating officer; names of injured; locations where motor vehicles and injured were transported; and the identification and owners of damaged property other than motor vehicles.

*l.* Confidential assignments of state vehicles by the state vehicle dispatcher. These records include letters/memos detailing driver assignments and plate numbers for selected vehicles pursuant to 2003 Iowa Code Supplement section 8A.362, and Iowa Code section 321.19(1).

*m.* Computer resource security files containing names, identifiers, and passwords of users of computer resources. This file must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

*n.* Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors, and school districts.

*o.* Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making communications to that government body if the communications were available for general public examination. (See Iowa Code section 22.7.)

*p.* Information contained in records of the centralized employee registry created in Iowa Code chapter 252G, except to the extent that disclosure is authorized pursuant to Iowa Code chapter 252G. (See Iowa Code section 22.7.)

*q.* Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body.

*r.* Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

*s.* Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

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

**4.13(3)** *Authority to release confidential records.* The department 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 these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 4.4(8A,17A,22). If the department initially determines that it will release such records, the department may, where appropriate, notify interested persons and withhold the records from inspection as provided in subrule 4.4(3).

**11—4.14(8A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifier in record systems as defined in rule 4.1(8A,22). Unless otherwise stated, the authority to maintain the record is provided by 2003 Iowa Code Supplement chapter 8A.

**4.14(1)** *Retrieval.* Personal identifiers may be used to retrieve information from any of the systems of records that the department maintains that contain personally identifiable information.

**4.14(2)** *Means of storage.* Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

**4.14(3)** *Comparison.* Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

**4.14(4)** *Comparison with data from outside the department.* Personally identifiable information in systems of records maintained by the department is retrievable through the use of personal identifiers and may be compared with information from outside the department when specified by law. This comparison is allowed in situations including:

*a.* Determination of any offset of a debtor's income tax refund or rebate for child support recovery or foster care recovery (2003 Iowa Code Supplement section 8A.504);

*b.* Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (2003 Iowa Code Supplement section 8A.504);

*c.* Offset from any tax refund or rebate for any liability owed a state agency (2003 Iowa Code Supplement section 8A.504);

*d.* Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (2003 Iowa Code Supplement section 8A.504).

**4.14(5)** *Nature and extent.* All of the record systems listed in subrule 4.14(6) contain personally identifiable information concerning matters such as income and social security numbers.

**4.14(6)** *Record systems with personally identifiable retrieval.* The department maintains the systems or records that contain personally identifiable and confidential information as described in the following paragraphs. The legal authority for the collection of the information is listed with the description or the system.

*a.* *Personnel files.* Personnel files are maintained by the department and the employee's appointing authority. An employee may have several files depending on the purpose of the file and the records maintained within the file. Personnel files consist of records that concern individual state employees and their families, as well as applicants for state employment.

(1) Personnel files contain personal, private, and otherwise confidential records related to:

1. Applicants.

- Preemployment information, including information gathered during background screenings;
- Test scores.

2. Benefits.

- Employee assistance program participation;
- Wellness program participation;
- Pre-tax programs;
- Health, dental, life, and long-term disability insurance;
- Benefit elections and miscellaneous benefit documents;
- Medical information on the employee or a member of the employee's immediate family;
- Medical information to support the employee's sick leave usage and fitness for duty determinations;
- Deferred compensation;
- Workers' compensation.

3. Employee performance and discipline.

- Investigations incident to the employee's employment;
- Information related to disciplinary actions;

- Complaints, grievances, and appeals;
- Performance planning and evaluation;
- Training; and
- Other information incident to the employment of individuals.

(2) These records are collected in accordance with 2003 Iowa Code Supplement chapter 8A, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and are confidential records under Iowa Code section 22.7(11) and other law because the information in the record is private and personal, the disclosure of which would likely result in an unwarranted invasion of the privacy of the subject of the record or the subject's family. It is unlikely that the personal and private information in these records can be separated from otherwise releasable information without identifying the subject or the subject's family.

*b. Employee payroll records.* The payroll records system consists of records that concern individual state employees and their families.

(1) This system contains the following information:

1. Workers' compensation;
2. Health, dental, life, and long-term disability insurance;
3. Qualified domestic relations orders;
4. Charitable contributions;
5. Garnishments;
6. Pay and benefits;
7. Equal employment opportunity;
8. Training;
9. Deferred compensation; and
10. Other information incident to the employment of individuals.

(2) Records under the jurisdiction of the department are collected in accordance with 2003 Iowa Code Supplement chapter 8A, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and are confidential records in part under Iowa Code section 22.7 and other law.

(3) These records contain names, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Computer records permit the comparison of personally identifiable information in one record system with that in another system.

*c. Vehicle dispatcher files.* Vehicle assignments and credit card records may be accessed by personal identifier or by vehicle identification number. Other records which may contain personally identifiable information, but are not retrievable by it, are: mileage reports, auction information, automobile insurance premiums, pool car billings, departmental billing, motor fuel tax refund, and motor oil claims. Records are stored on paper, computer, and microfilm.

*d. Capitol complex parking files.* The general services enterprise maintains records concerning parking assignments, decals, gate cards, after-hours building passes, parking tickets, departmental parking coordinators, and hearings and appeals. All records except those related to hearings and appeals may be retrieved by personal identifier data. Records related to hearings and appeals are filed by date of hearing only. Records are stored on paper and computer. Records relating to hearings and appeals are also stored on audio tapes.

*e. Annual bid bonds.* The printing division maintains a file of annual bid bonds for vendors eligible to bid on printing contracts. The file is alphabetical by vendor name and contains only those papers necessary for execution of the bond. This record is stored on paper only.

*f. Telephone directory of state employees.* The information technology enterprise maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored on both paper and computer.

*g. Contracts.* These are records pertaining to training, consultants, and other services. These records are collected in accordance with 2003 Iowa Code Supplement chapter 8A and Iowa Code chapter 19B and are confidential records in part under Iowa Code section 22.7. These records contain

names, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Computer records permit the comparison of personally identifiable information in one record system with that in another system.

*h.* *Vendor files.* The department maintains files of vendors eligible to do business with the state of Iowa. Files may contain applications, vendor information booklets, vendor codes, commodity codes, minority-owned vendor identification information, and mailing lists. Records are stored on paper and computer.

**4.14(7)** *Releasable information on state employees.* The following information that is maintained in the state payroll system or a personnel file shall be released to the public without the consent of the employee because the information is not considered to be confidential information:

*a.* The name and compensation paid to the state employee.

*b.* The date on which the state employee was employed by state government.

*c.* The position or positions that the state employee holds or has held with state government.

*d.* The state employee's qualifications for the position or positions that the state employee holds or has held including, but not limited to, educational background and work experience.

**11—4.15(8A,22) Other groups of records.** This rule describes groups of records maintained by the department other than record systems retrieved by individual identifiers as defined in rule 4.1(8A,22). The records listed may contain information about individuals. These records are routinely available to the public subject to costs. Unless otherwise designated, the authority for the department to maintain the record is provided by 2003 Iowa Code Supplement chapter 8A. All records may be stored on paper, microfilm, tape or in automated data processing systems unless otherwise noted.

**4.15(1)** *Rule-making records.* Official documents executed during the promulgation of department rules and public comments. This information is collected pursuant to Iowa Code chapter 17A.

**4.15(2)** *Board and commission records.* Agendas, minutes, and materials presented to boards and commissions within the department are available from the department except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may identify individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records may also be stored on audiotapes.

**4.15(3)** *Publications.* Publications include but are not limited to news releases, annual reports, project reports, and newsletters which describe various department programs.

**4.15(4)** *Information about individuals.* Department news releases, final project reports, and newsletters may contain information about individuals, including staff or members of boards or commissions.

**4.15(5)** *Statistical reports.* Periodic reports of activity for various department programs are available from the department.

**4.15(6)** *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 4.5(8A,17A,22) or subrule 4.13(2). These records, collected under the authority of 2003 Iowa Code Supplement chapter 8A, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, 97A, 97B, 97C, and 509A may contain confidential information about individuals.

**4.15(7)** *Published materials.* The department 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 laws.

**4.15(8)** *Published manuals.* The department 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.

**4.15(9)** *Mailing lists and contact lists.* The department maintains lists including names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public. These lists may be used for distribution of informational

material, such as newsletters, policy directives, or educational bulletins. These lists are also used to provide contacts for coordination of services or as reference information sources.

**4.15(10)** *Authorized user lists.* The information technology enterprise maintains a list of persons authorized to use their on-line services.

**4.15(11)** *Publication sales files.* The general services enterprise maintains records of persons purchasing legal publications. Records are used to produce mailing lists for renewal notification and publication mailings. Records are maintained by ZIP code. These are paper records except for mailing list production.

**4.15(12)** *Bid/purchasing process.* The department maintains records of specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, printing orders, supply orders, and correspondence.

**4.15(13)** *Project files.* The department maintains plans, specifications, contracts, studies, drawings, photos, blueprints, requests for services, abstracts, lease/rental files, 28E agreements, space administration, and facilities records.

**4.15(14)** *Property/equipment files.* The department maintains records of inventory, assignments, distribution, maintenance, requests, operations, shipping/receiving reports, and adjustments.

**4.15(15)** *Education program records.* Educational records include a library of training courses and reference materials, a library of course documentation, TSO data sets, Iowa interagency training system, class registrations of state employees, and files of course evaluations.

**4.15(16)** *Data processing files.* Data processing files include operations logs, database user requests, job number maintenance/update, data entry format book, integrated data dictionary, computer output forms designations, system software, hardware/software configurations, problem determination/resolution records, and incident reports.

**4.15(17)** *Federal surplus property records.* Donee files include applications for eligibility and records of distribution, transfer orders of property from other federal agencies, and auction files. Auction records are filed by auction date only, but award forms may contain names of individuals purchasing property.

**4.15(18)** *Administrative records.* Administrative records include the following:

*a.* Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.

*b.* Correspondence: public, interdepartmental, internal.

*c.* Policies and procedures.

*d.* Organizational charts or table of authorized positions.

*e.* Memberships: professional/technical organizations.

*f.* Budget and financial records.

*g.* Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, departmental billings.

*h.* Requisition of equipment and supplies.

**4.15(19)** *Legislative files.* Legislative files include pending bills, enrolled bills, legislative proposals, and copies of amendments.

**4.15(20)** *Printing files.* Printing files include print requisition, plates, negatives, samples, typesetting, artwork, and production logs.

**4.15(21)** *All other records.* Records are open if not exempted from disclosure by law.

**11—4.16(8A,22) Data processing systems.** Some of the data processing systems used by this department may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**11—4.17(8A,22) Applicability.** This chapter does not:

1. Require the department to index or retrieve records which contain information about a person 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 department that are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs unless otherwise provided by law or agreement.

5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. Applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations shall govern the availability of such records to the general public or to any subject individual or party to such litigation or proceedings.

**11—4.18(8A) Agency records.**

**4.18(1)** Each agency shall maintain a file of personnel records on each employee and each applicant for employment as specified by the department in rule or policy. All employee and applicant records are under the jurisdiction of the department.

**4.18(2)** The appointing authority shall give each employee copies of all materials placed in the employee's file unless determined otherwise by the department. The appointing authority shall provide copies of records to the department as requested.

**4.18(3)** When an employee is transferred, promoted or demoted from one agency to another agency, the employee's personnel records shall be sent to the receiving appointing authority by the former appointing authority.

**4.18(4)** The director shall prescribe the forms to be used for collecting and recording information on employees and applicants for employment, as well as the procedures for the completion, processing, retention, and release of those forms and records, as well as the information contained on them.

These rules are intended to implement 2003 Iowa Code Supplement chapter 8A and Iowa Code chapter 22.

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# CHAPTER 5
# PETITIONS FOR RULE MAKING

**11—5.1(17A) Petition for rule making.**

**5.1(1)** *Filing.* Any person or agency may file a petition for adoption of rules or request for review of rules with the Administrative Services Department, Office of the Director, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the department. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ADMINISTRATIVE SERVICES DEPARTMENT

| | |
|---|---|
| Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter). } | PETITION FOR RULE MAKING |

The petition must provide the following information:

*a.* A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

*b.* A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.

*c.* A brief summary of petitioner's arguments in support of the action urged in the petition.

*d.* A brief summary of any data supporting the action urged in the petition.

*e.* The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.

*f.* Any request by petitioner for a meeting provided for by rule 5.4(17A).

**5.1(2)** *Content.* 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.

**5.1(3)** *Denial.* The director may deny a petition because it does not substantially conform to the required form.

**11—5.2(17A) Briefs.** The petitioner may attach a brief to the petition in support of the action urged in the petition. The director may request a brief from the petitioner or from any other person concerning the substance of the petition.

**11—5.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the director at the offices of the department.

**11—5.4(17A) Department consideration.**

**5.4(1)** Within 14 days after the filing of a petition, the department must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the department must schedule a brief and informal meeting between the petitioner and the department to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

**5.4(2)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department must, in writing, deny the petition, and notify petitioner of its action and the

specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to the petitioner.

**5.4(3)** Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Code Supplement chapter 8A.

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# CHAPTER 6
# AGENCY PROCEDURE FOR RULE MAKING

**11—6.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**11—6.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment. Notwithstanding the foregoing, except as otherwise provided by law, the department may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

**11—6.3(17A) Public rule-making docket.**

**6.3(1)** *Docket maintained.* The department shall maintain a current public rule-making docket.

**6.3(2)** *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the department. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the department for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

**6.3(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's 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 department determination with respect thereto;

*h.* Any known timetable for department decisions or other action in the proceeding;

*i.* The date of the rule's adoption;

*j.* The date of the rule's filing, indexing, and publication;

*k.* The date on which the rule will become effective; and

*l.* Where the rule-making record may be inspected.

**11—6.4(17A) Notice of proposed rule making.**

**6.4(1)** *Contents.* At least 35 days before the adoption of a rule, the department shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

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

*b.* The specific legal authority for the proposed rule;

*c.* Except to the extent impracticable, the text of the proposed rule;

*d.* Where, when, and how persons may present their views on the proposed rule; and

*e.* Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

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

**6.4(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 6.12(2) of this chapter.

**6.4(3)** *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the department a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the 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 one year. Inquiries regarding the subscription price should be directed to the Administrative Services Department, Office of the Director, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319.

**11—6.5(17A) Public participation.**

**6.5(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 person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action.

**6.5(2)** *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

*a.* 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.

*b.* 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.

*c.* 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.

**6.5(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"* 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 director or another person designated by the director who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the director does not preside, the presiding officer shall prepare a memorandum for consideration by the director summarizing the contents of the presentations made at the oral proceeding unless the director determines that such a memorandum is unnecessary because the director 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 director 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 department.

(6) The presiding officer may continue the oral proceeding at 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 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.

**6.5(4)** *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**6.5(5)** *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance to arrange access or other needed services.

**11—6.6(17A) Regulatory analysis.**

**6.6(1)** *Definition of small business.* A "small business" is defined in Iowa Code section 17A.4A(7).

**6.6(2)** *Mailing list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the rules administrator. The application for registration shall state:

*a.* The name of the small business or organization of small businesses;

*b.* Its address;

*c.* The name of a person authorized to transact business for the applicant;

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

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

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

**6.6(3)** *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**6.6(4)** *Qualified requesters for regulatory analysis—economic impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)*"a"* after a proper request from:

*a.* The administrative rules coordinator;

*b.* The administrative rules review committee.

**6.6(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 Iowa Code section 17A.4A(2)*"b"* after a proper request from:

*a.* The administrative rules coordinator;

*b.* The administrative rules review committee;

*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.

**6.6(6)** *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the department shall adhere to the time lines described in Iowa Code section 17A.4A(4).

**6.6(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 Iowa Code section 17A.4A(1).

**6.6(8)** *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and (5).

**6.6(9)** *Publication of a concise summary.* The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

**6.6(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 Iowa Code section 17A.4A(2)*"a,"* unless a written request expressly waives one or more of the items listed in the section.

**6.6(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 Iowa Code section 17A.4A(2)*"b."*

**11—6.7(17A,25B) Fiscal impact statement.**

**6.7(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 shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

**6.7(2)** If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**11—6.8(17A) Time and manner of rule adoption.**

**6.8(1)** *Time of adoption.* The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**6.8(2)** *Consideration of public comment.* Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**6.8(3)** *Reliance on agency expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**11—6.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**6.9(1)** The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

*a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

*b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

*c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**6.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

*a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

*b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

**6.9(3)** The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**6.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**11—6.10(17A) Exemptions from public rule-making procedures.**

**6.10(1)** *Omission of notice and comment.* To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**6.10(2)** *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

**6.10(3)** *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 6.10(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 department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 6.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 6.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**11—6.11(17A) Concise statement of reasons.**

**6.11(1)** *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Rules Administrator, Administrative Services Department, Hoover State Office Building, Level A-South, 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.

**6.11(2)** *Contents.* The concise statement of reasons shall contain:

*a.* The reasons for adopting the rule;

*b.* An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

*c.* The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

**6.11(3)** *Time of issuance.* After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

**11—6.12(17A) Contents, style, and form of rule.**

**6.12(1)** *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

*a.* The date the department adopted the rule;

*b.* A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1)*"b,"* or the department 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 Iowa Code section 17A.4(1)*"b,"* or the department in its discretion decides to include such reasons; and

*g.* The effective date of the rule.

**6.12(2)** *Incorporation by reference.* The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the administrative services department, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the administrative services department.

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

**6.12(3)** *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

**6.12(4)** *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**11—6.13(17A) Department rule-making record.**

**6.13(1)** *Requirement.* The department shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative Bulletin of a Notice of Intended Action. The rule-making record and materials incorporated by reference must be available for public inspection.

**6.13(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 submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

*b.* Copies of any portions of the department's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

*c.* All written petitions, requests, and submissions received by the department, and all other written materials of a factual nature and distinguished from opinion that are relevant to the merits of the rule

and that were created or compiled by the department and considered by the chief information officer, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion;

*d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

*e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

*f.* A copy of the rule and any concise statement of reasons prepared for that rule;

*g.* All petitions for amendment or repeal or suspension of the rule;

*h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

*i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any department response to that objection;

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*k.* A copy of any executive order concerning the rule.

**6.13(3)** *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

**6.13(4)** *Maintenance of record.* The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 6.13(2)*"g," "h," "i,"* or *"j."*

**11—6.14(17A) Filing of rules.** The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

**11—6.15(17A) Effectiveness of rules prior to publication.**

**6.15(1)** *Grounds.* The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**6.15(2)** *Special notice.* When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances

considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notices 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 6.15(2).

**11—6.16(17A) General statements of policy.**

**6.16(1)** *Compilation, indexing, public inspection.* The department shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)*"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(11)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**6.16(2)** *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 6.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**11—6.17(17A) Review by department of rules.**

**6.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or whether the rule should be amended or repealed. The department 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.

**6.17(2)** In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Code Supplement chapter 8A.

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# CHAPTER 7
# CONTESTED CASES

**11—7.1(8A,17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the administrative services department, or by the division of administrative hearings in the department of inspections and appeals on behalf of the department. Excepted from this chapter are matters covered by rule 11—60.2(8A), disciplinary actions; rule 11—61.1(8A), grievances; 11—subrule 61.2(6), appeal of disciplinary actions; rule 11—68.6(19B), discrimination complaints, including disability-related and sexual harassment complaints; matters covered by the grievance procedure in any collective bargaining agreement with state employees; matters within the exclusive jurisdiction of the industrial commissioner; and matters related to any of the department's vendors that administer group benefits if the vendor has an established complaint or appeal procedure. Further, the provisions of 11—Chapter 52, job classification, are exempt from subrules 7.5(4) to 7.5(7) and rules 7.6(8A,17A) and 7.8(8A,17A).

**11—7.2(8A,17A) Definitions.** Except where otherwise specifically defined by law:

*"Administrative law judge (ALJ)"* means an employee of the administrative hearings division of the department of inspections and appeals who presides over contested cases and other proceedings.

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

*"Department"* means the department of administrative services (DAS).

*"Director"* means the director of the department of administrative services or the director's designee.

*"Division"* means the division of administrative hearings of the department of inspections and appeals (DIA).

*"Ex parte"* means a communication, oral or written, to the presiding officer or other decision maker in a contested case without notice and an opportunity for all parties to participate.

*"Filing"* is defined in subrule 7.12(4) except where otherwise specifically defined by law.

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

*"Party"* means a party as defined in Iowa Code subsection 17A.2(8).

*"Presiding officer"* means the administrative law judge (ALJ) assigned to the contested case or, in the case of an appeal pursuant to rule 11—52.5(8A), the classification appeal committee appointed by the director.

*"Proposed decision"* means the presiding officer's recommended findings of fact, conclusions of law, and decision and order in contested cases where the department did not preside.

**11—7.3(8A,17A) Time requirements.**

**7.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**7.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as provided otherwise by rule or law. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**11—7.4(8A,17A) Requests for a contested case hearing.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the department action in question.

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

**11—7.5(8A,17A) Notice of hearing.**

**7.5(1)** *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Notices shall be served by first-class mail, unless otherwise required by statute or rule.

**7.5(2)** *Content.* Notices of hearing shall contain the information required by Iowa Code subsection 17A.12(2), the following information and any additional information required by statute or rule.

*a.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel, where known;

*b.* Reference to the procedural rules governing conduct of the contested case proceeding;

*c.* Reference to the procedural rules governing informal settlement; and

*d.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., an administrative law judge from the department of inspections and appeals, or the classification appeal committee).

**7.5(3)** *Transmission of contested cases.* In every proceeding filed by the department with the division, the department shall complete a transmittal form. The following information is required:

*a.* The name of the transmitting department;

*b.* The name, address and telephone number of the contact person in the transmitting department;

*c.* The name or title of the proceeding, which may include a file number;

*d.* Any department docket or reference number;

*e.* A citation to the jurisdictional authority of the department regarding the matter in controversy;

*f.* Any anticipated special features or requirements that may affect the hearing;

*g.* Whether the hearing should be held in person or by telephone or video conference call;

*h.* Any special legal or technical expertise needed to resolve the issues in the case;

*i.* The names and addresses of all parties and their attorneys or other representatives;

*j.* The date the request for a contested case hearing was received by the department;

*k.* A statement of the issues involved and a reference to statutes and rules involved;

*l.* Any mandatory time limits that apply to the processing of the case;

*m.* The earliest appropriate hearing date; and

*n.* Whether a petition or answer is required.

**7.5(4)** *Issuance of the hearing notice.* When a case is transmitted by the department to the division for hearing, the division shall issue the notice of hearing.

**7.5(5)** *Attachments.* The following documents shall be attached to the completed transmittal form when it is sent to the division:

*a.* A copy of the document showing the department action in controversy; and

*b.* A copy of any document requesting a contested case hearing.

**7.5(6)** *Receipt.* When a properly transmitted case is received, it is marked with the date of receipt by the division. An identifying number shall be assigned to each contested case upon receipt.

**7.5(7)** *Scheduling.* The division shall promptly schedule hearings for the department. The availability of an administrative law judge and any special circumstances shall be considered.

**11—7.6(8A,17A) Presiding officer.**

**7.6(1)** An administrative law judge shall have the following technical expertise unless waived by the department.

*a.* A license to practice law in the state of Iowa;

*b.* Three years' experience as an administrative law judge; and

*c.* For a hearing related to procurement, knowledge of contract law.

**7.6(2)** Except as otherwise provided by law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the department. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**7.6(3)** Unless otherwise provided by law, the director, or the director's designee, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**11—7.7(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter pursuant to Iowa Code section 17A.10. However, the department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**11—7.8(8A,17A) Telephone/video proceedings.** A prehearing conference or a hearing may be held by telephone or video conference call pursuant to a notice of hearing or an order of the presiding officer. The presiding officer shall determine the location of the parties and witnesses in telephone or video hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when the location is chosen.

**11—7.9(8A,17A) Disqualification.**

**7.9(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

*a.* Has a personal bias or prejudice concerning a party or a representative of a party;

*b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

*c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

*d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;

*e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

*f.* Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

*g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**7.9(2)** The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other department functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code subsection 17A.17(3) and subrules 7.9(3) and 7.23(3).

**7.9(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**7.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 7.25(8A,17A) and seek a stay under rule 7.29(8A,17A).

**11—7.10(8A,17A) Consolidation—severance.**

**7.10(1)** *Consolidation.* The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case proceedings where:

*a.* The matters at issue involve common parties or common questions of fact or law;

*b.* Consolidation would expedite and simplify consideration of the issues; and

*c.* Consolidation would not adversely affect the rights of parties to those proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

**7.10(2)** *Severance.* The presiding officer may, upon motion by any party or upon the presiding officer's own motion, for good cause shown, order any proceeding or portion thereof severed.

**11—7.11(8A,17A) Pleadings.**

**7.11(1)** Pleadings may be required by rule, by the notice of hearing or by order of the presiding officer.

**7.11(2)** Petition. When an action of the department is appealed and pleadings are required under subrule 7.11(1), the aggrieved party shall file the petition.

*a.* Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

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

(1) On whose behalf the petition is filed;

(2) The particular provisions of the statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**7.11(3)** Answer. If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

*a.* Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.

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

*c.* The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.

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

**7.11(4)** Amendment. Any notice of hearing, petition or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**11—7.12(8A,17A) Service and filing of pleadings and other papers.**

**7.12(1)** *When service is required.* Except where otherwise specifically authorized by law, every pleading, motion, document or other paper filed in the contested case proceeding and every paper relating to discovery in the proceeding shall be served upon each of the parties to the proceeding, including the originating agency. Except for the notice of the hearing and an application for rehearing

as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

**7.12(2)** *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by first-class mail is rebuttably presumed to be complete upon mailing, except where otherwise specifically provided by statute, rule or order.

**7.12(3)** *Filing—when required.*

*a.* After a matter has been assigned to the division, and until a proposed decision is issued, documents shall be filed with the division, rather than the originating agency. All papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

*b.* After the notice of hearing, when a matter has not been assigned to the department of inspections and appeals for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Administrative Services Department, Hoover State Office Building, Level A, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department.

**7.12(4)** *Filing—when made.*

*a.* Except where otherwise provided by law, a document is deemed filed at the time it is:

(1) Delivered to the division of administrative hearings pursuant to subrule 7.12(3), paragraph *"a,"* or to the department of administrative services pursuant to subrule 7.12(3), paragraph *"b,"* and date-stamped received;

(2) Delivered to an established courier service for immediate delivery;

(3) Mailed by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or

(4) Sent by facsimile transmission (fax) as provided in subrule 7.12(4), paragraph *"b."*

*b.* All documents filed with the division or the department pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code subsection 17A.12(9)), may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the division or the department. The receiving office will not provide a mailed file-stamped copy of documents filed by fax.

**7.12(5)** *Proof of mailing.* Adequate proof of mailing includes the following:

*a.* A legible United States Postal Service postmark on the envelope;

*b.* A certificate of service;

*c.* A notarized affidavit; or

*d.* A certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed) or (state interoffice mail).
>
> _____ _____
>
> (SIGNATURE) (DATE)

**11—7.13(8A,17A) Discovery.**

**7.13(1)** Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by rules of the department or by a ruling

by the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**7.13(2)** Any motion relating to discovery shall allege that the moving party has made a good faith attempt to resolve the issues raised by the motion with the opposing party. Motions in regard to discovery shall be ruled on by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.13(1). The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

**7.13(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**11—7.14(8A,17A) Subpoenas.**

**7.14(1)** *Issuance.*

*a.* Pursuant to Iowa Code subsection 17A.13(1), a department subpoena shall be issued to a party on request unless subrule 7.14(1), paragraph *"d,"* applies. A request may be either oral or in writing. In the absence of good cause for permitting later action, a written request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address and telephone number of the requesting party.

*b.* Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

*c.* When authorized by law, a presiding officer may issue a subpoena on the presiding officer's own motion.

*d.* When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena is irrelevant, the presiding officer may refuse to issue the subpoena, or may require the requesting party to provide a statement of testimony expected to be elicited from the subpoenaed witness and a showing of relevancy. If the presiding officer refuses to issue a subpoena, the presiding officer shall provide, upon request, a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing regarding the refusal by filing a written request to the presiding officer.

**7.14(2)** *Motion to quash or modify.*

*a.* A subpoena may be quashed or modified upon motion for any lawful ground in accordance with Iowa Rule of Civil Procedure 1.1701.

*b.* A motion to quash or modify a subpoena shall be served on all parties of record.

*c.* The motion shall be set for argument promptly.

**11—7.15(8A,17A) Motions.**

**7.15(1)** No technical form is required for motions. Prehearing motions, however, must be written, state the grounds for relief and state the relief sought. Any motion for summary judgment shall be filed in compliance with the requirements of Iowa Rule of Civil Procedure 1.981.

**7.15(2)** Any party may file a written resistance or response to a motion within 15 days after the motion is served, unless the time period is extended or shortened by rules of the department or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**7.15(3)** The presiding officer may schedule oral argument on any motion on the request of any party or on the presiding officer's own motion.

**7.15(4)** Except for good cause, all motions pertaining to the hearing must be filed and served at least 10 days prior to the hearing date unless the time period is shortened or lengthened by rules of the department or by the presiding officer.

**11—7.16(8A,17A) Prehearing conference.**

**7.16(1)** Any party may request a prehearing conference. A request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed in writing and served

on all parties of record not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

The presiding officer shall give notice of the prehearing conference to all parties. For good cause, the presiding officer may permit variances from this rule.

**7.16(2)** Each party shall bring to the prehearing conference:

*a.* A final list of witnesses who the party reasonably anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying.

*b.* A final list of exhibits that the party reasonably anticipates will be introduced at the hearing. Exhibits not listed, except rebuttal exhibits, may be excluded from admission into evidence.

**7.16(3)** In addition to the requirements of subrule 7.16(2), the parties at a prehearing conference may:

*a.* Enter into stipulations of law;

*b.* Enter into stipulations of fact;

*c.* Enter into stipulations on the admissibility of exhibits;

*d.* Identify matters that the parties intend to request be officially noticed;

*e.* Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A allowed by Iowa Code section 17A.10(2) or waiver of department rules; and

*f.* Consider any additional matters that will expedite the hearing.

**7.16(4)** A prehearing conference shall be conducted by telephone or video conference call unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists prior to a telephone or video prehearing conference call.

**11—7.17(17A) Continuances.** Unless otherwise provided, application for continuance shall be made to the presiding officer.

**7.17(1)** A written application for continuance shall:

*a.* Be made before the hearing;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the requesting party's representative.

**7.17(2)** If the presiding officer waives the requirement for a written motion, an oral application for continuance may be made. A written application shall be submitted no later than five days after the oral request. The presiding officer may waive the requirement for a written application. No application for continuance will be made or granted ex parte without notice except in an emergency where notice is not feasible. The department may waive notice of requests for a case or a class of cases.

**7.17(3)** Except where otherwise provided, a continuance may be granted at the discretion of the presiding officer. The presiding officer may consider, in addition to the grounds stated in the motion:

*a.* Any prior continuances;

*b.* The interests of all parties;

*c.* The likelihood of informal settlement;

*d.* Existence of emergency;

*e.* Objection to the continuance;

*f.* Any applicable time requirements;

*g.* The existence of a conflict in the schedules of counsel or parties or witnesses;

*h.* The timeliness of the request;

*i.* Any applicable state or federal statutes or regulations; and

*j.* Other relevant factors.

The presiding officer may require documentation of any ground for continuance.

**11—7.18(8A,17A) Withdrawals.** The party that requested an evidentiary hearing regarding department action may withdraw prior to the hearing only in accordance with department rules. Requests for withdrawal may be oral or written. If the request is oral, the presiding officer may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

**11—7.19(8A,17A) Intervention.**

**7.19(1)** *Motion.* A motion for leave to intervene shall be served on all parties and shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**7.19(2)** *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the disposition of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if one is held, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreement, arrangement or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the hearing will be denied.

**7.19(3)** *Grounds for intervention.* The movant shall demonstrate that:

*a.* Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

*b.* The movant will be aggrieved or adversely affected by a final order; and

*c.* The interests of the movant are not being adequately represented by existing parties; or that the movant is otherwise entitled to intervene.

**7.19(4)** *Effect of intervention.* If appropriate, the presiding officer may order consolidation of petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues to be raised or otherwise condition the intervenor's participation in the proceeding.

**11—7.20(8A,17A) Hearing procedures.**

**7.20(1)** The appointed presiding officer in a contested case proceeding shall preside at the hearing and may:

*a.* Rule on motions;

*b.* Require the parties to submit briefs;

*c.* Issue a proposed decision; and

*d.* Issue orders and rulings to ensure the orderly conduct of the proceedings.

**7.20(2)** All objections to procedures, admission of evidence or any other matter shall be timely made and stated on the record.

**7.20(3)** Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations or associations may be represented by any member, officer, director or duly authorized agent.

Any party may be represented by an attorney or another person authorized by law. The cost of representation is the responsibility of the party.

**7.20(4)** Parties in a contested case have the right to introduce evidence on points at issue, to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, to present evidence in rebuttal, and to submit briefs and engage in oral argument.

**7.20(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly or disruptive.

**7.20(6)** Witnesses may be sequestered during the hearing.

**7.20(7)** The presiding officer shall conduct the hearing in the following manner:

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

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

*c.* Parties shall present their cases in the sequence determined by the presiding officer;

*d.* Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning consistent with Iowa Code section 17A.14;

*e.* The presiding officer has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material; and

*f.* When all parties and witnesses have been heard, parties shall be given the opportunity to present final arguments.

**11—7.21(8A,17A) Evidence.**

**7.21(1)** The presiding officer shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may take official notice of facts pursuant to Iowa Code subsection 17A.14(4).

**7.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**7.21(3)** Evidence shall be confined to the issues on which there has been fair notice prior to the hearing. The presiding officer may take testimony on a new issue if the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If there is objection, the presiding officer may refuse to hear the new issue and may make a decision on the original issue in the notice, or may grant a continuance to allow the parties adequate time to amend pleadings and prepare their cases on the additional issue.

**7.21(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**7.21(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. The objecting party shall briefly state the grounds for the objection. The objection, the ruling on the objection and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**7.21(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony. If the evidence excluded consists of a document or exhibits, it shall be marked as part of an offer of proof and inserted in the record.

**11—7.22(8A,17A) Default.**

**7.22(1)** If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party.

**7.22(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**7.22(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final department action unless, within 15 days (unless another period of time is specifically required by statute or rule) after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 7.27(8A,17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit must be attached to the motion.

**7.22(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**7.22(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**7.22(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**7.22(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 7.25(8A,17A).

**7.22(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**7.22(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

**7.22(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 7.29(8A,17A).

**11—7.23(8A,17A) Ex parte communication.**

**7.23(1)** Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives and the presiding officer shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The presiding officer may communicate with persons who are not parties as provided in subrule 7.23(2).

**7.23(2)** However, the presiding officer may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in, or those prosecuting or advocating in the case under consideration or a factually related case involving the same parties. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**7.23(3)** Any party or presiding officer who receives prohibited communication shall submit the written communication or a summary of the oral communication for inclusion in the record. Copies shall be sent to all parties. There shall be opportunity to respond.

**7.23(4)** Prohibited communications may result in sanctions as provided in department rule. In addition, the department, through the presiding officer, may censure the person or may prohibit further appearance before the department.

**11—7.24(8A,17A) Recording costs.** The department shall provide a copy of the tape-recorded hearing or a printed transcript of the hearing when a record of the hearing is requested. The cost of preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

**11—7.25(8A,17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the director or the director's designee may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which the granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the department at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**11—7.26(8A,17A) Decisions.**

**7.26(1)** *Final decision of department.* When the department presides over the reception of evidence at the hearing, its decision is a final decision.

**7.26(2)** *Proposed decision.* When the department does not preside at the reception of evidence, the presiding officer shall make a proposed decision.

A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

**7.26(3)** *Contents of decision.* The proposed or final decision or order shall:

*a.* Be in writing or stated in the record.

*b.* Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

*c.* Include conclusions of law stated separately from findings of fact and supported by cited authority or a reasoned opinion.

*d.* Be based on the record of the contested case. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). This record shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

**7.26(4)** *Proposed decision becomes final.* The proposed decision of the presiding officer becomes the final decision of the department without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 7.27(8A,17A).

**7.26(5)** *Reports.* The department shall send to the division a copy of any request for review of a proposed decision issued by a presiding officer from the department of inspections and appeals. The department shall notify the division of the results of the review, the final decision and any judicial decision issued.

**11—7.27(8A,17A) Appeals and review.**

**7.27(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the director within 14 days after issuance of the proposed decision.

**7.27(2)** *Review.* The director may initiate review of a proposed decision on the director's own motion at any time within 21 days following the issuance of such a decision.

**7.27(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

*a.* The parties initiating the appeal;

*b.* The proposed decision or order appealed from;

*c.* The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

*d.* The relief sought; and

*e.* The grounds for relief.

**7.27(4)** *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The director may remand a case to the presiding officer for further hearing. The director or director's designee may preside at the taking of additional evidence.

**7.27(5)** *Scheduling.* The department shall issue a schedule for consideration of the appeal.

**7.27(6)** *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The director or director's designee may resolve the appeal on the briefs or provide an opportunity for oral argument. The director or director's designee may shorten or extend the briefing period as appropriate.

**11—7.28(8A,17A) Applications for rehearing.**

**7.28(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**7.28(2)** *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the department decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.27(4), the applicant requests an opportunity to submit additional evidence.

**7.28(3)** *Time of filing.* The application shall be filed with the department within 20 days after issuance of the final decision.

**7.28(4)** *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the department shall serve copies on all parties.

**7.28(5)** *Disposition.* Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

**11—7.29(8A,17A) Stays of department actions.**

**7.29(1)** *When available.*

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

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

**7.29(2)** *When granted.* In determining whether to grant a stay, the director, director's designee, or presiding officer shall consider factors listed in Iowa Code section 17A.19(5)*"c."*

**7.29(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the department's representative or any other party.

**11—7.30(8A,17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**11—7.31(8A,17A) Emergency adjudicative proceedings.**

**7.31(1)** *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

*a.* Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

*b.* Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

*c.* Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

*e.* Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

**7.31(2)** *Issuance of order.*

*a.* An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

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

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the department;

(3) Certified mail to the last address on file with the department;

(4) First-class mail to the last address on file with the department; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

*c.* To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**7.31(3)** *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**7.31(4)** *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

These rules are intended to implement Iowa Code chapter 17A and Iowa Code Supplement chapter 8A.

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# CHAPTER 8
# DECLARATORY ORDERS

**11—8.1(17A) Petition for declaratory order.** Any person may file a petition with the administrative services department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Administrative Services Department, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The administrative services department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ADMINISTRATIVE SERVICES DEPARTMENT

| | |
|---|---|
| Petition by (Name of Petitioner)<br>for a Declaratory Order on<br>(Cite the provisions of law involved). | PETITION FOR<br>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 rule 8.7(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.

**11—8.2(17A) Notice of petition.** Within 15 business days after receipt of a petition for a declaratory order, the administrative services department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 8.6(17A) to whom notice is required by any provision of law. The administrative services department may also give notice to any other persons deemed appropriate.

**11—8.3(17A) Intervention.**

**8.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order and before the 30-day time for department action under rule 8.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

**8.3(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.

**8.3(3)** A petition for intervention shall be filed with the administrative services department. Such a petition is deemed filed when it is received by the department. The administrative services department 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:

ADMINISTRATIVE SERVICES DEPARTMENT

| | | |
|---|---|---|
| Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite the 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.

**11—8.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The administrative services department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**11—8.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the legal counsel for the Administrative Services Department, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319.

**11—8.6(17A) Service and filing of petitions and other papers.**

**8.6(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.

**8.6(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 Director's Office, Administrative Services Department, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319, Attn: Legal Counsel. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

**8.6(3)** *Method of service.* Petitions for declaratory orders, petitions for intervention, and every document relating to such petitions shall be served upon the department and each known party simultaneously with their filing. The party filing a document is responsible for service on all parties.

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.

**8.6(4)** *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Director's Office, Department of Administrative Services, Hoover State

Office Building, Third Floor, Des Moines, Iowa 50319; 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.

**8.6(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)

**11—8.7(17A) Consideration.** Upon request by petitioner, the administrative services department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the department to discuss the questions raised. The administrative services department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

**11—8.8(17A) Action on petition.**

**8.8(1)** Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the department director or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

**8.8(2)** The date of issuance of an order or of a refusal to issue an order shall be 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.

**11—8.9(17A) Refusal to issue order.**

**8.9(1)** The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

*a.* The petition does not substantially comply with the required form.

*b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the administrative services department to issue an order.

*c.* The administrative services department does not have jurisdiction over the questions presented in the petition.

*d.* The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

*e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

*f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

*g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

*h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

*i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the question presented may fairly be presumed to be adverse to that of petitioner.

*j.* The petitioner requests the administrative services department to determine whether a statute is unconstitutional on its face or whether any of the other conditions under Iowa Code section 17A.19 have been met.

*k.* The department will not issue declaratory orders on the following:

(1) Actuarial assumptions used or proposed to be used by the department;

(2) The impact of proposed legislation;

(3) Issues which require the disclosure of confidential information; or

(4) Items listed in 11—7.1(8A,17A).

**8.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**8.9(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.

**11—8.10(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 the issuance.

**11—8.11(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.

**11—8.12(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 administrative services department, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Code Supplement chapter 8A.

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# CHAPTER 9
# WAIVERS

**11—9.1(17A,8A) Definitions.**

*"Department"* or *"DAS"* means the department of administrative services authorized by 2003 Iowa Code Supplement chapter 8A.

*"Director"* means the director of the department of administrative services or the director's designee.

*"Person"* means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, vendor, or any legal entity.

*"Waiver or variance"* means any action by the department that 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."

**11—9.2(17A,8A) Scope.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department 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.

**11—9.3(17A,8A) Applicability.**

**9.3(1)** *Department authority.* The department may grant a waiver from a rule only if the department has jurisdiction over the rule from which waiver is requested or has final decision-making authority over a contested case in which a waiver is requested and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The department may not waive requirements created or duties imposed by statute. Any waiver must be consistent with statute.

**9.3(2)** *Interpretive rules.* This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the department does not possess delegated authority to bind the courts to any extent with its definition.

**11—9.4(17A,8A) Granting a waiver.** In response to a petition completed pursuant to rule 9.6(17A,8A), the director may, in the director's sole discretion, issue an order waiving in whole or in part the requirements of a rule.

**9.4(1)** *Criteria for waiver or variance.* A waiver may be granted if the director finds based on clear and convincing evidence each of the following:

*a.* The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

*b.* The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

*c.* The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

*d.* 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.

In determining whether a waiver should be granted, the director shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

**9.4(2)** *Special waiver or variance of rules not precluded.* These rules shall not preclude the director from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so; the director deems it appropriate to do so; and the director is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

**9.4(3)** *Procurement-related waiver or variance.* The director may waive a rule or grant a variance due to noncompliance with a stated requirement in a procurement, sale, or auction if the request meets all of the following criteria:

*a.* The request is made prior to the issuance of a notice of intent to award a contract or the finalization of a sale.

*b.* The waiver or variance will tend to promote competition rather than inhibit or reduce competition.

*c.* The waiver or variance will not materially alter the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.

*d.* The noncompliance with the stated requirement is correctable (if correction is necessary) without materially or substantially altering the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.

*e.* No other person who submits an offer, a response to an invitation to bid or a response to a request for proposals is materially or substantially harmed by the waiver or variance. A person shall not be deemed to have been harmed if the waiver or variance merely increases competition.

*f.* Fundamental notions of good faith and fair dealing favor the issuance of a waiver or variance.

*g.* The waiver or variance will not result in unreasonable delay in the procurement, sale or auction and will not interfere with certainty or finality in the procurement, sale or auction.

If the stated terms of the procurement, sale or auction permit or authorize waiver or variance from the stated terms, the director may waive or vary the stated terms without regard to subrule 9.4(1).

**9.4(4)** *Special waiver or variance not permitted.* The compensation rates for publication in a newspaper for any notice, order or citation or other publication required or allowed by law as determined by the state printing administrator pursuant to Iowa Code section 618.11 shall not be waived or varied. The procedure established in this chapter does not apply to waiver or variance of contractual terms or conditions; contracts shall be waived or varied only upon their own terms. These rules do not apply to the Terrace Hill commission established in 2003 Iowa Acts, chapter 145, section 41, or rules adopted by the commission unless these rules are adopted by the Terrace Hill commission.

**11—9.5(17A,8A) Filing of petition for waiver.** Any person may file with the department a petition requesting a waiver, in whole or in part, of a rule of the department on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

A petition for a waiver must be submitted in writing to the Iowa Department of Administrative Services, Office of the Director, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319-0104, Attention: Legal Counsel. Requests for waiver may be delivered, mailed, sent by facsimile transmission or by other electronic means reasonably calculated to reach the intended recipient.

**9.5(1)** *Appeals.* If the petition relates to a pending appeal or contested case, a copy of the petition shall also be filed in the appeal proceeding or contested case using the caption of the appeal or contested case.

**9.5(2)** *Other.* If the petition does not relate to an appeal or contested case, the petition will be submitted to the department's legal counsel.

**11—9.6(17A,8A) Content of petition.** A petition for waiver or variance 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 pending appeal or contested case.

2. A description and citation of the specific rule (and the stated requirement in a procurement, auction or sale) from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration, and any alternative means or other condition or modification proposed to achieve the purposes of the rule.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 9.4(1) or the criteria in subrule 9.4(3) if the request relates to a procurement, sale or auction. 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 the waiver.

5. A history of any prior contacts between the department and the petitioner relating to the activity that is the subject of the requested waiver including, but not limited to, a list or description of prior notices, investigative reports, advice, negotiations, consultations or conferences, a description of contested case hearings relating to the activity within the past five years, and penalties relating to the proposed waiver.

6. Any information known to the requester regarding the department'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, if reasonably known to the petitioner.

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 department with information relevant to the waiver or variance.

**11—9.7(17A,8A) Additional information.** Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in conjunction with an appeal, the director may, on the director's own motion or at the petitioner's request, schedule a telephonic, ICN, or in-person meeting between the petitioner and the director.

**11—9.8(17A,8A) Notice.** The department shall acknowledge the receipt of a petition by written means reasonably calculated to reach the petitioner or designee. The department shall ensure that, within 30 days of the receipt of the petition, notice and a concise summary of the content of the petition have been provided to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons.

To accomplish this notice provision, the department 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 department attesting that notice has been provided.

**11—9.9(17A,8A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver or variance of rule filed within a contested case; (2) when the director so provides by rule or order; or (3) when a statute so requires. Prior to issuing an order granting or denying a proposed waiver, the department shall determine whether or not the facts alleged in the proposed waiver are accurate and complete.

**11—9.10(17A,8A) 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 (including any conditions) and duration of the waiver if one is issued.

**9.10(1)** *Director discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the director, upon consideration of all relevant factors. Each petition for waiver shall be evaluated by the director based on the unique, individual circumstances set out in the petition.

**9.10(2)** *Burden of persuasion.* If the petition for waiver is based on a request pursuant to subrule 9.4(1), the burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant a waiver from a department rule.

**9.10(3)** *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**9.10(4)** *Administrative deadlines.* When the rule from which a waiver or variance is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

**9.10(5)** *Conditions.* The director may place any condition on the waiver that the director finds desirable to protect the public health, safety, and welfare or other such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

**9.10(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 director, a waiver may be renewed if the director finds that grounds for a waiver continue to exist.

**9.10(7)** *Time for ruling.* The director 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 or the department, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition is filed in an appeal, the director shall grant or deny the petition no later than the time at which the final decision in that appeal is issued.

**9.10(8)** *When deemed denied.* Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director. However, the director shall remain responsible for issuing an order denying a waiver.

**9.10(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.

**11—9.11(17A,8A) 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 department is authorized or required to keep confidential. The director may accordingly redact confidential information from petitions or orders prior to public inspection.

**11—9.12(17A,8A) Rules from which the department shall not grant waivers.** The department shall not grant waivers from the following rules:

1. Rules regarding the taxability of pension, tax-sheltered annuity, deferred compensation, or health and dependent care benefits under the Internal Revenue Code or the Iowa Code and rules adopted thereunder.

2. Rules governing separations, disciplinary actions and reductions in force under 11—Chapter 60 and grievances and appeals under 11—Chapter 61 (except as permitted by statute and applicable department rules).

**11—9.13(17A,8A) Summary reports.** Semiannually, the director 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 director'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.

**11—9.14(17A,8A) Cancellation of a waiver.** A waiver issued by the director pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the director 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 the material facts relevant to the propriety or desirability of the waiver;

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.

**11—9.15(17A,8A) 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.

**11—9.16(17A,8A) Defense.** After the director 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.

**11—9.17(17A,8A) Judicial review.** Judicial review of the department'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 and 2003 Iowa Code Supplement chapter 8A.

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CHAPTER 10
CUSTOMER COUNCILS
Rescinded IAB 11/5/08, effective 12/10/08

CHAPTERS 11 to 19
Reserved

TITLE II
*INFORMATION TECHNOLOGY*

# CHAPTER 20
# INFORMATION TECHNOLOGY GOVERNANCE

**11—20.1(81GA,ch90) General provisions.**

**20.1(1)** *Establishment.* The technology governance board is established within the department of administrative services by 2005 Iowa Acts, chapter 90.

**20.1(2)** *Mission.* The mission of the technology governance board is to set priorities for statewide technology investments and initiatives and to assist the department of management and the state's chief information officer in developing a statewide information technology budget. The budget shall reflect the total information technology spending of the executive branch, resulting in better decision making and financial investment performance reporting.

**11—20.2(81GA,ch90) Definitions.** For the purpose of this chapter, the following definitions apply:

*"Agency"* or *"state agency"* means a participating agency as defined in Iowa Code section 8A.201.

*"Board"* means the technology governance board.

*"Department"* means the department of administrative services, including the information technology enterprise.

*"Director"* means the director of the department of administrative services.

*"IowAccess advisory council"* means the council established pursuant to Iowa Code section 8A.221.

*"Large agency"* means a state agency with more than 700 full-time, year-round employees.

*"Medium-sized agency"* means a state agency with 70 or more full-time, year-round employees, but not more than 700 full-time, year-round employees.

*"Small agency"* means a state agency with less than 70 full-time, year-round employees.

**11—20.3(81GA,ch90) Membership of the board.**

**20.3(1)** *Composition.* The technology governance board is composed of ten members as follows:

*a.* The director.

*b.* The director of the department of management, or the designee of the director of the department of management.

*c.* Eight members appointed by the governor as follows:

(1) Three representatives from large agencies.

(2) Two representatives from medium-sized agencies.

(3) One representative from a small agency.

(4) Two public members who are knowledgeable and have experience in information technology matters.

*d.* A director, deputy director, chief financial officer or the equivalent is preferred as an appointed representative for each of the agency categories of membership pursuant to paragraph *"c."*

*e.* Appointments of public members to the board are subject to Iowa Code sections 69.16 and 69.16A governing balance in political affiliation and gender of members of appointed boards.

**20.3(2)** *Length of term.* Members appointed to the board pursuant to paragraph 20.3(1)*"c"* shall serve two-year fixed terms.

*a.* *Initial member terms.* In order to stagger terms of board members so that one-half of the terms expire each year, four of the eight members appointed by the governor shall serve initial terms of no longer than one year. Designation of which members are appointed to the initial staggered terms shall be at the discretion of the governor.

*b.* *Agency member terms.* Terms of the agency members appointed pursuant to paragraph 20.3(1)*"c"* shall expire on April 30 of the last year of the member's term. New terms shall begin on May 1.

*c.* *Public member terms.* The public members of the board are subject to Iowa Code section 69.19, requiring senate confirmation and terms that expire on April 30 of the year of term expiration. New terms of the public members shall begin on May 1.

**11—20.4(81GA,ch90) Compensation of members.**

**20.4(1)** A member shall be reimbursed for actual and necessary expenses incurred in performance of the member's duties.

**20.4(2)** Public members appointed by the governor may be eligible to receive compensation as provided in Iowa Code section 7E.6.

**11—20.5(8A) Officers of the board.** The technology governance board annually shall elect a chairperson and a vice chairperson from among the members of the board, by majority vote, to serve one-year terms.

**11—20.6(81GA,ch90) Meetings of the board.**

**20.6(1)** Meetings of the board shall be held at the call of the chairperson or at the request of three members. However, the board shall meet no less than monthly for the one-year period following the appointment of all members.

**20.6(2)** A majority of the members of the board shall constitute a quorum.

**20.6(3)** Meetings of the board are subject to the open meetings provisions of Iowa Code section 21.3.

**11—20.7(81GA,ch90) Correspondence and communications.** The office of the technology governance board is maintained in the office of the department of administrative services. Correspondence and communications to the board shall be directed in care of the Iowa Department of Administrative Services, Information Technology Enterprise, Hoover State Office Building, Level B, Des Moines, Iowa 50319.

**11—20.8(81GA,ch90) Powers and duties of the board.**

**20.8(1)** *Spending and savings report.* On an annual basis, the board shall prepare a report to the governor, the department of management, and the general assembly regarding the total spending on technology for the previous fiscal year, the total amount appropriated for the current fiscal year, and an estimate of the amount to be requested for the succeeding fiscal year for all agencies. The report shall include a five-year projection of technology cost savings, an accounting of the level of technology cost savings for the current fiscal year, and a comparison of the level of technology cost savings for the current fiscal year with that of the previous fiscal year. This report shall be filed as soon as possible after the close of a fiscal year, and by no later than the second Monday of January of each year.

**20.8(2)** *Budget and accounts.* The board shall work with the department of management and the state accounting enterprise of the department, pursuant to Iowa Code section 8A.502, to maintain the relevancy of the central budget and proprietary control accounts of the general fund of the state and special funds to information technology, as those terms are defined in Iowa Code section 8.2.

**20.8(3)** *Rules.* The board shall develop and approve administrative rules governing the activities of the board to be adopted under the department's name.

**20.8(4)** *Standards.* In conjunction with the department, the board shall develop and adopt standards with respect to procurement of information technology that shall be applicable to all agencies.

**20.8(5)** *Service and initiative recommendations.* The board shall make recommendations to the department regarding all of the following:

*a.* Technology utility services to be implemented by the department or other agencies.

*b.* Improvements to information technology service levels and modifications to the business continuity plan for information technology operations developed by the department pursuant to Iowa Code section 8A.202 for agencies, and to maximize the value of information technology investments by the state.

*c.* Information technology initiatives for the executive branch.

**20.8(6)** *Fees for electronic access.* The board shall review fee proposals for value-added services from state agencies and other governmental entities that have been recommended to the board by the IOWAccess advisory council. The board shall also perform or cause to have performed periodic audits of approved fees. If at any time the findings from an audit cause the board to reconsider its approval of a fee, the board shall within five business days notify the IOWAccess advisory council and the state agency of its reconsideration of the fee and request the agency to resubmit the adjusted fee to the IOWAccess advisory council for the council's recommendation. In establishing and auditing the fees for value-added services, the board shall consider the reasonable costs of creating and organizing government information into a gateway for one-stop electronic access to government information and transactions, whether federal, state, or local. The board shall submit decisions regarding fees to the department of management and to the legislative services agency.

**20.8(7)** *Advisory groups.* The board shall designate advisory groups as appropriate to assist the board in all of the following:

*a.* Development and adoption of an executive branch strategic technology plan.

*b.* Annual review of technology operating expenses and capital investment budgets of agencies by October 1 for the following fiscal year, and development of technology costs savings projections, accountings, and comparison.

*c.* Quarterly review of requested modifications to information technology budgets of agencies due to funding changes.

*d.* Review and approval of all requests for proposals having an information technology component prior to issuance for all information technology devices, hardware acquisitions, information technology services, software development projects, and information technology outsourcing for agencies that exceed the greater of a total cost of $50,000 or a total involvement of 750 agency staff hours.

*e.* Development of a plan and process to improve service levels and continuity of business operations, and to maximize the value of information technology investments.

*f.* Formation of internal teams to address cost-savings initiatives, including consolidation of information technology and related functions among agencies, as enacted by the technology governance board.

*g.* Development of information technology standards.

*h.* Development of rules, processes, and procedures for implementation of aggregate purchasing among agencies.

These rules are intended to implement 2005 Iowa Acts, chapter 90.

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CHAPTERS 21 to 24
Reserved

# CHAPTER 25
# INFORMATION TECHNOLOGY OPERATIONAL STANDARDS
[Prior to 1/21/04, see 471—Ch 12]

**11—25.1(8A) Definitions.** As used in this chapter:

*"Information technology"* means computing and electronics applications used to process and distribute information in digital and other forms and includes information technology devices and information technology services.

*"Information technology device"* means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. "Information technology device" includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

*"Information technology services"* means services designed to do any of the following:

1. Provide functions, maintenance, and support of information technology devices.
2. Provide services including, but not limited to, any of the following:

- Computer systems application development and maintenance.
- Systems integration and interoperability.
- Operating systems maintenance and design.
- Computer systems programming.
- Computer systems software support.
- Planning and security relating to information technology devices.
- Data management consultation.
- Information technology education and consulting.
- Information technology planning and standards.
- Establishment of local area network and workstation management standards.

*"Nonparticipating entity"* means the office of the governor or the office of an elective constitutional or statutory officer.

*"Operational standards"* means information technology standards, including but not limited to system design, system integration, specifications, requirements, processes or initiatives that foster compatibility, interoperability, connectivity, and use of information technology devices and services among participating agencies. Operational standards specify:

1. The performance that is required to be acceptable in accordance with specific operational criteria.
2. The technological features with which information technology products or services must comply to ensure compatibility, interoperability or connectivity among state agencies.

*"Participating agency"* means all executive branch agencies except those listed in Iowa Code section 8A.201(4), or as otherwise provided by law.

*"Technology governance board"* means the board established by 2005 Iowa Acts, chapter 90, section 3.

**11—25.2(8A) Authority and purpose.**

**25.2(1)** The department is required to develop, in consultation with the technology governance board, and implement information technology operational standards through a process as set forth in this chapter. It is the intent of the general assembly that information technology standards be established for the purpose of guiding the procurement of information technology by all participating agencies.

**25.2(2)** The goal of the department is to develop and implement effective and efficient strategies for the use and provision of information technology for participating agencies and other governmental entities.

**11—25.3(8A) Application of standards to participating agencies.** Operational standards established by the department, unless waived pursuant to rule 25.6(8A), shall apply to all information technology participating agencies.

**11—25.4(8A) Application of standards to nonparticipating entities.**

**25.4(1)** Nonparticipating entities are required to consult with the department prior to procuring information technology.

**25.4(2)** Nonparticipating entities are also required to consider the operational standards recommended to agencies by the department.

**25.4(3)** Upon the decision by a nonparticipating entity regarding acquisition of information technology, the entity shall provide a written report to the department.

**11—25.5(8A) Development of operational standards.**

**25.5(1)** *Recommendation of operational standards.* The department and the technology governance board shall develop recommended information technology operational standards that shall be subject to consideration through the public input process established pursuant to rule 25.7(8A).

**25.5(2)** *Implementation of operational standards.* The department and the technology governance board shall jointly approve information technology standards which are applicable to information technology operations by participating agencies, including but not limited to system design and systems integration and interoperability pursuant to Iowa Code section 8A.202. The director is charged with prescribing and adopting information technology operational standards.

**25.5(3)** *Requirement for operational standards.* Operational standards shall be developed regarding information technology issues that affect multiple participating agencies. Examples of situations where establishing an operational standard would result in potential advantage to the state include, but are not limited to:

*a.* Promoting knowledge transfer and reducing learning curves for new technology solutions,

*b.* Protecting and securing the state's information technology infrastructure and data,

*c.* Reducing the resources applied to technology solutions,

*d.* Streamlining the state's common information technology systems and infrastructure,

*e.* Streamlining the delivery of information or services by promoting consistency in the handling, collection, transport, or storage of data and information, or

*f.* Promoting potential short- or long-term cost savings or cost avoidance.

**25.5(4)** *Basis for operational standards.* Operational standards may be based on any of the following:

*a.* *Best practice guidelines.* Standards based on best practice guidelines means that a case study or analysis is used to provide a benchmark for good business and information technology practices in achieving a desired result. The analysis or case study highlights one or several proposed products, technology fields, analytical methodologies or information technology solutions which constitute a good approach for other entities pursuing similar solutions. Best practice guidelines are intended to:

(1) Be informational,

(2) Facilitate knowledge transfer, and

(3) Shorten the learning curve for other entities addressing common technology issues.

*b.* *Policy.* Standards based on policy means that the operational standards are based on a description of required or prohibited courses of action or behavior with respect to the acquisition, deployment, implementation, or use of information technology resources.

*c.* *Procedure.* Standards based on procedure means that the operational standards are based on a set of administrative instructions for implementation of a policy or standards specifications.

*d.* *Standards specifications.* Standards based on specifications means that the operational standards are based on a description of specific required technical approaches, solutions, methodologies, products or protocols which must be adhered to in the design, development, implementation or upgrade of systems architecture, including hardware, software and services, and a description of those prohibited. Standards are intended to establish uniformity in common technology infrastructures,

applications, processes or data. Standards may be developed as a subset of, and within the context of, a broader technology policy. Standards may define or limit the tools, proprietary product offerings or technical solutions which may be used, developed or deployed by state government entities subject to compliance with the operational standards specifications.

**25.5(5)** *Goals for information technology standards.* The underlying purpose of operational standards involving information technology shall be one or more of the following:

*a.* To promote consistency in the automation of systems;

*b.* To eliminate duplicative development efforts;

*c.* To ensure continuity of ongoing state operations;

*d.* To promote administrative efficiencies relating to development and maintenance of systems;

*e.* To enable the state to realize its full purchasing power from the use of a statewide, enterprise approach to the selection of technology solutions; and

*f.* To enhance security of systems and protection of personal information.

**25.5(6)** *Evaluating compliance with operational standards.* In evaluating compliance with operational standards, the technology governance board shall consider the following criteria:

*a.* *Current technology.* A proposed technology solution should be consistent with the statewide technology direction.

(1) A proposed technology solution should promote the goals set forth in subrule 25.5(5).

(2) A proposed technology solution should be current and reflect industry trends or best practice guidelines.

(3) A proposed technology solution should offer potential for a long life cycle, minimizing the risk of technological obsolescence.

*b.* *Existing technology deployments.* When state government entities have already made an investment in the proposed technology solution, the following issues shall be considered:

(1) The size and scope of existing deployments of the technology solution among state government entities (the installed base).

(2) Current fiscal investment associated with the installed base.

(3) Acquisition, development and deployment time frames associated with developing the installed base.

*c.* *Maintenance of ongoing business operations.* The proposed technology solution should enhance the ability of state government entities to maintain ongoing business operations.

*d.* *Impact on state resources.* Considerations regarding state resources include the following:

(1) Administrative and fiscal resources required to implement the proposed technology solution.

(2) Deployment time frame to implement the proposed technology solution.

(3) The potential for cost savings or cost avoidance.

**25.5(7)** *Effective date of operational standards.* Operational standards are effective 24 hours after the time of final posting unless otherwise specified.

**11—25.6(8A) Waivers of operational standards.** Participating agencies may apply directly to the department for a waiver of a current or proposed standard. The director, upon the written request of a participating agency and for good cause shown, may grant a waiver from a requirement otherwise applicable to a participating agency relating to an information technology standard established by the department.

**11—25.7(8A) Review of operational standards by the public and period of public comment.**

**25.7(1)** Interested members of the public may participate in the process of establishing standards by providing written comments to the Enterprise IT Standards Coordinator, Department of Administrative Services, Information Technology Enterprise, Hoover State Office Building, Level B, Des Moines, Iowa 50319. Comments will be accepted for a period of ten days after the initial posting of the standard by the department on the department's Web site at http://das.ite.iowa.gov/standards/index.html.

**25.7(2)** Interested members of the public may inquire about standards currently being considered for recommendation by writing to the Enterprise IT Standards Coordinator, Department of Administrative

Services, Information Technology Enterprise, Hoover State Office Building, Level B, Des Moines, Iowa 50319; or by accessing the department's Web site at http://das.ite.iowa.gov/standards/index.html.

**11—25.8(17A) Petition to initiate review of operational standards.** Any interested member of the public may petition the department for review of an existing or recommended standard by filing a written or electronic request with the department. The director may grant the petition if the director determines that the petition has merit. If the petitioner does not receive a response within 30 days of receipt of petition by the department, the petitioner may deem the petition denied.

**11—25.9(8A) Adoption of enterprise operational standards.** Information technology operational standards shall be approved by the technology governance board (board). Once approved, standards shall be posted for public comment for ten days on the department of administrative services, information technology enterprise standards Web site pursuant to rule 11—25.7(8A). All comments shall be provided to the board. The board shall determine if an operational standard should be adopted as originally written or be modified as a result of public comment. Modified standards shall be returned to the board for final approval before adoption.

Operational standards approved by the board shall be adopted by posting on the department of administrative services, information technology enterprise standards Web site and notifying affected agencies of the standard and the effective date.

**11—25.10** Reserved.

**11—25.11(8A) Assessment and enforcement of security operational standards.** The director shall designate a state chief information security officer for the department who is responsible for assessment of information security standards adopted by the technology governance board. The chief information security officer, or designee, shall assess compliance with security standards and seek recommendations for enforcement from the board when agencies are found to be noncompliant.

**25.11(1)** *Requests for additional time to comply with security standards.* An agency may request additional time to comply with adopted security standards by sending a written request to the chief information security officer. The written request must include the reason for the request, a description of what the agency will do to achieve compliance, and a time line for achieving compliance. The chief information security officer, or designee, shall approve or deny the request in writing to the agency within 15 calendar days of receipt of the request. The agency may modify and resubmit the request within 30 calendar days of receipt of notification of the decision. The chief information security officer shall approve or deny the resubmitted request in writing to the agency within 15 calendar days of receipt of notification. If the resubmitted request is denied, the agency may request review by the board at its next regularly scheduled meeting.

**25.11(2)** *Requests for a variance in security standards.* An agency may request a variance in the application of operational standards for security by sending a written request to the chief information security officer. A variance allows the agency to implement security measures different from the standard if the different measures, as determined by the chief information security officer, provide an equal or greater balance between security and service delivery. The written request must explain any change in risk to information technology resources within the agency and to resources managed by others which would result from the variance. Within 30 calendar days of receipt of the request for variance, the chief information security officer, or designee, shall approve, deny or propose an alternative to the request in writing to the agency. The agency may request review by the board at its next regularly scheduled meeting.

**25.11(3)** *Compliance assessments.* The chief information security officer shall periodically assess agency compliance with security standards. Agencies shall provide appropriate access and assistance to complete the assessments. Agencies may request the acceptance of results of like assessments conducted by third parties in lieu of an assessment by the chief information security officer.

**25.11(4)** *Determination of noncompliance.* If the chief information security officer determines that the agency is noncompliant, the chief information security officer shall send to the director of the noncompliant agency, the director and the board written notification of the finding and the steps that the agency must take to become compliant. Within 30 calendar days of receipt of the noncompliance notification, the agency shall submit to the chief information security officer a written plan describing the actions the agency will take to achieve compliance or submit a written request for a variance from the standard pursuant to subrule 25.11(2). Within 15 calendar days of receipt of the agency's plan or request for variance, the chief information security officer, or designee, shall approve, deny or propose an alternative to the request in writing to the agency. The agency may request review by the board at its next regularly scheduled meeting.

**25.11(5)** *Remedies.* When an agency is determined to be noncompliant by the chief information security officer, or designee, and all requests for review by the board have been exhausted, the chief information security officer may seek enforcement recommendations from the board for action by the director.

The board's recommendations shall reduce risk to acceptable levels and include considerations for cost and impact on service delivery. When other measures do not reduce risk to an acceptable level, the board may recommend the disconnection of all shared services, including access to shared data, until compliance is achieved or a remediation plan for achieving compliance is approved by the board. If the noncompliant agency is unable to implement the recommended remediation plan and the board determines that the noncompliance continues to represent an unacceptable risk to state resources, the board may submit to the governor a written recommendation for the department's information technology enterprise to assume responsibility for the management of the noncompliant agency's information technology systems. The noncompliant agency shall reimburse the information technology enterprise for services at the published rates.

**25.11(6)** *Emergency remediation.* When an information technology incident is determined by the chief information security officer to be a threat to critical state information resources or information resources outside state government, the director, the chief operating officer of the department's information technology enterprise, or a designee will request the immediate shutdown or disconnection of the agency technology services that are contributing to the threat. If the agency does not immediately comply, the information technology enterprise, Iowa communications network or other body may disconnect the agency from all shared services. The agency will be reconnected to shared services when the chief information security officer determines there is no longer a critical threat.

These rules are intended to implement 2003 Iowa Code Supplement chapter 8A.

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◊ Two or more ARCs

# CHAPTER 26
# INFORMATION TECHNOLOGY DEVELOPMENT STRATEGIES AND ACTIVITIES
[Prior to 1/21/04, see 471—Ch 15]

**11—26.1(8A) Development strategies and activities.** The department shall establish and implement strategies that will foster the development and application of information technology, electronic commerce, electronic government and Internet applications across participating agencies and in cooperation with other governmental entities and the private sector. Such strategies shall include, but not be limited to, developing public and private relationships to supplement existing resources and comprehensively meet the information technology needs of the state.

**11—26.2(8A) Partnerships with public or private entities.** The department may enter into partnerships, relationships, agreements, or other arrangements with public or private entities in order to obtain assistance, supplement existing resources and generate revenue in support of information technology development strategies and activities. Such partnerships, relationships, agreements, or other arrangements may involve, without limitation, the following:

**26.2(1)** The evaluation and development of information technology.

**26.2(2)** The establishment of pilot projects to develop prototype applications.

**26.2(3)** The joint sharing of information technology.

**26.2(4)** The provision or sale of sponsorships or other promotional activities on IowAccess or state Web sites.

**26.2(5)** The purchase, lease, licensing, disposal, or other procurement or disposition of information technology.

**26.2(6)** The obtainment of legal protection necessary to secure or enforce a right to or an interest in data processing software, consistent with Iowa Code section 22.3A.

**26.2(7)** The sale or distribution, marketing or licensing of data processing software, consistent with Iowa Code section 22.3A.

**11—26.3(8A) Web-based sponsorships and promotional activities.**

**26.3(1)** *Agreements.* The department may enter into agreements with public or private entities to provide for sponsorships or other promotional activities on eligible state Web sites in order to generate revenue or other advantages for the state. These agreements are limited in scope to solely those relationships by which an entity sponsors a Web site and are not intended to extend to public-private marketing partnerships which may be legally entered into outside the scope of this rule.

**26.3(2)** *Policies and procedures.* Prior to placing any sponsorships on state Web sites, the department and the information technology council shall consult with the IowAccess advisory council to develop and publish written policies and procedures that will apply to all sponsorships and other promotional content appearing on state Web sites.

**26.3(3)** *Deposit and use of revenues.* All revenues received as a result of any Web-based sponsorship or promotional activity shall be deposited in the IowAccess revolving fund to be administered by the department. All funds received from each individual department or entity sponsorship activity shall be earmarked for that particular department and then shall be dedicated for that particular department's technology needs consistent with 2003 Iowa Code Supplement section 8A.224.

**26.3(4)** *No endorsement by the state.* The appearance on a state Web site of any sponsorship or other promotion with respect to a product or service produced, provided or offered by a person or entity unaffiliated with the state shall not be construed as the state's endorsement, acceptance or approval of, or a representation or warranty with respect to (a) such product or service, or (b) the content, accuracy or method of sponsoring or promoting such product or service.

**11—26.4(8A) Scope of applicability.**

**26.4(1)** Nothing in this rule shall be interpreted to violate Iowa Code sections 99E.10 and 99E.20.

**26.4(2)** Agencies choosing to participate in any Web-based sponsorship activity shall be able to participate in the decisions surrounding their participation.

**26.4(3)** Entities which do not fall under the authority of 2003 Iowa Code Supplement chapter 8A may agree to partner with the department to participate in Web-based sponsorship activities. Moneys received as a result of these agreements shall be administered in the same manner as those administered under 26.3(3).

These rules are intended to implement 2003 Iowa Code Supplement chapter 8A.

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CHAPTERS 27 to 34
Reserved

TITLE III
*STATE ACCOUNTING*

CHAPTERS 35 to 39
Reserved

# CHAPTER 40
# OFFSET OF DEBTS OWED STATE AGENCIES

**11—40.1(8A) Definitions.** For the purposes of this chapter, the following definitions shall govern:

*"Collection entity"* means the department of administrative services and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

*"Debtor"* means any person owing a debt to the state of Iowa or any state agency.

*"Department"* means the Iowa department of administrative services.

*"Director"* means the director of the Iowa department of administrative services or the director's designee.

*"Liability"* or *"debt"* means any liquidated sum due and owing to the state of Iowa or any state agency which has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person's liability to a state agency shall be at least $50.

*"Offset"* means to set off or compensate a state agency which has a legal claim against a person or entity where there exists a person's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person's claim on a state agency shall be at least $50.

*"Person"* or *"entity"* means an individual, corporation, business trust, estate, trust, partnership or association, or any other legal entity, but does not include a state agency.

*"State agency"* or *"agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code Supplement section 7E.5. However, "state agency" or "agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

**11—40.2(8A) Scope and purpose.**

**40.2(1)** The purpose of these rules is to establish a procedure by which state agencies can cooperate in identifying debtors who owe liabilities to those state agencies and to establish a procedure for offsetting debtors' claims against state agencies with liabilities or debts which those debtors owe the state agencies.

**40.2(2)** Agencies may collect debts under the provisions of Iowa Code Supplement section 8A.504 through the daily processing offset system. Agencies utilizing the income tax refund offset system under the provisions of Iowa Code Supplement section 8A.504, which allows for the recovery of child support, foster care, and public assistance payments; the recovery of guaranteed student or parental loans; or recovery of any liquidated sum due, owing, and payable to the clerk of the district court may also utilize this offset system to collect debts due. Any state agency exempt from the provisions of Iowa Code Supplement section 8A.513 and that is making payments shall be subject to these rules.

**40.2(3)** Inclusions in and exclusions from setoff. The offset system may be used to collect any debt described in rule 40.1(8A). However, some claims against the state or state agencies on behalf of certain persons are made from funds exempt from collection and are thus unavailable for offset. A consolidated listing of payment sources unavailable for offset is available from the department's state accounting enterprise.

**11—40.3(8A) Participation guidelines.** Those state agencies qualified under rule 40.2(8A) to use this chapter's offset provisions should utilize these provisions when it is cost-effective to do so. Final determination regarding whether or not it will be cost-effective to offset any debt owed will be at the

discretion of the director. Generally, it will not be cost-effective to offset a debt if the total anticipated collection cost will exceed the amount of the claim that could reasonably be expected to be realized as a result of the collection costs. The cost-effectiveness criteria that the director applies will not be the same for every agency. Circumstances differ among agencies. The following nonexclusive examples are intended to provide guidance in determining cost-effectiveness. These examples represent instances in which it might not be cost-effective to offset debts.

EXAMPLE A: A debtor has ceased operations for an extended period of time.

EXAMPLE B: A business has changed its form (e.g., from a sole proprietorship to a partnership or corporation).

EXAMPLE C: A debt has been placed with a private collection firm and it appears likely that the firm will collect the debt.

EXAMPLE D: The age or health of a debtor is such that it is unlikely that the debtor will be receiving any payments from the state or a state agency.

EXAMPLE E: The debtor is a foreign student who has left the country.

EXAMPLE F: The debtor is a person in bankruptcy.

EXAMPLE G: By statute or federal regulations certain agencies cannot write off debts. If the debt of one of these agencies has been owed for a substantial amount of time, it may be reasonable to assume that referral would not be cost-effective (e.g., the debtor has changed its name or address or for some other reason would be impossible to locate).

**11—40.4(8A) Duties of the agency.** An agency seeking offset shall have the following duties regarding the department and debtors.

**40.4(1)** *Notification to the department.* An agency must provide a list of debtors to the department of administrative services. This list must be in a format and type prescribed by the department and include only information relevant to the identification of the person owing.

The director shall not process a claim under the provisions of Iowa Code Supplement section 8A.504 until notification is received from the state agency that the debt has been established through notice and opportunity to be heard. The agency shall provide along with each liability file a written statement to the director declaring that the debt has occurred.

**40.4(2)** *Change in status of debt.* A state agency that has provided a liability file to the department of administrative services must notify the department immediately of any change in the status of a debt to the state. This notification shall be made no later than 30 calendar days from the occurrence of the change. A change in status may come from payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

**40.4(3)** *Semiannual certification of file.* Each agency that maintains a liability file shall be required to certify the file to the department semiannually. This certification shall be made in a manner prescribed by the director. Debtors not certified in the manner prescribed will be removed from the liability file.

**40.4(4)** *Notification to debtor.* An agency shall send notification to the debtor within ten calendar days from the date the agency was notified by the department of a potential offset. This notification shall include:

*a.* The agency's right to the payment in question.

*b.* The agency's right to recover the payment through the offset procedure.

*c.* The basis of the agency's case in regard to the debt.

*d.* The right of the debtor to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

*e.* The debtor's right to appeal the offset and the procedure to follow in that appeal.

*f.* The name of the agency or division and a telephone number for the person owing to contact in the case of questions.

The department may require that a copy of this notice be sent to the department. Once the offset has been completed, the agency shall notify the debtor of the action taken along with the balance, if any, still due to the agency. It is the responsibility of the agency to make payment to the person owing the state

any payment offset by the department to which the state is not entitled, in accordance with established procedures.

**11—40.5(8A) Duties of the department—performance of the offset.** The department will develop procedures for administering each offset program request on an individual basis. Procedures will vary in order to achieve the greatest efficiency in administering each offset.

Before issuing an authorized payment to a person or entity, the department will match the payment against a debt listing provided by the state agencies participating in the offset program. The department will notify the state agency of the person's or entity's name, address, identifying number, and amount of the entitled payment.

The department shall hold the payment which offsets the liquidated sum due and payable for a period not to exceed 45 days while awaiting notification from the agency as to the amount required to satisfy the person's or entity's debt to the state. If notification is not made to the department by the state agency within 45 days, the amount of the payment shall be released to the person or entity.

The department will make the offset only after the state agency has notified the debtor as prescribed in subrule 40.4(4). The department shall then refund any balance amount due from the state to the person or entity.

**11—40.6(8A) Multiple claims—priority of payment.** In the case of multiple claims to payments filed under Iowa Code Supplement section 8A.504, after satisfaction of the provisions of Iowa Code section 422.73, priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit. Next priority shall be given to claims filed by the college student aid commission. Next priority shall be given to claims filed by the office of investigations. Next priority shall be given to claims filed by a clerk of the district court. Last priority shall be given to claims filed under Iowa Code Supplement section 8A.504.

The order of priority for offset against multiple claims by more than one state agency shall be determined by the date the liability was listed with the department. Subsequent entries of claims by state agencies shall be offset in order of the date the listing was made with the department.

**11—40.7(8A) Payments of offset amounts.** Payments to the agency requesting the offset shall be made by the department on the twenty-fifth day of each month.

**11—40.8(8A) Reimbursement for offsetting liabilities.** Costs incurred by the department in administering the offset program will be charged to the state department requesting offset. The costs will be deducted from the gross proceeds collected through offset and may include direct expenses such as salaries, supplies, equipment, and system modification and development costs; or indirect costs such as space, security, or utility costs. If the above-described procedure is prohibited by paramount state or federal law, the director shall allow reimbursement in a manner which conforms to the paramount law.

**11—40.9(8A) Confidentiality of information.** Information shared between state agencies shall be deemed confidential and shall be disclosed only to the extent that sufficient information is given that is relevant to the identification of persons liable to or claimants of state agencies. The information is to be used for the purpose of offset only.

## JUDICIAL OFFSET PROCEDURES

**11—40.10(8A) Incorporation by reference.** In providing judicial offset procedures, the department incorporates by reference the following rules and subrules to be applied to the substance and procedure under this heading:

1. 11—40.2(8A) Scope and purpose.
2. 11—40.3(8A) Participation guidelines.
3. 11—subrule 40.4(1) Duties of the agency—notification to the department.

4. 11—subrule 40.4(2) Duties of the agency—change in status of debt.
5. 11—subrule 40.4(3) Duties of the agency—semiannual certification of file.
6. 11—40.5(8A) Duties of the department—performance of the offset.
7. 11—40.7(8A) Payments of offset amounts.
8. 11—40.8(8A) Reimbursement for offsetting liabilities.
9. 11—40.9(8A) Confidentiality of information.

**11—40.11(8A) Definitions.** The definitions set forth in 11—40.1(8A) are incorporated by reference and are applicable to rules 11—40.10(8A) to 40.16(8A) except the definitions of "`liability' or `debt'" and "offset" which shall be defined for the purpose of these rules as follows:

*"Liability"* or *"debt"* means any liquidated sum due and owing to any clerk of the Iowa district court which has accrued through the following means including, but not limited to, fines, judgments, court costs, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person's original liability to a state agency must be at least $50, unless otherwise provided as based on the discretion of the department.

*"Offset"* means to set off or compensate any clerk of the Iowa district court which has a legal claim against a person or entity where there exists a person's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person's claim on a state agency shall be at least the minimum amount as indicated in the definition of "`liability' or `debt'" as set forth in this rule. If the source of a person's claim is a tax refund or tax rebate, the minimum will be $25.

**11—40.12(8A) Applicability and procedure.** For liabilities accrued and owing to any and all clerks of the Iowa district court, the department shall issue a written notice informing any person having a valid claim against a state agency that an offset will be performed against the claim. The department will perform the offsets for such clerks as provided in Iowa Code Supplement section 8A.504, and the department will send a written notice to the person liable for such a liability prior to and after the offset has been performed. Subsequently, the department will also provide administrative procedures and available remedies for contesting the validity of such an offset. The Iowa district court will provide the procedures and remedies for challenging the underlying liability at issue. This rule applies only to liabilities and debts owed to the clerks of the Iowa district court.

**11—40.13(8A) Notice of offset.** The department shall send written notification of the offset to the person that has a valid claim against any state agency that is a liquidated sum, due and payable and in which such a person is liable for a liability owed to any and all clerks of the Iowa district court within ten calendar days from the date the department is notified by the judicial branch of the uncollected liability. This notification must include:

1. The judicial branch's right to the payment in question;
2. The judicial branch's right to recover the payment through the offset procedure;
3. The basis of the judicial branch's case in regard to the debt;
4. The right of the person who owes the liability to request, within 15 days of the mailing of the notice, that the payment between parties be split when the payment in question is jointly owned or otherwise owned by two or more persons;
5. The right of the person liable to contest the right of offset and the validity of such offset with the department by mailing, to the department's legal counsel, a protest within 15 days of the mailing of such notice, and that the procedure to follow in that appeal will conform, according to the context, to the rules of the department involving protests and contested case proceedings in 11—Chapter 7.
6. The name of the agency or division and the telephone number for the person liable for the liability to contact concerning questions regarding the validity of the offset and the procedures for the offset;
7. That the person liable for the liability has the opportunity to contest the validity and amount of the liability by mailing, within 15 days of mailing of the notice of offset, a written application to contest the liability to the appropriate clerk of the Iowa district court; and

8. The name of the clerk of the district court and the telephone number for the person liable for the liability to contact concerning questions relating to the validity of the underlying liability and regarding the validity of the amount owed.

**11—40.14(8A) Procedure for contesting.** A person liable for a liability under this heading may contest the validity or amount of the underlying liability by mailing written notification of the person's intent to contest such a liability to the appropriate clerk of the Iowa district court. The Iowa district court will provide the person liable with the procedure and remedies for contesting the validity and amount of the underlying liability.

A person liable for a liability payable to the judicial branch that has been deemed qualified for offset may contest the validity of the offset or the right of the offset by mailing written notification to the Department of Administrative Services, Legal Counsel, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. The department will provide the procedure and remedies for contesting the validity of the offset and right of offset pursuant to the applicable contested case rules set forth in 11—Chapter 7.

If a person liable to the judicial department gives written notice of intent to contest either the validity or the amount of the liability or the validity of the offset or right of offset, the judicial department and the department will hold a payment in abeyance until the final disposition of the contested liability or offset.

**11—40.15(8A) Postoffset notification and procedure.** Following the offset, the department will notify the person liable that the offset was performed. It is the responsibility of the department to make payment to the person liable to the Iowa district court clerk of any amount to which the Iowa district court clerk is not entitled to receive under the offset, in accordance with established procedures.

**11—40.16(8A) Report of satisfaction of obligations.** At least monthly, the department will file with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. No additional or separate written notice from the department regarding the performed offsets is required.

These rules are intended to implement Iowa Code Supplement sections 8A.504, 422.16, 422.20, 422.72, and 422.73.

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# CHAPTER 41
# AUDITING CLAIMS

[Prior to 12/17/86, see Comptroller, State[270] Ch 1]
[Prior to 5/12/04, see 701—Ch 201]

All vouchers and claims required by law to be audited by the department of administrative services, state accounting enterprise, should conform to the following rules.

**11—41.1(8A) General provisions.**

**41.1(1)** *Submission of claims and approval.* All claims shall be typewritten, or written in ink, and be itemized and certified by the claimant.

EXCEPTION: The claimant's certification is not needed when the original invoice is attached to the claim. The original invoice shall indicate in detail the items of service, expense, thing furnished, or contract upon which payment is sought.

Approval of the claim shall be certified thereon by the head of the state agency, or the deputy, or the chair of the board or commission or its executive officer, or by a person delegated by the head of the state agency to fulfill this responsibility. A list of authorized signatures shall be provided to the department of administrative services, state accounting enterprise. If a rubber stamp signature is used, the claim shall be signed or initialed by the employee authorized to use the rubber stamp.

All travel claims submitted shall be the actual expense incurred (not exceeding maximum limitations) by the claimant, and shall not include expenses paid for other individuals, or for the purchase of miscellaneous items which are not needed in the performance of official duties while traveling. All travel vouchers shall contain the social security number of the employee or other individual identification (with prior written approval by the department of administrative services, state accounting enterprise).

All claims shall show in the space provided the Iowa Code reference for the appropriation or fund from which the claim is payable.

When an original invoice is submitted by a vendor, rather than the claimant signing the voucher, the vendor shall provide the state agency with an original invoice that the vendor would use in the normal conduct of its business. A state agency shall not impose additional or different requirements on submission of invoices than those contained in these rules unless the department of administrative services, state accounting enterprise, exempts the agency from these invoice requirements upon a finding that compliance would result in poor accounting or management practices.

**41.1(2)** *Interest on claims.* For any claim received for services, supplies, materials or a contract which is payable from the state treasury that remains unpaid after 60 days following the receipt of the claim or the satisfactory delivery, furnishing or performance of the services, supplies, materials or contract, whichever date is later, the state shall pay interest at the rate of 1 percent per month on the unpaid amount of the claim. Agencies may enter into written contracts for goods and services on payment terms of less than 60 days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. All agencies entering into written contracts for goods and services on payment terms of less than 60 days shall maintain written documentation demonstrating that the agency obtained a financial benefit or incentive which would not otherwise have been available from the vendor. This subrule does not apply to claims against the state under Iowa Code chapters 25 and 669 or the claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified.

**41.1(3)** *Availability of rules.* All state agencies are required to mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule.

**41.1(4)** *Property claims and real estate claims.* Claims for personal property sold, the acquisition of real estate, or services rendered to the state must have the original invoices or other documentation attached whenever possible to do so.

**41.1(5)** *Form for travel claim.* All travel claims are to be on a travel voucher or on a form approved (in writing) by the department of administrative services, state accounting enterprise.

**41.1(6)** *Intradepartmental rules on claims.* All intradepartmental rules pertaining to the auditing of claims internally shall be subject to the review and approval (in writing) of the department of administrative services, state accounting enterprise.

This rule is intended to implement Iowa Code section 17A.4 and Iowa Code Supplement section 8A.514.

**11—41.2(8A) Official travel.**

**41.2(1)** *Personal funds to be supplied.* All employees shall provide themselves with sufficient funds for all current expenses. See subrules 41.2(3) and 41.2(4) regarding travel advances.

**41.2(2)** *Reimbursable expenses and travel allowances.* The reimbursement allowed shall be limited to an allowance for subsistence and transportation, and other actual and necessary travel expenses incurred by a traveler in the performance of official duties subject to applicable limitations. All travel reimbursements shall be made on the basis of the usually traveled route.

**41.2(3)** *Travel advance.* State employees who are required to travel out of state may apply for a travel advance if the anticipated out-of-pocket expenses are in excess of $200. An advance may not exceed 80 percent of the anticipated expenses. In addition, employees shall comply with the conditions set forth below:

*a.* The travel advance shall be deducted from the expense voucher submitted by the employee upon completion of the trip.

*b.* If for any reason an employee does not make the anticipated trip, the travel advance shall be immediately returned to the state.

*c.* The employee shall give the department of administrative services, state accounting enterprise, authority to recover funds owed the state (through payroll deduction) which have not been repaid within 30 days of completion of the trip.

*d.* The department of administrative services, state accounting enterprise, reserves the right to refuse advances when funds are currently owed the state or when there have been prior abuses.

**41.2(4)** *Permanent in-state travel advance.* State employees who are not covered by collective bargaining agreements negotiated under the provisions of Iowa Code chapter 20 may be eligible for a permanent in-state travel advance if they meet and agree to the following conditions:

*a.* Employees whose in-state travel expense reimbursements average between $100 and $150 per month for the preceding 12 months shall receive upon written request a permanent travel allowance of $100.

*b.* Employees whose in-state travel expense reimbursements average over $150 per month for the preceding 12 months shall receive upon written request a permanent travel allowance of $150.

*c.* The department of administrative services, state accounting enterprise, shall have authority to deduct the permanent travel advance from the employee's last paychecks upon separation from state service.

*d.* The department of administrative services, state accounting enterprise, and employing agency reserve the right to review the employee's monthly travel expenses and should the employee fail to meet the above requirements, or become ineligible due to a change in duties or job assignment, the advance will be withdrawn (through payroll deduction) following proper notification.

**41.2(5)** *Official domicile defined.*

*a.* *Office employee.* The official domicile of an officer or employee assigned to an office is the city, town or metropolitan area (as established by the department of administrative services, state accounting enterprise) within which such office is located. Transportation costs between the employee's residence and office, and subsistence within the limits of an employee's official domicile are not reimbursable.

*b.* *Field employees.* The official domicile of field employees shall be designated by the administrative head of the state agency. Subsistence within the limits of an employee's official domicile shall not be allowed. No transportation costs will be allowed between the employee's place of residence and office.

*c.* *Nonreimbursable travel.* When additional expense is incurred by reason of an employee residing in a city or town other than the employee's official domicile, the additional expense is otherwise caused by an employee's choice of residence, and is not reimbursable.

**11—41.3(8A) Temporary duty assignment.**

**41.3(1)** *Subsistence while on temporary duty assignment.* When an employee is on temporary duty assignment, subsistence may be allowed for each day (including Saturdays, Sundays and holidays) from the time of departure from the employee's official domicile until the employee's return to the previous official domicile or a newly assigned domicile.

**41.3(2)** *Weekends.* When authorized by the administrative head of the agency or the designated representative, an employee who is on temporary duty status will be reimbursed for expenses involved while returning home for the weekend provided the amount, including transportation, does not exceed the amount that would have been allowable had the claimant remained at the temporary duty station.

**11—41.4(8A) Authorization for travel.**

**41.4(1)** *Approval by administrative head of the agency.* All official travel shall be authorized by the administrative head of the agency or the designated representative, prior to the travel whenever possible. This applies to in-state travel which is not subject to executive council approval.

**41.4(2)** *Out of state.* Official travel out of the state must receive prior approval in writing from the executive council of the state except those employees exempt from executive council approval pursuant to Iowa Code Supplement section 8A.512 or other specific statutory exemptions.

**41.4(3)** *Requests for out-of-state travel.* All requests for out-of-state travel shall be on a form approved by the executive council, and shall include information as the council deems necessary.

**41.4(4)** *Most economical or advantageous mode of travel.* Reimbursement for transportation approved by the administrative head of the agency shall be for the most economical or advantageous mode and by the usually traveled route.

**11—41.5(8A) Mode of transportation.**

**41.5(1)** *Airline travel accommodations.* When the administrative head of the agency determines that airline travel is the most economical or advantageous to the state, the use of airline travel may be authorized. The most economical mode of airline travel is considered to be coach or economy class, if available.

**41.5(2)** *Train travel.* In cases where train travel is utilized, the most economical mode shall be considered coach fare, if available.

**41.5(3)** *Purchase of tickets.*

*a.* All state agencies covered by the statewide travel agency contracts may purchase airline tickets through a travel agency under contract. Agencies shall develop internal policies so that agencies purchase or direct their employees to purchase tickets from the source determined by the agency to be the best value.

*b.* For all other tickets purchased, it shall be the employee's responsibility to purchase the ticket for whatever mode of transportation that is determined to be the most economical. Reimbursement will be made by attaching a receipt to the employee travel voucher. Refunds received on any unused portion of the ticket shall be shown and deducted from the original ticket.

**41.5(4)** *Use of privately owned vehicle.* Authorized use of a privately owned vehicle for travel on official state business will be subject to rule 11—103.4(8A).

*a.* *Instate.* Where use of a privately owned vehicle is authorized by rule 11—103.4(8A), reimbursement shall be on a mileage basis at a rate established by the director pursuant to Iowa Code Supplement section 8A.363. Reimbursement for travel at the official domicile will be reimbursed at a rate (established by the director pursuant to Iowa Code Supplement section 8A.363) per mile if the purpose of the travel is official business. The per-mile reimbursement includes all costs incurred in connection with the operation of the vehicle.

*b. Out of state.* If the traveler desires to use a personally owned vehicle instead of common carrier and it is authorized by the executive council, the cost of mileage (not to exceed airfare) to the destination's nearest air terminal, plus expenses incurred to final destination and subsistence allowance en route will be allowed. Out-of-state subsistence allowance will be allowed only for the number of meals and nights lodging which would have been necessary had the traveler used the available public transportation to destination instead of a private vehicle. Taxi or mileage expenses will be allowed at destination if incurred while on official business.

If two or more travelers on official business travel in one privately owned vehicle instead of common carrier, the use of one vehicle may be authorized on a mileage basis not to exceed the statutory limit per mile.

**41.5(5)** *Mileage while on temporary duty assignment.* In general, mileage for use of privately owned vehicles may be allowed for travel within the area of temporary duty, if approved by the administrative head of the agency, provided a state-owned vehicle is not available. When a privately owned vehicle is authorized in the transaction of official business within the area or in the vicinity of the city to which the traveler is assigned or directed, the traveler shall show on the travel claim the number of miles of vicinity travel for each.

**41.5(6)** *Assignment of more than one employee to a vehicle.* In authorizing the use of privately owned or state-owned vehicles, the agency head shall, whenever possible, assign more than one employee to the use of one vehicle.

**41.5(7)** *Verification of mileage.* The travel shall be by the usually traveled route. Mileage shall be based on mileage published by the American Automobile Association, when available. Any variation from the published mileage should be documented in writing.

**41.5(8)** *Use of buses, street cars, limousines and rental cars.* When buses, street cars, limousines, or rental cars are used for official travel within the official station or city to which a traveler is directed, the traveler shall show the cost of the fares in the "miscellaneous" column of the travel voucher.

**41.5(9)** *Abode and point of duty in interstate travel.* Insofar as official interstate travel is concerned, the employee's hotel may be considered a point of official duty.

**41.5(10)** *Taxicabs.* Taxicab charges shall be allowed only from regular domicile or place of business to station or other terminal; from station or terminal at origin of destination of trip to hotel or domicile or place of business; or between bus, rail or plane stations or terminals or other points of official duty.

**41.5(11)** *Home-travel from and to.* Actual taxi or common carrier fares shall be allowed for transportation directly from home of traveler to railroad, bus or airport terminals at the beginning of official travel status and for transportation directly from railroad, bus or airport terminals to home of traveler at conclusion of official travel status. The maximum reimbursement will be the current cost of taxi fare from the capitol to the Des Moines airport.

**41.5(12)** *Rental or charter of special conveyances.* The rental or charter of aircraft, automobiles, boats, buses, or other special conveyances shall be held to a minimum but may be authorized in those cases when no public or ordinary means of transportation is available, or when such public or ordinary means of transportation cannot be used advantageously in the best interest of the state. Specific justification shall accompany the voucher in each instance where the use of special conveyance is authorized and shall include information such as the location where special conveyance commenced, and the points visited. The department of administrative services, state accounting enterprise, may require a comparison of costs between public or ordinary means of transportation compared to the cost of special conveyance.

**11—41.6(8A) Subsistence allowance.**

**41.6(1)** *The phrase "subsistence allowance."* The phrase "subsistence allowance" used herein shall be construed to include all charges (including applicable taxes) for meals and lodging (single rate only). Charges for radios, television, and similar appliances are not reimbursable.

**41.6(2)** *Subsistence allowances for in-state travel—monetary and time limitations.* Officers and employees shall be allowed overnight lodging and meal expense when required to travel outside of the

city of their official domicile. The amounts shall not exceed the limits established in the department of administrative services, state accounting enterprise, procedure manual.

*a.* Rescinded, effective February 19, 1986.

*b.* Rescinded, effective February 19, 1986.

**41.6(3)** *Subsistence allowances for out-of-state travel—monetary and time limitations.*

*a.* Lodging and meal expenses are not limited outside the state but the incurred expenditures are to be reasonable. Receipts for lodging are to accompany the claim and show the dates, room number, occupants, and amount per night. Lodging will be limited to the night preceding and the night of the ending date of the convention or meeting. Elected officials are not required to furnish receipts.

*b.* Meals will be limited to lunch and dinner the day preceding and breakfast and lunch the day after the meeting.

**11—41.7(8A) Miscellaneous expense.**

**41.7(1)** *Definition.* Miscellaneous expenses are those deemed necessary in the conduct of official business of the state which are not included in the categories of subsistence, mileage, and state-owned vehicle operation. All miscellaneous expenses shall be claimed under the column heading "miscellaneous expense" on the travel claim and be supported by sufficient documentation.

**41.7(2)** *Receipts.* A receipt for, or explanation of, each and every transaction involving miscellaneous expenditures shall be provided.

**41.7(3)** *Baggage.* Charges for baggage in excess of the weight or of the size carried free by transportation companies shall be allowed if the baggage is used for official business. Charges for the storage of baggage may also be allowed if it is shown that such storage was on account of official business. Specific justification must be submitted with the claim voucher.

**41.7(4)** *Telephone and telegraph messages.* Expenses for official telephone and telegraph messages which must be paid for by the traveler shall be allowed. Toll and local calls and telegrams should be supported and attached to the travel claim showing date, city or town called or telegraphed, name of person or firm called or to where telegram was sent and amount of each call or telegram.

**41.7(5)** *Stenographic or typewriting services.* Charges for official stenographic or typewriting services shall be allowed on official travel.

**41.7(6)** *Purchase of supplies.* The purchase of stationery and all other similar supplies shall be allowed in emergencies warranting their use for handling of official business while on official travel, and shall be submitted and certified on a travel voucher (or other approved form) with the proper receipts attached.

**41.7(7)** *Parking.* Parking will be allowed for state and private cars at an airport during the employee's flight.

**41.7(8)** *Registration fees.* The payment of registration fees which are required for participation in meetings shall be allowed. Registration fees shall be supported by the official receipt of the conference or convention subject to the following limitations:

*a.* Expenditures for payment of registration fees for the purpose of obtaining the privileges of membership or other personal benefits from an organization are not reimbursable. Memberships in organizations must be in the name of the state agency and have executive council approval.

*b.* Registration fees paid by the traveler will be claimed for reimbursement as a miscellaneous nonsubsistence expense and a receipt must be attached to the claim.

*c.* Reimbursement of registration fees, at the official domicile, may require prior written approval of the department of administrative services, state accounting enterprise.

**11—41.8(8A) State-owned vehicle.** Any expense other than parking should not be claimed on the expense voucher but should be reimbursed through procedures established by the vehicle dispatcher's office.

Rules 41.2(8A) to 41.8(8A) are intended to implement Iowa Code Supplement sections 8A.506 to 8A.519.

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# CHAPTER 42
# ACCOUNTING PROCEDURES OF PUBLIC IMPACT

[Prior to 5/12/04, see 701—Ch 202]

**11—42.1(8A) Scope and application.** The department of administrative services, state accounting enterprise, is responsible for the payment of money due based on contracts with vendors for goods and services entered into by all state agencies and governmental subdivisions. Consequently, the department has implemented rules and policies to ease the administration of the payment of all obligations owed to third parties. The policies and procedures governing the payment of these obligations are set forth in the Department of Administrative Services, State Accounting Enterprise, Accounting Policies and Procedures Manual. This manual may be accessed on the state of Iowa Web site located at http://das.sae.iowa.gov/internal_services/policy_manual.html, or copies of the appropriate provisions may be requested and obtained by mail from State Accounting Enterprise, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. Provisions of the manual that affect persons outside state government are as follows:

| SUBJECT MATTER | MANUAL PROVISION NUMBER |
|---|---|
| Claims: | |
| Refund of fees | 235.550 |
| Late vendors | 235.150 |
| Signature requirements on claims | 204.150 |
| Original invoice | 204.200 |
| Claims requirements | 204.400, 204.450 |
| Contracting—personnel services | 240.102 |
| Court-ordered claims | 235.600(2) |
| Direct deposit of payments | 270.401 |
| Expenses of volunteers | 230.500 |
| General service contracts | 240.101 |
| Gifts to public employees | 240.200 |
| Income offset | 270.850 |
| Interest on claims | 230.250 |
| Maintenance and rental/lease agreements | 240.103 |

| SUBJECT MATTER | MANUAL PROVISION NUMBER |
|---|---|
| Personal service contracts | 240.102 |
| Settlements—former employees | 240.500 |
| Taxes: | |
| Refund of motor fuel | 230.150 |
| Refund of tax to contractors | 230.150 |
| States exempt from sales tax | 230.150 |
| Travel expenses—prospective employees | 204.250 |
| Vendor issues: | |
| Claims requirements | 204.400, 204.450 |
| Late vendors | 235.150 |
| Nonresident alien vendors | 240.400 |
| Outdated invoices | 260.250 |
| Original invoice | 204.200 |
| Purchasing orders and payment | 260.180 |
| Refund of fees | 235.550 |
| Signature requirements on claims | 204.150 |
| Vendor codes | 270.450 |
| Warrants: | |
| Canceled warrants | 270.550 |
| Duplicate warrants | 270.600 |
| Forged warrants | 270.750 |
| Incorrect warrants | 270.250 |
| Outdated warrants | 270.500 |
| Stop payment on warrant | 270.650 |

This rule is intended to implement Iowa Code Supplement section 8A.502.

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# CHAPTER 43
# EMPLOYEE PAYROLL DEDUCTIONS FOR CHARITABLE ORGANIZATIONS

[Prior to 12/17/86, Comptroller, State[270] Ch 3]
[Prior to 5/12/04, see 701—Ch 203]

**11—43.1(70A) General provisions.** The state of Iowa may extend to eligible charitable organizations the right to receive contribution deductions from state employees upon presentation of payroll deduction authorization cards signed by the state employees.

**11—43.2(70A) Qualifications.** To qualify to receive contributions an organization must:

**43.2(1)** Be eligible to receive contributions which may be deducted on the contributor's Iowa individual income tax return.

**43.2(2)** Have 100 or more eligible state officers and employees participating for any payroll system except as follows:

*a.* In the case of employees at the University of Northern Iowa, 50 or more.

*b.* In the case of employees at the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, 25 or more participants.

**11—43.3(70A) Enrollment period.** The enrollment period shall be designated by the charitable organization.

**43.3(1)** Employees will be provided a list of qualified organizations at least semiannually.

**43.3(2)** Reserved.

**11—43.4(70A) Certification.** In order to qualify as a "charitable organization" under the terms of this program, each organization must file an annual certification with the administrator of the payroll system. The certification must show:

**43.4(1)** That the organization is eligible to receive contributions as defined in 11—43.1(70A).

**43.4(2)** That the organization has met the requirements for tax deduction and number of participants as defined in subrule 43.2(2).

**11—43.5(70A) Payroll system.** A payroll system for the purpose of this chapter is any one of the following:

1. State of Iowa centralized.
2. Department of transportation.
3. Iowa State University of Science and Technology.
4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. Iowa state fair board.
9. Community-based corrections.

- Waterloo corrections district.
- Ames corrections district.
- Sioux City corrections district.
- Council Bluffs corrections district.
- Des Moines corrections district.
- Cedar Rapids corrections district.
- Davenport corrections district.
- Fairfield corrections district.

**11—43.6(70A) Forms.** The administration of payroll deductions for charitable organizations must be done on authorization forms approved by the department of administrative services, state accounting enterprise. The responsible official in charge of each payroll system may be designated by the

department of administrative services, state accounting enterprise, as an authorized representative to approve authorized forms for that payroll system.

**11—43.7(70A) Payee.** When there is more than one unit within an eligible charitable organization, the designated payee is the organization that qualified under the provisions of 11—43.2(70A).

**11—43.8(70A) Contribution limits.** Contributions for payroll deductions must be a minimum of $1 per deduction. The frequency of the deductions shall be compatible with the payroll system.

**11—43.9(70A) Distribution of literature.** The office of the department of administrative services, state accounting enterprise, will not distribute literature for charitable organizations with payroll materials.

**11—43.10(70A) Number of contributions.** Each payroll system shall provide for each employee to make contributions to four charitable organizations. The administrator of each payroll system may elect to provide for contributions to a maximum of nine charitable organizations for each employee.

**11—43.11(70A) Cash contributions.** No cash contributions will be accepted or administered through the payroll process or system.

**11—43.12(70A) Terminations.** Any employee wishing to terminate the deduction shall be required to give 30 days' notice in writing to the appointing authority of the department in which the employee works.

**11—43.13(70A) Authorization forms.** All organizations authorized under this chapter shall be required to issue an annual authorization form to all participating state employees. Annual authorization forms will be required from participating employees. The authorization forms are to be given to the appointing authority of the department in which the employee works, and are to be filed in the employee's individual file to substantiate the payroll deductions.

**11—43.14(70A) State held harmless.** Charitable organizations shall indemnify and save the state harmless against any and all claims, demands, suits, or other forms of liability which may arise out of any action taken or not taken by the state for the purpose of complying with the provisions of this chapter.

**11—43.15(70A) Remittance.** The administrator of the payroll system shall mail the monthly payment to each organization within ten working days after the last pay date of each calendar month. Support documentation shall be limited to a listing of employees and amount deducted.

These rules are intended to implement Iowa Code sections 70A.14 and 70A.15.

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[Filed 4/22/04, Notice 3/17/04—published 5/12/04, effective 6/16/04]

# CHAPTER 44
# PROFESSIONAL/TRADE DUES DEDUCTIONS
[Prior to 5/12/04, see 701—Ch 204]

**11—44.1(70A) General provisions.** The state of Iowa may grant eligible professional/trade associations the right to receive dues deductions from state employees through payroll deduction upon presentation of dues deduction authorization forms signed by state employees.

**11—44.2(70A) Qualifications.** To qualify to receive dues deductions, an association must have and maintain 100 members or more who are state officers or employees participating in either the centralized payroll system or the department of transportation payroll system. For purposes of meeting the minimum requirements, the association cannot count the enrollment of state officers or employees participating in similar programs that have been authorized by existing Iowa Code sections, by collective bargaining contracts, or by the appropriate governing authority. An association seeking to be qualified must supply officials in charge of each affected payroll system with an alphabetized, certified list of the state employees and their social security numbers for whom dues deductions are being requested. The type of dues being requested and the amount and frequency of the deduction must also be noted.

**11—44.3(70A) Forms.** The administration of dues deductions for qualified professional/trade associations must be done on authorization forms approved by the official in charge of each payroll system.

**11—44.4(70A) Deduction limits and frequency.** Authorized deductions must be at least $1. All payroll deductions must be made in equal amounts on a monthly basis, or be made on a basis compatible with the payroll system. Deductions cannot be made for any purpose other than for the payment of dues.

**11—44.5(70A) Distribution of literature.** The state of Iowa will not distribute literature soliciting for a dues payment payroll deduction or any other matter with payroll materials.

**11—44.6(70A) Number of contributions.** Each payroll system must allow each employee the opportunity to make a combination of insurance/professional/trade dues deductions to as many as five companies, but no more.

**11—44.7(70A) Cash contributions.** No cash contributions will be accepted or administered through the payroll process or system.

**11—44.8(70A) Terminations.** An employee wishing to terminate the deduction shall be required to give 30 days' notice in writing to the appointing authority of the department in which the employee works.

**11—44.9(70A) Remittance.** The administrator of the payroll system must mail the monthly payment to each company within 20 working days after the last pay date of each calendar month. Support documentation is limited to a listing of employees and the amount deducted.

**11—44.10(70A) Solicitation prohibited.** Agency rules prohibiting solicitation on state property must be followed by all salespersons or agents.

**11—44.11(70A) Annual review of participating employees.** During September of each year, each participating association must supply officials in charge of each affected payroll system with a certified list of all state employees who have a professional/trade association dues deduction. The list must contain the same information required in rule 11—44.2(70A), as it will be used by the state to determine if the association continues to have 100 or more employees participating in the program.

If the minimum qualification is not being maintained, written notification will be provided to the association giving them 90 days to meet the minimum qualification. If, at the end of the 90-day period,

the minimum qualification has not been attained, the dues deduction for all participating employees for that association will be terminated.

These rules are intended to implement Iowa Code section 70A.17A.

[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]
[Filed 4/22/04, Notice 3/17/04—published 5/12/04, effective 6/16/04]

# CHAPTER 45
# PAYROLL DEDUCTION FOR TUITION PROGRAM CONTRIBUTIONS

**11—45.1(81GA,HF748) General provisions.** The state of Iowa may grant to a qualified tuition program the right to receive payments from a state officer or employee through payroll deduction upon presentation of a tuition program contribution authorization form signed by the state officer or employee.

**11—45.2(81GA,HF748) Definitions.** For the purpose of this chapter, the following definitions apply.

*"Employee"* means a permanent employee of the state of Iowa.

*"Payroll system"* means any one of the following:

1. State of Iowa centralized.
2. Department of transportation.
3. Iowa State University of Science and Technology.
4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. Iowa state fair board.

*"Qualified tuition program"* means a program which meets the requirements of a qualified tuition program under Section 529 of the Internal Revenue Code.

**11—45.3(81GA,HF748) Tuition program qualifications.** To be eligible to receive contributions from state employees through payroll deductions, a tuition program must meet the requirements of a qualified tuition program under Section 529 of the Internal Revenue Code and must meet the requirements of this rule.

**45.3(1)** *Minimum number of participating employees.* The qualified tuition program must have and maintain the participation of 500 or more state employees.

**45.3(2)** *Qualification process.*

*a. Written agreement.* The qualified tuition program representative must enter into a written agreement with the centralized payroll administrator. The agreement shall delineate each party's rights and responsibilities. At the same time, the qualified tuition program representative must provide a template of the program's enrollment form to the centralized payroll administrator.

*b. Forms.* Payroll deductions for contributions to a qualified tuition program must be authorized on enrollment forms approved by the centralized payroll administrator.

*c. Payroll deduction requests.* A state employee must request payroll deduction for tuition program contributions in writing on the approved enrollment form and provide the form to the appointing authority.

*d. Participating employee list.* A tuition program seeking to be eligible must supply the centralized payroll administrator with a certified list of all state employees for whom tuition contribution payroll deductions are sought. The list of names of employees who have authorized a deduction, in alphabetical order for each affected payroll system, shall also contain each employee's date of birth, employing agency name, work telephone number, and the last four digits of the employee's social security number.

*e. Multiple payroll systems.* For determining the qualified tuition program's eligibility, a list of employees requesting payroll deduction for contributions to the qualified tuition program shall be provided by the qualified tuition program to the centralized payroll administrator in an acceptable electronic format. The centralized payroll administrator will determine whether the qualified tuition program has attained the minimum 500 participating employees by counting employees from all payroll systems combined. The centralized payroll administrator will notify the other payroll systems of the eligibility determination for a qualified tuition program.

**11—45.4** Reserved.

**11—45.5(81GA,HF748) Deduction limits and frequency.** An authorized deduction must be a minimum of $1. The frequency of the deductions must be compatible with the affected payroll system. All of an employee's payroll deductions must be made in equal amounts on a monthly basis or be made on a basis compatible with the payroll system. The deduction will be made only for the amount of the tuition contribution and shall not include amounts for any other purpose.

**11—45.6(81GA,HF748) Distribution of literature.** The state of Iowa will not distribute any literature soliciting tuition program contribution deductions or distribute any other materials for a qualified tuition program.

**11—45.7(81GA,HF748) Number of contributions.** Each payroll system must allow each employee the opportunity to make tuition contribution payroll deductions to any combination of qualified tuition programs, up to the limit that has been set by the applicable payroll system.

**11—45.8(81GA,HF748) Cash contributions.** No cash contributions will be accepted or administered through the payroll process or system.

**11—45.9(81GA,HF748) Terminations.** An employee wishing to terminate the deduction shall give 30 days' notice in writing to the department or agency in which the employee works or, in the case of regents institutions, to the officer in charge of the payroll system through which the employee is paid.

**11—45.10(81GA,HF748) Remittance.**

**45.10(1)** The officer in charge of the payroll system must send the monthly payment for the benefit of the employee's account to each eligible qualified tuition program no later than 30 days following the payroll deduction from the wages of the employee.

**45.10(2)** The deduction may be made even though the compensation paid to an employee is reduced to an amount below the minimum prescribed by law. Payment to an employee of compensation less the deduction shall constitute a full discharge of claims and demands for services rendered by the employee during the period covered by the payment.

**45.10(3)** Support documentation is limited to a listing of employees and the amount deducted for each such employee.

**11—45.11(81GA,HF748) Unapproved solicitation prohibited.** Salespersons or agents for the qualified tuition program must follow all applicable rules prohibiting solicitation on state property. The designated program representative may schedule presentations of marketing and informational materials provided that the centralized payroll administrator has given written approval of said materials and provided that applicable rules are followed concerning approval of the date, time, and location of such presentations. Further, use of employees' state E-mail addresses or work addresses to mass distribute marketing materials is prohibited.

**11—45.12(81GA,HF748) Annual review of participating employees.** During September of each year, each participating qualified tuition program must supply the centralized payroll administrator with a certified list, in an acceptable electronic format, of all state employees who have a tuition contribution deduction through any state payroll system. The list must contain the same information as required in 45.3(2)*"d"* and will be used by the centralized payroll administrator to determine whether the qualified tuition program has 500 employees participating in the program.

The centralized payroll administrator will provide a copy of the certified list for each payroll system to the officer in charge of that payroll system for verification of employee status.

If the minimum qualification is not being maintained, written notification will be provided to the qualified tuition program, giving the qualified tuition program 90 days to meet the minimum qualification. If, at the end of the 90-day period, the minimum qualification has not been attained, the tuition contribution deduction for all participating employees in that qualified tuition program will be terminated.

**11—45.13(81GA,HF748) Termination of qualified tuition program participation.** If the centralized payroll administrator finds that a qualified tuition program is not complying with the rules in this chapter or the agreement made with the centralized payroll administrator, or if the program is not operating in a manner that the centralized payroll administrator determines to be in the best interest of the state or its employees, the department of administrative services reserves the right to terminate a qualified tuition program's participation in the payroll deduction program.

**11—45.14(81GA,HF748) Reinstatement of company participation.** A qualified tuition program that has been terminated from participation in payroll deduction for tuition contributions may be reinstated when the company has again met program qualifications as set forth in this chapter.

These rules are intended to implement 2005 Iowa Acts, House File 748.

[Filed emergency 6/15/05—published 7/6/05, effective 7/1/05]
[Filed 10/4/05, Notice 7/6/05—published 10/26/05, effective 11/30/05]

# CHAPTER 46
# PAYROLL DEDUCTION FOR ADDITIONAL INSURANCE COVERAGE

[Prior to 7/21/04, see 701—Ch 206]

**11—46.1(70A) General provisions.** The state of Iowa may grant to qualified insurance companies the right to receive insurance premiums from state employees through payroll deduction upon presentation of insurance deduction authorization forms signed by state employees.

**11—46.2(70A) Definitions.** For the purpose of this chapter, the following definitions apply.

*"Employee"* means a permanent state employee.

*"Payroll system"* means any one of the following:

1. State of Iowa centralized.
2. Department of transportation.
3. Iowa State University of Science and Technology.
4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. Iowa state fair board.

**11—46.3(70A) Insurance company qualifications.** To qualify to receive insurance premiums from state employees through payroll deductions, an insurance company must be authorized to do business in Iowa and must meet the requirements of this rule.

**46.3(1)** *Minimum number of participating employees.*

*a.* The insurance company must have and maintain the participation of 500 or more state employees.

*b.* Notwithstanding subrule 46.3(1), paragraph *"a,"* during the first 12 months of this program an insurance company is considered qualified if it received insurance premium payments through payroll deductions under repealed Iowa Code section 70A.17. All such companies may continue in the program during the first 12 months following the reinstitution of this payroll deduction program. By the end of the twelfth month after the reinstitution of this program, all companies must have and maintain a total of at least 500 participating employees in order to continue participation. Following the end of the twelfth month of participation of an insurance company under this subrule, company participation may be terminated pursuant to rule 11—46.13(70A).

*c.* For purposes of certifying the required 500 state employees, an insurance company shall not count state employees enrolled in insurance programs authorized by existing Iowa Code sections, by collective bargaining contracts, or by the appropriate governing authority.

**46.3(2)** *Qualification process.*

*a.* *Written agreement.* The company providing the insurance must enter into a written agreement with the state delineating each party's rights and responsibilities. At the same time, the company must provide a template of the company's enrollment form.

*b.* *Forms.* The insurance premium payroll deductions for qualified insurance companies must be authorized on forms approved by the program administrator.

*c.* *Payroll deduction requests.* The state employee must make request for the payroll deduction for insurance premiums in writing to the appointing authority.

*d.* *Participating employee list.* A company seeking to be qualified must supply the program administrator with a certified list of all state employees for whom insurance premium payroll deductions are sought. The list shall contain, according to affected payroll systems, the names, in alphabetical order, and the social security numbers of state employees for whom insurance premium payroll deductions are being requested and the name of the type of insurance being requested.

**11—46.4(70A) Noneligible types of insurance.** Deductions from salaries and wages will not be authorized for any type of insurance that is not approved by the program administrator or which is being

provided for by the state, such as: health and dental; term life; and long-term sickness or disability. No insurance coverage offering a mutual fund or annuity investment component will be allowed.

**11—46.5(70A) Deduction limits and frequency.** Authorized deductions must be a minimum of $1. The frequency of the deductions must be compatible with the affected payroll system. All payroll deductions must be made in equal amounts on a monthly basis or be made on a basis compatible with the payroll system. The deduction will be made only for the amount of insurance premiums and shall not include amounts for any other purpose, such as organizational dues or membership fees.

**11—46.6(70A) Distribution of literature.** The state of Iowa will not distribute any literature soliciting insurance premium deductions or literature pertaining to any other matter on behalf of any company.

**11—46.7(70A) Number of contributions.** Each payroll system must allow each employee the opportunity to make insurance premium deductions to any combination of up to a maximum of four companies.

**11—46.8(70A) Cash contributions.** No cash contributions will be accepted or administered through the payroll process or system.

**11—46.9(70A) Terminations.** An employee wishing to terminate the deduction shall be required to give 30 days' notice in writing to the appointing authority of the department in which the employee works or, in the case of regents institutions, to the officer in charge of the payroll system through which the employee is paid.

**11—46.10(70A) Remittance.** The officer in charge of the payroll system must send the monthly payment to each company within 20 working days after the last pay date of each calendar month. Support documentation is limited to a listing of employees and the amount deducted for each such employee.

**11—46.11(70A) Unapproved solicitation prohibited.** Salespersons or agents must follow all applicable rules prohibiting solicitation on state property. The designated company representative may schedule presentations of marketing and informational materials, provided the program administrator has given written approval of said materials and applicable rules are followed concerning approval of the date, time, and location of such presentations. Further, use of employees' state E-mail addresses or work addresses to mass distribute marketing materials is prohibited.

**11—46.12(70A) Annual review of participating employees.** During September of each year, each participating company must supply the program administrator with a certified list of all state employees who have an insurance premium deduction through each payroll system. The list must contain the same information as required in 46.3(2)*"d,"* and will be used by the state to determine if the company has 500 employees participating in the program.

If the minimum qualification is not being maintained, written notification will be provided to the company, giving the company 90 days to meet the minimum qualification. If, at the end of the 90-day period, the minimum qualification has not been attained, the insurance premium deduction for all participating employees in that company will be terminated.

The program administrator will provide a copy of the certified list for each payroll system to the officer in charge of that payroll system for verification of employee status.

**11—46.13(70A) Termination of company participation.** If the program administrator finds a company is not complying with administrative rules in this chapter or the agreement made with the state, or if the company is not operating in a manner the program administrator determines to be in the best interest of the state or its employees, the state reserves the right to terminate an insurance company's participation in the program.

**11—46.14(70A) Reinstatement of company participation.** A company that has been terminated from participation in the payroll deduction program may be reinstated when the company has again met program qualifications as set forth in this chapter.

These rules are intended to implement Iowa Code section 70A.17.

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[Filed 11/30/05, Notice 10/26/05—published 12/21/05, effective 1/25/06]

# CHAPTER 47
Reserved

# CHAPTER 48
# PREPAYMENT OF EXPENSES
[Prior to 5/12/04, see 701—Ch 210]

**11—48.1(8A) Definitions.** For purposes of this chapter, the following definitions apply:

*"Department"* means the department of administrative services.

*"Director"* means the director of the department of administrative services.

This rule is intended to implement Iowa Code Supplement section 8A.514.

**11—48.2(8A) Prepayment of expenses.** The following expenses may be prepaid without prior written approval from the department:

1. Contracts for software purchases, software maintenance, or other maintenance contracts which have been negotiated with a clause requiring prepayment.
2. Subscriptions for magazines and periodicals.
3. Publications.
4. Rental of building space, post office boxes, parking spaces, and booths (only the portion that must be prepaid to reserve a space). Documentation must be attached to the claim.
5. Yearly memberships approved by the executive council.
6. Maintenance contracts that have been negotiated with a clause requiring prepayment.
7. If there is documentation attached to the claim which indicates the registration must be paid prior to the function, or there is documentation attached which indicates there is a savings of at least current general fund earning rate of the state treasurer if the registration is paid in advance.

This rule is intended to implement Iowa Code Supplement section 8A.514.

**11—48.3(8A) Prepayment under special circumstances.** Advance payment on contracts is allowable in certain instances. Reimbursement of expenses should be utilized whenever possible. The time elapsing between the receipt of the money and its disbursement should be minimized as much as is administratively feasible. In certain circumstances, the grantee may lack sufficient working capital to provide the service for which the grant was made. Contractors deemed by the department to have an employee/employer relationship with the state are not eligible for advance payments. Advance payments may be made under the following guidelines.

**48.3(1)** Advance payments may be made up to one month in advance of the anticipated expenditure. This is considered to be administratively feasible on a statewide basis. Requests for advance payments in excess of one month must have the prior approval from the department.

**48.3(2)** When it has been determined by the state agency that the grantee lacks sufficient working capital to provide the service of the grant, the grantee may be given a two-month "working capital advance" (i.e., an advance may be made for up to two months of projected expenses). After the initial two-month "working capital advance" has been made, the grantee should submit claims for the reimbursement on a monthly basis. This should allow the grantee enough start-up funds to commence the project, while also allowing the grantee to maintain a one-month advance after the initial start-up, which parallels subrule 48.3(1) above.

*a.* Documentation that indicates the grantee lacks sufficient working capital to commence the project must be attached to the initial claim.

*b.* Documentation supporting the projected costs must be attached to the initial claim.

This rule is intended to implement Iowa Code Supplement section 8A.514.

**11—48.4(8A) Prior approval for prepayment of expenses.** Any expense not specifically mentioned in rule 11—48.2(8A) must have prior approval to be paid in advance of receiving the good or service. Prior approval will be allowed only under the following circumstances.

1. If prepayment is required in order for the state to receive the good or service.
2. If the department can document that the state will benefit through reduced rates equal to or greater than the current general fund earning rate of the state treasurer.

This rule is intended to implement Iowa Code Supplement section 8A.514.

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# CHAPTER 49
Reserved

TITLE IV
*HUMAN RESOURCES*

# CHAPTER 50
# HUMAN RESOURCES DEFINITIONS

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1/21/04, see 581—Ch 1]

**11—50.1(8A) Definitions.**

*"Absence without leave"* means any absence of an employee from duty without specific authorization.

*"Agency"* means a department, independent agency, or statutory office.

*"Appointing authority"* means the appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person's designee.

*"Base pay"* means a fixed rate of pay for an employee that is exclusive of shift or educational differential, special or extraordinary duty pay, leadworker pay, or any other additional special pay.

*"Call back pay"* means extra pay for eligible employees who are directed by the appointing authority to report back to work outside of their regular scheduled work hours that are not contiguous to the beginning or the end of their scheduled work hours.

*"Certification"* means the referral of qualified names from an eligible list to an agency for the purpose of making a selection in accordance with these rules.

*"Certified disability program"* means that program covering persons with disabilities who have been certified by the vocational rehabilitation division of the department of education or the department for the blind as being able to perform the duties of a job class without participation in examinations used for the purpose of ranking qualified applicants on nonpromotional eligible lists.

*"Class"* or *"job classification"* or *"job class"* means one or more positions so similar in duties, responsibilities, and qualifications that each may be assigned to the same job title and pay plan.

*"Classification plan"* means the published list of job classifications and the related elements assigned to each. The classification plan is published annually by the department and revised as necessary.

*"Compensatory leave"* means leave accrued as a result of overtime, call back, holidays, or holiday work.

*"Confidential employee"* means, for purposes of merit system coverage, the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director of a state agency; as well as the nonprofessional staff in the office of the auditor of state, and the nonprofessional staff in the department of justice except those reporting to the administrator of the consumer advocate division.

*"Confidential employee"* means for purposes of collective bargaining coverage, a representative of the employer who, as a major function of the job, determines and effectuates employment relations policy for the appointing authority, exercises independent discretion in establishing such policies, or is so closely related to or aligned with management as to potentially place the employee in a position of conflict of interest between the employer and coworkers. It also means any employee who works for the department, who has access to information subject to use in collective bargaining negotiations, or who works in a close continuing relationship with representatives associated with negotiating collective bargaining agreements on behalf of the state, as well as the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director, deputy director, or division administrator of a state agency.

*"Demotion"* means the change of a nontemporary employee from one class to another having a lower pay grade. Demotions of permanent employees may be disciplinary, in lieu of layoff, or voluntary. Demotions of probationary employees may be disciplinary or voluntary.

*"Department"* means the Iowa department of administrative services.

*"Director"* means the director of the Iowa department of administrative services or the director's designee.

*"Examination"* means the screening of persons who meet the qualifications for job classifications.

*"Grievance"* means a written complaint alleging a specific violation of these rules or of Iowa Code chapter 8A, subchapter IV.

*"In loco parentis"* means in the place of a parent and charged with the same rights, duties, and responsibilities as a parent.

*"IRC"* means Internal Revenue Code.

*"Lead work"* means a responsibility assigned to an employee by management to direct (instruct, answer questions, distribute and balance work load, accept, modify or reject completed work, maintain attendance records, report infractions and provide input on staffing decisions) the work of two or more employees (federal, state, county, municipal and private employment organization, volunteers, inmates or residents).

*"Long-term disability"* means a condition of an employee who is determined by the state of Iowa's long-term disability insurance carrier to be unable to work because of illness or injury.

*"Merit system"* means the system of human resource administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees and other instances of state employment established pursuant to Iowa Code chapter 8A.

*"Minimum qualifications"* means the minimum education, experience, or other background required to be considered eligible to apply for, or otherwise perform the duties of a particular job classification.

*"Nonpay status"* means that period of time when an employee does not work during scheduled work hours and the work absence is not covered by any kind of paid leave. This includes employees who do not supplement workers' compensation payments with paid leave.

*"Overtime"* means those hours that exceed 40 in a workweek for which an eligible employee is entitled to be compensated unless otherwise specified in a collective bargaining agreement.

*"Overtime covered class, employee, or position"* means a class, employee, or position determined to be eligible for premium overtime compensation.

*"Overtime exempt class, employee, or position"* means a class, employee, or position determined to be ineligible for premium overtime compensation.

*"Pay increase"* means an increase in pay within the pay range.

*"Pay plan"* means one of the various schedules of pay grades and salaries established by the director to which classes in the classification plan are assigned.

*"Permanent employee"* means any executive branch employee (except board of regents employees) who has completed at least six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in Iowa Code section 8A.411, "permanent employee" further means those employees who have completed the period of probationary status provided for in Iowa Code section 8A.413. For peace officers employed by the department of public safety, "permanent employee" means a peace officer who has completed a 12-month probationary period after appointment.

*"Permanent employment"* means any period of full-time or part-time executive branch service (except board of regents employment) in a nontemporary position for which the person is eligible to accrue leave and participate in the health and dental insurance programs administered by the department pursuant to 11—64.1(8A) or 11—64.2(8A).

*"Position"* means the grouping of specific duties and responsibilities assigned by an appointing authority that comprise a job to be performed by one employee. A position may be part-time or full-time, temporary or permanent, occupied or vacant, eligible or not eligible to be covered by a collective bargaining agreement, or covered or not covered by merit system provisions. Each position in the executive branch of state government shall be assigned one of the job classifications published in the classification plan.

*"Position classification review"* means the process of studying the kind and level of duties and responsibilities assigned to a position by comparing those duties and responsibilities to classification descriptions, classification guidelines, or other pertinent documents in order to determine the proper job classification to which a position will be assigned.

*"Premium overtime rate of compensation"* means compensation equal to one and one-half hours for each hour of overtime.

*"Probationary employee"* means any executive branch employee (except board of regents employees) who has completed less than six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in Iowa Code section 8A.411, "probationary employee" further means those employees who have not completed the period of probationary status provided for in Iowa Code section 8A.413. For peace officers employed by the department of public safety, "probationary employee" means a peace officer who has completed less than 12 months of continuous nontemporary employment following appointment to a peace officer classification.

*"Promotion"* means the acceptance by a nontemporary employee of an offer by an appointing authority to move to a position in a class with a higher pay grade and may involve movement between positions covered by merit system provisions and positions not covered by merit system provisions.

*"Reassignment"* means the movement of an employee within the same organizational unit or to another organizational unit at the discretion of the appointing authority. A reassignment may include a change in duties, work location, days of work or hours of work and may be temporary or permanent. A reassignment may result in a change from the employee's previous job classification.

*"Reclassification"* means the change of a position from one job classification to another based upon changes in the kind or level of the duties and responsibilities assigned by an appointing authority.

*"Red-circled salary"* means an employee's salary that exceeds the maximum for the pay grade in the pay plan to which the employee's class is assigned.

*"Regular rate of pay"* means the total compensation an employee receives including base pay, shift or educational differential, special or extraordinary duty pay, leadworker pay, or any other additional special pay.

*"Same pay grade"* means those pay grades in the various pay plans having the same pay grade number.

*"Service in the uniformed services"* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, or examination to determine the fitness of the person to perform such duty.

*"Shift"* means one segment of a 24-hour period in the work schedule of an appointing authority (e.g., day, evening, night shift).

*"Shift differential"* means extra pay for eligible employees who work shifts other than the day shift.

*"Special duty assignment"* means the temporary assignment of a permanent employee to a position in another class.

*"Standby"* means those times when eligible employees are required by the appointing authority to restrict their activities during off-duty hours so as to be immediately available for duty.

*"Supervision"* means a responsibility assigned to an employee by management to direct the work of two or more employees and to hire, evaluate, reward, promote, transfer, lay off, recall, respond to grievances and discipline those employees.

*"Temporary"* means nonpermanent employment for a limited period of time.

*"Temporary services"* means staffing provided by an outside vendor under an authorized contract, such as a temporary employment service, for a limited period of time.

*"Transfer"* means the movement of an employee from a position in a job class to a vacant position for which the employee qualifies in the same or different job class in the same pay grade. A transfer may include a change in duties, work location, days of work or hours of work. A transfer may be voluntary at the request of the employee, or involuntary at the discretion of the appointing authority.

*"Uniformed services"* means service as defined in 29 CFR Part 1002.

*"Veteran"* means any person honorably separated from active duty with the armed forces of the United States who served in any war, campaign, or expedition during the dates specified in Iowa Code section 35C.1.

*"Work time"* means all hours spent performing the duties of an assigned job; travel between job sites during or after the employee's regular hours of work (where no overnight expenses are involved); rest periods allowed during the employee's regular hours of work; and meal periods when less than 30 consecutive minutes is provided.

*"Workweek"* means a regularly recurring period of time within a 168-hour period of seven consecutive 24-hour days.

This rule is intended to implement Iowa Code sections 8A.401 to 8A.439.

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09; **ARC 0401C**, IAB 10/17/12, effective 11/21/12; see Objection note at end of chapter]

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[2] See IAB Personnel Department.

[3] Objection to Personnel Department rule 581—1.1(19A), definition of "confidential employee," was imposed by the Administrative Rules Review Committee and was filed on December 2, 1986. This definition was amended in ARC 7009A, IAB 1/15/97, effective 2/19/97. The objection was lifted by the Committee at its meeting held October 9, 2012.

# CHAPTER 51
# COVERAGE AND EXCLUSIONS

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1/21/04, see 581—Ch 2]

**11—51.1(8A) State personnel system.** The state personnel system shall include and apply to all positions in the executive branch of state government, except those specifically excluded by law.

**11—51.2(8A) Merit system.** The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by Iowa Code section 8A.411 as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings, hereinafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

**51.2(1)** *Exclusion of division administrators and policy-making positions.* The appointing authority of each agency shall submit to the director for approval the position number and title of each position referred to in Iowa Code section 8A.412 and proposed for exclusion from coverage by the merit system provisions referred to in Iowa Code section 8A.411(4). Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

**51.2(2)** *Exclusion of confidential employees.* Confidential employees excluded from coverage by merit system provisions shall be as provided for in 11—Chapter 50.

**51.2(3)** *Other exclusions.* For further information regarding exclusions from merit system coverage, refer to Iowa Code section 8A.412.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—51.3(8A) Confidential collective bargaining exclusion.** An appointing authority may request the director to exclude a position in a class covered by a collective bargaining agreement from coverage by that agreement based upon the definition of a confidential employee in these rules. The request shall be submitted to the director in writing and include the reasons why the position should be excluded. The director shall notify the appointing authority of the decision.

Whenever a position in a class covered by a collective bargaining agreement has been excluded by the director under this rule, the employee in the position shall be subject to these rules.

**11—51.4(8A) Personnel services contracts.** Individuals providing services to the state pursuant to an authorized fee-for-services contract, including persons supplied by a temporary employment service, are not employees of the state. Persons providing services under this rule who are determined to have a common law employer-employee relationship with the state may, however, be subject to withholding for certain taxes, social security, Medicare, and federal unemployment taxes under the Federal Unemployment Tax Act.

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapters 19B and 70A.

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[2] See IAB Personnel Department

# CHAPTER 52
# JOB CLASSIFICATION

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1/21/04, see 581—Ch 3]

**11—52.1(8A) Overall administration.**

**52.1(1)** The director shall prepare, maintain, and revise a classification plan for the executive branch of state government such that positions determined by the director to be similar with respect to kind and level, as well as skill, effort, and responsibility of duties assigned may be included in the same job classification.

**52.1(2)** The director may add, delete, modify, suspend the use of or subdivide job classifications to suit the needs of the executive branch of state government.

**11—52.2(8A) Classification descriptions and guidelines.**

**52.2(1)** Classification descriptions are developed and published by the department as needed. They contain information about the job classification which may include examples of duties and responsibilities assigned, knowledges, abilities and skills required, and qualifications. They may be used by department staff as one of several resources for arriving at position classification decisions.

Classification descriptions are not intended to be all-inclusive. That some duties performed by an incumbent are or are not included in a classification description is in no way to be construed as an indication that a position is or is not assigned to the correct or incorrect job classification. Position classification decisions shall be based upon the preponderance of duties assigned to the position.

**52.2(2)** Position classification guidelines are developed and published by the department as needed. Their purpose is to document information about the duties and responsibilities that may be typically associated with a job classification or a series of job classifications. They may describe the kind and level of duties assigned, as well as the skill, effort, responsibilities and working conditions associated with job performance. Where the job classification being described is one in a series, the position classification guideline may compare and contrast the similarities and differences among levels in the series.

Position classification guidelines are generally intended for use by department staff as one of several resources that may be used in arriving at position classification decisions.

**52.2(3)** Nothing in a classification description or a position classification guideline shall limit an appointing authority's ability to assign, add to, delete or otherwise alter the duties of a position.

**52.2(4)** Changes to the minimum qualifications in a classification description shall have no effect on the status of employees in positions in that class, except where licensure, registration, or certification is changed or newly required.

**11—52.3(8A) Position description questionnaires.** Position description questionnaires shall be submitted to the director and kept current by the appointing authority on forms prescribed by the director for each position under an appointing authority's jurisdiction. The appointing authority shall assign duties to positions and may add to, delete or alter the duties of positions. An updated position description questionnaire shall be submitted to the department by the appointing authority whenever requested by the director or whenever changes in responsibilities occur that may impact a position's classification. Position description questionnaires are a public record.

**11—52.4(8A) Position classification reviews.**

**52.4(1)** The director shall decide the classification of all positions in the executive branch of state government except those specifically determined and provided for by law. Position classification decisions shall be based solely on duties permanently assigned and performed.

**52.4(2)** Position classification decisions shall be based on documented evidence of the performance of a kind and level of work that is permanently assigned and performed over 50 percent of the time and that is attributable to a particular job classification.

**52.4(3)** The director may initiate specific or general position classification reviews. An appointing authority or an incumbent may also submit a request to the director to review a specific position's

classification. When initiated by other than the director, position classification review decisions shall be issued within 60 calendar days after the request is received by the department. If additional information is required by the department, it shall be submitted within 30 calendar days following the date it is requested. Until the requested information is received by the department, the 60-calendar-day review period may be suspended by the department.

**52.4(4)** Position classification decision.

*a.* Notice of a position classification review decision shall be given by the department to the incumbent and to the appointing authority.

*b.* The decision shall become final unless the appointing authority or the incumbent submits a request for reconsideration to the department.

*c.* The request for reconsideration shall be in writing, state the reasons for the request and the specific classification requested, and must be received in the department within 30 calendar days following the date the decision was issued.

*d.* The final position classification decision in response to a request for reconsideration shall be issued by the department within 30 calendar days following receipt of the request.

**52.4(5)** The maximum time periods in the position classification review process may be extended when mutually agreed to in writing by the parties.

**52.4(6)** Following a final position classification review decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based.

*a.* A new position description questionnaire must be prepared and all new and substantively changed duties must be identified as such on the new questionnaire.

*b.* The absence of a showing of substantive changes in duties shall result in the request being returned to the requester.

*c.* A decision to return a request for failing to show substantive change in duties may be appealed to the classification appeal committee in accordance with 11—52.5(8A).

*d.* The classification appeal committee shall rule only on the issue of whether a substantive change in duties has been demonstrated by the appellant.

*e.* The appellant has the burden of proof to show by a preponderance of evidence that there has been a substantive change in duties.

**52.4(7)** The position classification review process is not a contested case.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—52.5(8A) Classification appeals.**

**52.5(1)** If, following a position classification review request, a decision notice is not issued within the time limit provided for in these rules, or the appointing authority or the incumbent does not agree with the department's final position classification review decision, the appointing authority or the incumbent may request a classification appeal committee hearing. The request shall be in writing and shall be submitted to: Classification Appeal Committee Chair, Department of Administrative Services—Human Resources Enterprise, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case as defined by Iowa Code chapter 17A.

**52.5(2)** A classification appeal committee shall be appointed by the director.

**52.5(3)** A request for a classification appeal committee hearing must be in writing, state the reasons for the request and the specific classification requested. The request must be received in the department within 14 calendar days following the date the final position classification review decision notice was or should have been issued by the department.

**52.5(4)** Hearings.

*a.* The classification appeal committee shall schedule a hearing pursuant to Iowa Code section 17A.12.

*b.* All exhibits to be entered into evidence at the hearing shall be exchanged between the parties prior to the hearing.

*c.* Hearings will be scheduled and the requester will be notified via mail of the date, time and location.

*d.* The appellant shall carry the burden of proof to show by a preponderance of evidence that the duties of the requested job classification are assigned and carried out on a permanent basis and are performed over 50 percent of the time.

*e.* The committee shall grant or deny the job classification requested, remand the request to the director for further review, or decide whether there has been a substantive change in duties pursuant to an appeal under subrule 52.4(6) or 52.5(6).

*f.* The committee's written decision shall be issued within 30 calendar days following the close of the hearing and the receipt of any posthearing submissions. The written decision of the committee shall constitute final agency action.

**52.5(5)** Requests for rehearing and judicial review of final classification appeal committee decisions shall be in accordance with Iowa Code section 17A.19.

**52.5(6)** Following a final classification appeal committee decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based.

*a.* A new position description questionnaire must be prepared, and all new and substantively changed duties must be identified as such on the new questionnaire.

*b.* The absence of such a showing of substantive changes in duties shall result in the request's being returned to the requester.

*c.* A decision to return a request for failing to show substantive change in duties as defined in subrule 52.5(7) may be appealed to the classification appeal committee in accordance with 11—52.5(8A).

*d.* The classification appeal committee shall rule only on the issue of whether a substantive change in duties has been demonstrated by the appellant.

*e.* The appellant has the burden of proof to show by a preponderance of evidence that there has been a substantive change in duties.

**52.5(7)** As it relates to subrules 52.4(6) and 52.5(6), the phrase "substantive change" means that sufficient credible evidence exists, in the form of the deletion or addition to the duties in the requester's present classification, that would cause a reasonable person to believe that the duties of the requested classification are assigned and carried out on a permanent basis and are performed over 50 percent of the time.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—52.6(8A) Implementation of position classification decisions.**

**52.6(1)** Position classification changes shall not be retroactive and shall become effective only after approval by the director. Position classification changes approved by the director that are not made effective by the appointing authority within 90 calendar days following the date approved shall be void. Position classification changes that will have a budgetary impact shall not become effective until approved by the department of management. If the appointing authority decides not to implement the change or the department of management does not approve funding for the change, duties commensurate with the current job classification shall be restored by the appointing authority within three pay periods following the date of that decision.

**52.6(2)** Except where licensure, registration or certification is required, an employee shall not be required to meet the minimum qualifications for the new job classification when a reclassification is the result of the correction of a position classification error, a class or series revision, the gradual evolution of changes in the position, legislative action, or other external forces clearly outside the control of the appointing authority.

**52.6(3)** An employee in a position covered by merit system provisions shall be required to meet the qualifications for the new job classification when the reclassification is the result of successful completion of an established training period where progression to the next higher level in the job classification series is customary practice, for reasons other than those mentioned in subrule 52.6(2), or when the reclassification is the result of a voluntary or disciplinary demotion. "Completion of an established

training period" shall be the period provided for on the class descriptions for the class. In addition, employees with probationary status must be eligible for certification in accordance with 11—Chapter 58, Iowa Administrative Code.

**52.6(4)** In all instances of reclassification where licensure, certification, or obtaining a passing score on a test is required, that requirement shall be met by the employee within the time limits set forth by the director. If this requirement is not met, the provisions of rule 11—60.3(8A) shall apply.

**52.6(5)** Reserved.

**52.6(6)** If an employee is ineligible to continue in a reclassified position and cannot otherwise be retained, the provisions of 11—Chapter 60, Iowa Administrative Code, regarding reduction in force shall apply.

**52.6(7)** An employee shall not be reclassified from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in merit system coverage. A copy of the written consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapters 19B and 70A.

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[2] See IAB Personnel Department

Note: The 7/24/91 IAC incorrectly identified subrule 3.5(5) as being delayed 70 days from 7/19/91. Correction published 8/7/91 IAC.

# CHAPTER 53
# PAY

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 2/18/04, see 581—Ch 4]

**11—53.1(8A) Pay plan adoption.** The director shall adopt pay plans for all classes and positions in the executive branch of state government, except as otherwise provided for in the Iowa Code.

**11—53.2(8A) Pay plan content.** Pay plans shall have numbered pay grades showing minimum and maximum salaries.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—53.3(8A) Pay plan review and amendment.** The director shall review pay plans at least annually and, taking into account the results of collective bargaining and other factors, may adjust pay ranges or reassign classes to different pay grades.

**11—53.4(8A) Pay administration.**

**53.4(1)** *Employees.* The director shall assign classes to pay plans and grades and shall assign employees to classes. Employees shall be paid at a rate between the minimum and maximum of the pay grade of the class to which the employee is assigned. Pay decisions shall be at the discretion of the appointing authority unless otherwise provided for in this chapter or by the director.

**53.4(2)** *Appointed officials.* Unless otherwise provided for in the Iowa Code or these rules, the staff of the governor, full-time board and commission members, department directors, deputy directors, division administrators, independent agency heads and others whose appointments are provided for by law or who are appointed by the governor may be granted pay increases of any amount at any time within the pay grade of the class or position to which appointed.

**53.4(3)** *Total compensation.* An employee shall not receive any pay other than that provided for the discharge of assigned duties, unless employed by the state in another capacity or specifically authorized in the Iowa Code, an Act of the general assembly or these rules.

**53.4(4)** *Part-time employment.* Pay for part-time employment shall be proportionate to full-time employment and based on hourly rates.

**53.4(5)** *Effective date of changes.* All pay changes shall be effective on the first day of a pay period, unless otherwise approved by the director. Original appointments, reemployment and reinstatements shall be effective on the employee's first day of work.

**53.4(6)** *General pay increases.* The director shall administer general pay increases for employees that have been authorized by the legislature and approved by the governor. An employee in a position whose pay has been red-circled above the maximum pay rate of the class to which the employee is assigned shall not receive a general pay increase unless specifically authorized by the Acts of the general assembly or otherwise provided for in these rules.

**53.4(7)** *Pay corrections.* An employee's pay shall be corrected if it is found to be in violation of these rules or a collective bargaining agreement. Corrections shall be made on the first day of a pay period.

*a.* *Retroactive pay.* An employee may receive retroactive pay in the same fiscal year for which the pay should have been paid. A request for retroactive pay must be received and processed no later than August 31 following the close of the fiscal year for which the request is made. Requests for retroactive pay which are not made in a timely fashion must be submitted to the state appeal board.

*b.* *Overpayment and underpayment.* If an error results in an employee's being overpaid for wages, except for FICA, state and federal income taxes and IPERS contributions shall be collected. Also, premiums for health, dental and life insurance benefits that have been underpaid shall be subject to collection. An employee may choose to repay the amount from wages in the pay period following discovery of the error, have the overpayment deducted from succeeding pay periods not to exceed the number of pay periods during which the overpayment occurred, or the employee or appointing authority may submit an alternate repayment plan to the director. The director shall notify the appointing authority

of the decision on the alternate repayment plan. The appointing authority shall submit the repayment plan on forms prescribed by the department beginning with the document correcting the employee's pay. If the employee terminates, the amount remaining shall be deducted from wages, vacation payout, applicable sick leave payout and any wage correction payback from IPERS.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—53.5(8A) Appointment rates.** An employee shall be paid at the minimum pay rate for the class to which appointed, except in the following instances:

**53.5(1)** *Individual advanced appointment rate.* For new hires, reinstatements, or promotions of employees in contract classes, the appointing authority may request pay in excess of the minimum based on education and experience directly related to duties that exceed the minimum qualifications of the class. The appointing authority shall maintain a written record of the justification for the advanced appointment rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate. Individual advanced appointment rates are subject to prior approval by the department.

**53.5(2)** *Blanket advanced rate.* If there is a scarcity of applicants, an appointing authority may submit a written request to the director documenting the economic or employment conditions that make employment at the minimum pay rate for a class unlikely. The director may authorize appointments beyond the minimum rate for the class as a whole or in a specific geographical area. All current employees and new or promoted employees under the same conditions and in the same class shall be paid the higher rate. This rate shall remain in effect until rescinded by the director.

**53.5(3)** *Trainee.* Rescinded IAB 1/28/04, effective 3/24/04.

**53.5(4)** *Internship.* Rescinded IAB 1/28/04, effective 3/24/04.

**53.5(5)** *Temporary, seasonal, and internship.* When an appointment is made to a class on a temporary, seasonal, or internship basis, the employee may be paid at any rate within the pay grade to which the class is assigned. Such employees may be given authorized, noncontract salary, across-the-board adjustments within the minimum and maximum rates of the pay grade. Temporary, seasonal and internship employees are not eligible for within-grade increases based on performance or time in service.

**53.5(6)** *Overlap.* When an appointment is made on an overlap basis, the employee shall be paid in accordance with this chapter.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—53.6(8A) Payroll transactions.**

**53.6(1)** *Pay at least at minimum.* If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee shall be paid at least the minimum pay rate of the class to which assigned, except as provided in subrules 53.5(3) and 53.5(4).

**53.6(2)** *Pay not to exceed maximum.* If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee's pay shall not exceed the maximum pay rate of the class to which assigned, except as provided in subrule 53.6(3) or 53.6(13) or rule 53.8(8A).

**53.6(3)** *Red-circling.* If the pay of an employee in a noncontract class exceeds the maximum pay for the class to which assigned, the employee's pay may be maintained (red-circled) above the maximum for up to one year. Requests to change the time period or the red-circled rate must first be submitted to the director for approval. If approved, the appointing authority shall notify the employee in writing of any changes in the time period and the pay. If an employee's classification or agency changes, a request to rescind the red-circling may be submitted by the appointing authority to the director for approval. The director may also require red-circling in certain instances.

**53.6(4)** *Pay plan changes.* If a transaction results in an employee's being paid from a different pay plan, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1) and 53.6(2). For demotions, the employee's pay shall be at the discretion of the appointing authority so long as the employee's pay is not greater than it was prior to the demotion. For setting eligibility dates, see subrule 53.7(5).

**53.6(5)** *Pay grade changes.* If a transaction results in an employee in a noncontract class being paid in a higher pay grade, the employee's pay may be increased by up to 5 percent for each grade above the employee's current pay grade, except as provided in subrules 53.6(1) and 53.6(2). The implementation of pay grade changes for employees in contract classes shall be negotiated with the applicable collective bargaining representative. For setting eligibility dates, see subrule 53.7(5).

**53.6(6)** *Promotion.* For setting eligibility dates, see subrule 53.7(5).

*a.* *Noncontract classes.* If an employee is promoted to a noncontract class, the employee may be paid at any rate in the pay grade of the pay plan to which the employee's new class is assigned, except as provided in subrules 53.6(1) and 53.6(2).

*b.* *Contract classes.* If an employee is promoted to a contract-covered class, the employee shall receive a 5 percent pay increase, except as provided in subrules 53.5(1), 53.6(1), 53.6(2), and 53.6(4).

*c.* *Leadworker.* If an employee who is receiving additional pay for leadworker duties is promoted, the pay increase shall be calculated using the employee's new base pay plus the leadworker pay.

**53.6(7)** *Demotion.* If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any pay rate that does not exceed the employee's pay at the time of demotion, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4). For setting eligibility dates, see subrule 53.7(5).

**53.6(8)** *Transfer.* If an employee transfers under these rules to a different class, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4).

**53.6(9)** *Reclassification.* If an employee's position is reclassified, the employee shall be paid as provided for in subrule 53.6(6), 53.6(7) or 53.6(8), whichever is applicable. For setting eligibility dates, see subrule 53.7(5).

**53.6(10)** *Return from leave.* If an employee returns from an authorized leave, the employee shall be paid at the same pay rate as prior to the leave, including any pay grade, pay plan, class or general salary increases for which the employee would have been eligible if not on leave, except as provided for in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

**53.6(11)** *Recall.* If an employee is recalled in accordance with 11—subrule 60.3(6), the employee shall be paid at the same step or pay rate as when laid off or bumped, including any pay grade, pay plan, class or general salary increases, except as provided in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

**53.6(12)** *Reinstatement.* When an employee is reinstated, the employee may be paid at any pay rate for the class to which the employee is reinstated.

**53.6(13)** *Change of duty station.* If an employee is promoted, reassigned or voluntarily demoted at the convenience of the appointing authority and a change in duty station beyond 25 miles is required, the employee may receive a one-step or up to 5 percent pay increase. The pay may exceed the maximum pay for the class to which assigned. Notice must first be given to the director. Subsequent changes in duty station may result in the additional pay being removed.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—53.7(8A) Within grade increases.**

**53.7(1)** *General.* An employee, upon completion of a minimum pay increase eligibility period, may receive a periodic increase in base pay that is within the pay grade and pay plan of the class to which the employee is assigned.

*a.* *Pay increase eligibility periods.* The minimum pay increase eligibility period for employees shall be 52 weeks, except that it shall be 26 weeks for new hires and employees who receive an increase in base pay as a result of a promotion, reclassification or pay grade change.

*b.* *Noncreditable periods.* Except for required educational and military leave, periods of leave without pay exceeding 30 calendar days shall not count toward an employee's pay increase eligibility period.

*c.* *Reduction of time periods.* The director may authorize a reduction in the pay increase eligibility periods for a position where there is an unusual recruitment and retention circumstance.

**53.7(2)** *Noncontract classes.* An employee in a noncontract class may be given any amount of within grade pay increase up to the maximum pay rate for the employee's class. The pay increase shall be at the

beginning of the pay period following completion of the employee's prescribed minimum pay increase eligibility period and shall not be retroactive, except as provided for in subrule 53.4(7).

*a. Performance.* Within grade pay increases shall be based on performance, are not automatic, and may be delayed beyond completion of the employee's minimum pay increase eligibility period. To be eligible, a within grade pay increase must be accompanied by a current performance evaluation on which the employee received a rating of at least "meets job expectations." Time spent on required educational or military leave shall be considered to "meet job expectations."

*b. Lump sum.* When budgetary conditions make it infeasible to grant within grade pay increases, an appointing authority may instead grant a lump sum increase. The increase shall not be added to the employee's base pay and shall be allowed only once in a fiscal year. Lump sum pay increases must be requested in writing from the director.

**53.7(3)** *Contract classes.* Within grade pay increases for employees in contract classes shall be in accordance with the terms of their collective bargaining agreement.

**53.7(4)** *Certified teachers.* Within grade pay increases for employees who are required to possess a current valid teaching certificate with appropriate endorsements and approvals by the Iowa department of education shall be based on length of service, performance and credentials.

**53.7(5)** *Eligibility dates.* An employee's pay increase eligibility date shall be set at the time of hire, and if the employee starts on the first working day of the pay period, it shall be the first day of the pay period following completion of the employee's minimum pay increase eligibility period. Otherwise, it shall be the first day of the pay period following the date the employee starts work.

*a. General.* A new eligibility date shall be set when an employee receives an increase in base pay, except when transferring in the same pay grade to a different pay plan. Such date will be set at 52 weeks, except for new hires and employees who receive a pay increase as a result of a promotion, reclassification or pay grade change. The date for such employees shall be 26 weeks following the effective date of the action.

*b. Bumping.* An employee who is recalled to a class from which the employee was bumped shall have a new eligibility date set if the pay increase eligibility period of the class to which recalled is less than the employee's current pay increase eligibility period.

*c. No adjustment for educational or military leave.* An employee who returns to work from required educational or military leave shall have the employee's eligibility date restored without adjusting for the period of absence.

*d. Adjustments for returning from leave or recall.* An employee who returns to work from a recall list or from an authorized leave of absence shall have the employee's eligibility date restored, but adjusted for the period of absence that exceeds 30 calendar days.

*e. Administrative changes.* The director may change eligibility dates when economic or other pay adjustments are made to the classification plan or pay plans.

**53.7(6)** *Suspension.* If within grade pay increases are suspended by an Act of the general assembly, the rules that provide for such increases shall also be suspended.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—53.8(8A) Temporary assignments.** Requests to provide employees with additional pay for temporary assignments shall first be submitted in writing to the director for review and indicate the reason and period of time required, if applicable. This pay may exceed the maximum for the employee's class. If temporary assignments are terminated or the duties removed, the additional pay shall also end.

**53.8(1)** *Leadworker.* An employee who is temporarily assigned lead work duties, as defined in rule 11—50.1(8A), may be given additional pay of up to 15 percent unless otherwise provided in an applicable collective bargaining agreement.

**53.8(2)** *Special duty.* An employee who is temporarily assigned to a vacant position in a class with a higher pay grade may be given additional pay equal to that provided in paragraph *"a"* or *"b"* of subrule 53.6(6), whichever is applicable.

**53.8(3)** *Extraordinary duty.* An employee who is temporarily assigned higher level duties, including supervisory duties, may be given additional pay in step or percent increments.

**53.8(4)** *Effect on within grade increases.* Temporary assignments shall not affect an employee's eligibility for within grade pay increases, and the additional pay amount shall be recalculated whenever a within grade pay increase is granted. The class to which the employee is temporarily assigned shall be controlling for purposes of overtime, shift differential, standby and call back pay.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—53.9(8A) Special pay.**

**53.9(1)** *Shift differential.* If an overtime eligible employee in a noncontract class works for an appointing authority whose operations require other than a day shift, the employee shall receive a shift differential if scheduled to work four or more hours between 6 p.m. and 6 a.m. for two or more consecutive workweeks, or is regularly assigned to rotate shifts. The amount of the shift differential shall be determined by the director and paid in cents per hour. There shall be one rate for the 6 p.m. to midnight time period and another higher rate for the midnight to 6 a.m. time period. Employees who work in both time periods shall be paid at the rate applicable to the period in which the majority of their hours are worked. Employees who work equal amounts in both time periods shall be paid at the higher rate. The differential shall be in addition to the employee's regular base pay and shall be paid for all hours in pay status.

Employees in overtime exempt noncontract classes may receive a shift differential if a request is first submitted in writing and approved by the director. Shift differential for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

**53.9(2)** *Call back.* If an overtime eligible employee in a noncontract class is directed to report to work during unscheduled hours that are not contiguous to the beginning or the end of the employee's assigned shift, the employee shall be paid a minimum of three hours. These hours shall be considered as hours worked for purposes of determining overtime, but shall not count as standby hours if the employee is in standby status. Employees in overtime exempt noncontract classes may be eligible for call back pay, if a request is first submitted in writing and approved by the director.

Call back for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

**53.9(3)** *Standby.* If an employee in an overtime eligible noncontract class is directed to be on standby after the end of the employee's shift, the employee shall be paid 10 percent of the employee's hourly pay rate for each hour in a standby status. If required to be on standby, an employee shall receive at least one hour of standby pay. Time spent working while on standby shall not count in determining standby pay, nor shall standby hours count for purposes of determining overtime. Employees in overtime exempt classes may be eligible for standby pay if a request is first submitted in writing and approved by the director. Standby for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

**53.9(4)** *Discretionary payments.* A lump sum payment for exceptional job performance may be given to an employee. A written explanation setting forth the reasons shall first be submitted to the director for approval.

**53.9(5)** *Recruitment or retention payments.* A payment to a job applicant or an employee may be made for recruitment or retention reasons. A written explanation shall first be submitted in writing to the director.

As a condition of receiving recruitment or retention pay, the recipient must sign an agreement to continue employment with the appointing authority for a period of time following receipt of the payment that is deemed by the appointing authority to be commensurate with the amount of the payment. If the recipient is terminated for cause or voluntarily leaves state employment, the recipient will be required to repay the appointing authority for the proportionate amount of the payment for the time remaining, and it will be recouped from the final paycheck. When the recipient changes employment to another state agency, then a repayment schedule must be approved by the director. Recoupment will be coordinated with the department of administrative services, state accounting enterprise, to ensure a proper reporting of taxes.

**53.9(6)** *Pay for increased credentials.* An employee in a noncontract classification who successfully completes a course of study, a certificate program, or any educational program directly related to the employee's current employment is eligible to receive an increase in base pay at the discretion of the appointing authority. Granting an increase pursuant to this subrule will not affect an employee's pay increase eligibility date and may not exceed the maximum pay for the assigned job classification pursuant to subrule 53.6(2).
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—53.10(8A) Phased retirement.** An employee who participates in the phased retirement program shall receive 10 percent of the employee's regular biweekly pay in addition to being paid for the number of hours the employee works or is in pay status during the pay period. An employee who is on leave without pay during an entire pay period shall not receive the additional 10 percent for that pay period.

**11—53.11(8A) Overtime.**

**53.11(1)** *Administration.* Job classes shall be designated by the director as overtime eligible or overtime exempt.

**53.11(2)** *Eligible job classes.* An employee in a job class designated as overtime eligible shall be paid at a premium rate (one and one-half hours) for every hour in pay status over 40 hours in a workweek.

**53.11(3)** *Exempt job classes.* An employee in an overtime exempt job class shall not be paid for hours worked or in pay status over 40 hours in a workweek, except as specifically provided for in a collective bargaining agreement.

**53.11(4)** *Method of payment.* Payment of overtime for employees in noncontract classes shall be in cash or compensatory time. The decision shall rest with the employee, except that the appointing authority may require overtime to be paid in cash. Employees in noncontract classes may elect compensatory time for call back, standby, holiday hours and for working on a holiday. Payment of overtime for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

**53.11(5)** *Compensatory time.* An overtime eligible employee in a noncontract class may accrue up to 80 hours of compensatory time before it must be paid off. Compensatory time may be paid off at any time, but it shall be paid off if the employee separates, transfers to a different agency, or moves to a class with a different overtime eligibility designation. The paying off of compensatory time for employees in classes covered by a collective bargaining agreement shall be in accordance with the terms of the applicable agreement.

**53.11(6)** *Holiday hours.* Holiday hours that have already been paid at a premium rate shall not be counted in calculating overtime.

**11—53.12(8A) Years of service incentive program.** Rescinded IAB 8/11/10, effective 9/15/10.

**11—53.13(8A) Appeals.** Appeal of the application of these rules must be filed as a grievance pursuant to 11—61.1(8A). The appeal procedures for grievance decisions as addressed in 11—61.2(8A) must be exhausted prior to a petition for judicial review.

These rules are intended to implement Iowa Code Supplement sections 8A.401, 8A.402, 8A.411, 8A.413, 8A.417, 8A.418, 8A.439, 8A.455, 8A.456 and 8A.458.

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[2] See IAB Personnel Department

# CHAPTER 54
# RECRUITMENT, APPLICATION AND EXAMINATION

[Prior to 11/5/86, Merit Employment Department [570]]
[Prior to 2/18/04, see 581—Ch 5]

**11—54.1(8A) Recruitment.** Classes are closed to application unless specifically opened for recruitment.

**54.1(1)** *Open recruitment announcements.* The director shall give public notice of positions opened for recruitment for a minimum of ten calendar days following the announcement date. Recruitment may be limited to a specific geographic area or a specific selective background area or both. Recruitment announcements shall be posted publicly. Copies may also be sent to newspapers, radio stations, educational institutions, professional and vocational associations, and other recruitment sources. Recruitment announcements may be posted as promotional opportunities for current permanent state employees only.

**54.1(2)** *Content of announcements.* Announcements shall specify the job title, vacancy number, salary range, location, method for making application, closing date for receiving applications, minimum qualifications, and any selective requirements. All announcements must include a statement indicating that the state of Iowa is an affirmative action and equal employment opportunity employer. Announcements for continuous recruitment shall include a statement indicating that applications will be accepted until further notice.

**54.1(3)** *Advertising.* The appointing authority shall send to the director copies of all advertisements announcing employment opportunities that are to be placed in any publication, and any additional information required by the director. The appointing authority shall comply with any policies established by the director regarding advertising.

**11—54.2(8A) Applications.**

**54.2(1)** *Applicant information.* Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job with or without a reasonable accommodation.

**54.2(2)** *Verifying applicant information.* The director may at any time verify statements contained in an application and seek further information concerning an applicant's qualifications. If information is obtained which affects or would have affected an applicant's qualifications, standing on an eligible list, or status if already employed, the director may make the necessary adjustment or take other appropriate action, including termination if the applicant has already been employed.

**54.2(3)** *Applicant files.* Applications accepted for processing and necessary related materials will be placed in the applicant files in the department and retained for no less than one year. Applications for jobs which result in the hire of the applicant will be placed in the employee files in the department and retained for no less than the period of employment.

**54.2(4)** *Application for eligible lists.* Persons may apply to be on eligible lists as follows:

*a.* *Promotional lists.* Promotional applicants shall meet the minimum qualifications. Promotional applicants may be subject to keyboard examinations, background checks, psychological examinations, and other examinations used for further screening. The following persons may apply to be on promotional eligible lists:

(1) Permanent employees, including permanent employees of the board of regents and community-based corrections;

(2) Persons enrolled in work experience programs who have successfully completed at least 90 calendar days in the program; and

(3) Persons who have been formally enrolled in the department's intern development program for a period of at least 90 calendar days.

*b.* *All-applicant lists.* The following persons may apply to be on all-applicant lists:

(1) Persons laid off and eligible for recall;

(2) Judicial branch employees;

(3) Legislative branch employees;

(4) Probationary or provisional probationary employees;

(5) Permanent employees, including permanent employees of the board of regents and community-based corrections;

(6) Temporary employees not on the promotional list and volunteers (including persons enrolled in work experience programs who are not on the promotional list) following 60 calendar days' service with the state;

(7) Nonpermanent employees of the board of regents and community-based corrections; and

(8) Former permanent employees who resigned or retired from state employment in good standing.

**54.2(5)** *Application pending license or graduation.* An applicant who does not meet the minimum education or license requirements, but who is currently enrolled in an education program that will result in meeting such requirements, may be placed on the eligible list with a "pending graduation" or "pending license" status provided the applicant will meet or has a reasonable expectation of meeting, the requirements within the following nine months. The applicant may be selected for employment, but may not be appointed until all qualification requirements are met.

**54.2(6)** *Disqualification or removal of applicants.* The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

*a.* Does not meet the minimum qualifications or selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law.

*b.* Is incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.

*c.* Has knowingly misrepresented the facts when submitting information relative to an application, examination, certification, appeal, or any other facet of the selection process.

*d.* Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, examination, appeal or selection process.

*e.* Has obtained screening information to which applicants are not entitled.

*f.* Has failed to submit the application within the designated time limits.

*g.* Was previously discharged from a position in state government.

*h.* Has resigned in lieu of discharge for cause.

*i.* Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

*j.* Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.

*k.* Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 11—61.3(8A). Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

**54.2(7)** *Qualifications.* Applicants must meet the qualifications for the class as well as any selective requirements associated with a particular class or position as indicated in the class description. The director shall determine whether or not an applicant meets such qualifications and requirements.

Applicants and employees may, as a condition of the job, be required to have a current license, certificate, or other evidence of eligibility or qualification. Employees who fail to meet and maintain this requirement shall be subject to discharge in accordance with rule 11—57.9(8A) or 11—subrule 60.2(4).

Any fees associated with obtaining or renewing a license, certificate, or other evidence of eligibility or qualification shall be the responsibility of the applicant or employee unless otherwise provided by statute.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—54.3(8A) Examinations.**

**54.3(1)** *Purpose of examinations.* The director or appointing authority may conduct examinations to assess the qualifications of applicants. Possession of a valid license, certificate, registration, or work permit required by the Iowa Code or the Iowa Administrative Code in order to practice a trade or profession may qualify as evidence of an applicant's basic qualifications.

**54.3(2)** *Types of examinations.* Examinations may include, but are not limited to, written, oral, physical, or keyboard tests, and may screen for such factors as education, experience, aptitude, psychological traits, knowledge, character, physical fitness, or other standards related to job requirements.

**54.3(3)** *Background checks.* Background checks and investigations, including, but not limited to, checks of arrest or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule and Iowa Code chapter 8A. Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in the documents' confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

*a.* Arrest record information, unless otherwise required by law, shall not be considered in the selection of persons for employment unless expressly authorized by the director.

*b.* The appointing authority shall notify the director of each job class or position that requires applicants to undergo any type of background check. The notification shall document the clear business necessity for the background check and the job relatedness of each topic covered in the inquiry.

*c.* The appointing authority shall provide a statement that shall be presented to each applicant who is to be investigated under this subrule. This statement shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application and selection process.

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**11—54.4(8A) Development and administration of examinations.**

**54.4(1)** *Examination development.* The director shall oversee the development, purchase, and use of examination materials, forms, procedures, and instructions.

**54.4(2)** *Examination administration.* The director or appointing authority shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. Examinations may be postponed, canceled, or rescheduled.

*a.* *Examination of persons with disabilities.* Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department.

*b. Retaking examinations.* Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 11—54.6(8A). Violation of the waiting period for an examination shall result in the voiding of the current examination score and the imposition of an additional 60-calendar-day waiting period.

Keyboard examinations, such as typing, may be retaken at any time without a waiting period.

The most recent examination score shall determine the applicant's qualification for the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

**54.4(3)** *Examination materials.*

*a.* All examination materials, including working papers, test booklets, test answer sheets and test answer keys are not public records under Iowa Code chapter 22. All examination materials are the property of the department and shall not be released without the consent of the director.

*b.* Removing examination material. Any unauthorized person who removes examination material from an examination site, who participates in unauthorized distribution of examination materials, who is in unauthorized possession of examination material or who otherwise compromises the integrity of the examination process shall be subject to discipline, up to and including discharge if employed by the state, as well as prosecution.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—54.5(8A) Scoring examinations.** All applicants shall be given uniform treatment in all phases of the examination scoring process applicable to the job class or position and status of the applicant. Applicants may be required to obtain at least a minimum score in any or all parts of the examination process in order to receive a final score or to be allowed to participate in the remaining parts of an examination.

**54.5(1)** *Adjustment of errors.* Examination scoring errors will be corrected. A correction shall not, however, invalidate any list already issued or any appointment already made and shall not extend the life of the score.

**54.5(2)** *Points for veterans.* Veterans' points shall be applied to veterans as defined in Iowa Code section 35C.1.

*a.* "Veteran" means a resident of this state who served in the armed forces of the United States at any time during the following dates and who was discharged under honorable conditions:

(1) World War I from April 6, 1917, through November 11, 1918.

(2) Occupation of Germany from November 12, 1918, through July 11, 1923.

(3) American expeditionary forces in Siberia from November 12, 1918, through April 30, 1920.

(4) Second Haitian suppression of insurrections from 1919 through 1920.

(5) Second Nicaragua campaign with marines or navy in Nicaragua or on combatant ships from 1926 through 1933.

(6) Yangtze service with navy and marines in Shanghai or in the Yangtze valley from 1926 through 1927 and 1930 through 1932.

(7) China service with navy and marines from 1937 through 1939.

(8) World War II from December 7, 1941, through December 31, 1946.

(9) Korean conflict from June 25, 1950, through January 31, 1955.

(10) Vietnam conflict from February 28, 1961, through May 7, 1975.

(11) Lebanon or Grenada service from August 24, 1982, through July 31, 1984.

(12) Panama service from December 20, 1989, through January 31, 1990.

(13) Persian Gulf conflict from August 2, 1990, through the date the President or the Congress of the United States declares a cessation of hostilities. However, if the United States Congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf conflict, that date shall be substituted for August 2, 1990.

*b.* "Veteran" also includes the following:

(1) Former members of the reserve forces of the United States who served at least 20 years in the reserve forces after January 28, 1973, and who were discharged under honorable conditions. However, a member of the reserve forces of the United States who completed a minimum aggregate of 90 days of active federal service, other than training, and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(2) Former members of the Iowa national guard who served at least 20 years in the Iowa national guard after January 28, 1973, and who were discharged under honorable conditions. However, a member of the Iowa national guard who was activated for federal duty, other than training, for a minimum aggregate of 90 days and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(3) Former members of the active, oceangoing merchant marine who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, who were discharged under honorable conditions.

(4) Former members of the women's air force service pilots and other persons who have been conferred veteran status based on their civilian duties during World War II in accordance with federal Pub. L. No. 95-202, 38 U.S.C. Section 106.

*c.* Proof of eligibility for points must be provided by the applicant in the form of a certified photocopy of a DD214 Form (Armed Forces Report of Transfer or Discharge) or other official document containing dates of service or a listing of service medals and campaign badges.

*d.* Applicants who were awarded a Purple Heart, or who have a service-connected disability, or who are receiving disability compensation or pension under laws administered by the U.S. Veterans Administration may request to have a maximum of ten points added to examination scores. Proof of current disability dated within the last 24 months and updated every 24 months after initial application must be submitted for continued eligibility.

**11—54.6(8A) Review of written examination questions.** Applicants may request to review their incorrectly answered questions on department-administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review. Violation of this waiting period shall result in the voiding of the current examination score and the imposition of an additional 60-calendar-day waiting period.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—54.7(8A) Drug use and drug tests.**

**54.7(1)** *Policy.* Employees shall not report to work while under the influence of alcohol or illegal drugs. The unauthorized use, possession, sale, purchase, manufacture, distribution, or transfer of any illegal drug or alcoholic beverage while engaged in state business or on state property is prohibited. Employees who violate this policy are subject to disciplinary action up to and including discharge.

**54.7(2)** *Definition and applicability.*

*a.* "Drug test" means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual. These rules authorize only the use of urinalysis tests for this purpose. Other methods of drug testing are prohibited.

*b.* These rules do not apply to drug tests required under federal statutes, drug tests conducted pursuant to a nuclear regulatory commission policy statement, or drug tests conducted to determine if an employee is ineligible to receive workers' compensation under Iowa Code section 85.16, subsection 2.

**54.7(3)** *Preemployment drug tests.* A urinalysis drug test may be performed as part of a preemployment physical only for department of corrections correctional officer positions. Application materials for these positions shall include clear notice that a drug test is part of the preemployment physical. Requirements for these tests are as follows:

*a.* A urine sample will be collected during the preemployment physical examination.

*b.* The sample container will include identification for chain of custody purposes that does not include any part of the applicant's name or social security number.

*c.* The container will be transported directly from the site of the physical examination to a laboratory or other testing facility. Samples may be transported via certified mail or courier service.

*d.* The sample will be tested and retained by the laboratory or other testing facility for a minimum of 30 days. The applicant may have the sample analyzed, at the applicant's expense, by a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.

*e.* Each drug test will include an initial screen and a confirmation of positive results. The initial screening test may utilize immunoassay, thin layer, high performance liquid or gas chromatography, or an equivalent technology. If the initial test utilizes immunoassay, the test kit must meet the requirements of the Food and Drug Administration. All confirmation tests will be done by Gas Chromatography - Mass Spectrometry (GC-MS) at a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.

*f.* At a minimum, tests will screen for marijuana, cocaine, and amphetamines.

*g.* Procedures for obtaining, sealing, identifying, transporting, storing, and retention of samples shall protect the chain of custody and the viability of the sample, and shall comply with department of public health administrative rules.

*h.* The laboratory or other testing facility shall report the results of the drug tests to the appointing authority. The confidentiality of the information shall be protected by all parties.

*i.* The appointing authority shall provide an applicant an opportunity to rebut or explain the results of a positive drug test by administering a pretest questionnaire or arranging a posttest conference with the applicant.

*j.* A positive confirmation drug test will disqualify an applicant from further consideration and hire for department of corrections correctional officer positions.

**54.7(4)** *Employee drug tests.* Drug testing of employees is prohibited except as provided in subrule 54.7(2), paragraph *"b."*

These rules are intended to implement Iowa Code Supplement sections 8A.401, 8A.402, 8A.412 to 8A.414, 8A.416, 8A.452, 8A.453, 8A.456 and 8A.458.

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[2] See IAB Personnel Department

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# CHAPTER 55
# ELIGIBLE LISTS

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 2/18/04, see 581—Ch 6]

**11—55.1(8A) Establishment of eligible lists.** The director shall establish and maintain various lists of eligible applicants for use in filling vacant positions. Eligible lists may be by job class or specific position. Eligible lists may be continuous or may be abolished after a vacancy is filled. The following are types of eligible lists:

**55.1(1)** *Recall lists.* These lists shall consist of the names of permanent employees who were separated by layoff; or who moved to another class or had their work hours reduced in lieu of layoff. Recall shall be in accordance with 11—subrule 60.3(6).

**55.1(2)** *Promotional lists.* Promotional lists shall consist of the names of permanent employees and those as designated in 11—paragraph 54.2(4)*"a"* who have applied for a job class and who have met the minimum qualifications and other promotional screening requirements for the class. The length of time of eligibility for promotion from these lists need not be the same as that for appointment from nonpromotional lists.

**55.1(3)** *All-applicant lists.* All-applicant lists shall consist of the names of all persons who have applied for positions, met the minimum qualifications for the class, and undergone, as necessary, the designated screening for the class. Persons in the certified disability program or any other formal waiver program established by the department shall be identified as such and placed on the all-applicant list.

**11—55.2(8A) Removal of names from eligible lists.** The director may remove names from an eligible list for a particular job class(es) for any of the following reasons in addition to those cited in 11—subrule 54.2(6):

1. Failure by the applicant to maintain a record of current address as evidenced by the return of a properly addressed letter or other similar evidence.
2. Failure by the applicant to respond to a written inquiry from the director or an appointing authority as to availability within five workdays following the date the inquiry was sent.
3. Receipt of a statement that the applicant no longer wants to be on the list for the class.
4. Declination of an appointment or promotion under previously agreed to conditions.
5. Appointment to a job class.
6. Abolition or expiration of an eligible list for a job class(es).
7. In the case of promotional lists, separation from state service.
8. Correction of erroneous placement on a list.
9. Violation of any of the provisions of Iowa Code Supplement chapter 8A or these rules. Applicants removed for this reason shall be notified in writing by the director within five workdays following removal. Appeal of removal for this reason shall be in accordance with 11—subrule 61.2(4).
10. Failure by the applicant to maintain contact as instructed by the department concerning current availability, mailing address and telephone number.

**11—55.3(8A) Statement of availability.** It shall be the applicant's responsibility to notify the director in writing of any change in address or other changes affecting availability for employment. The director may at any time verify the availability of applicants. The names of applicants shall be withheld from all eligible lists which do not meet the stated conditions and locations under which the applicants have indicated availability.

These rules are intended to implement Iowa Code Supplement sections 8A.401, 8A.402, 8A.411, 8A.413, 8A.417, 8A.418, 8A.453, 8A.455, 8A.456 and 8A.458.

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# CHAPTER 56
# FILLING VACANCIES

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 2/18/04, see 581—Ch 7]

**11—56.1(8A) Method of filling vacancies.** Vacancies shall be filled through promotion, transfer, demotion, recall, reinstatement or original appointment. The method and order in which vacancies are filled shall be determined by the director, taking into consideration the provisions of collective bargaining agreements and these rules. Vacancies shall be announced before a list of applicants is issued to an appointing authority.

**11—56.2(8A) List requests.** An appointing authority shall submit a request form when filling a vacancy.

**11—56.3(8A) Types of lists.** The following types of lists may be issued.

**56.3(1)** *Recall list.* The director will provide the names of those persons who are eligible for recall on the date and time issued in accordance with the provisions of 11—subrule 60.3(6) or applicable collective bargaining agreements.

**56.3(2)** *Promotional list.* The director will provide the names of qualified applicants who are permanent employees and those designated in 11—subrule 54.2(4) who have indicated availability for the conditions and location specified in the vacancy announcement.

**56.3(3)** *All-applicant list.* The director will provide the names of all qualified applicants who have indicated availability for the conditions and location specified in the vacancy announcement.

**11—56.4(8A) Selective lists.** The director may provide lists of only those eligibles for a position who possess specific education, experience or other selective qualifications required to perform the duties of a position. The director may establish procedures for determining and approving selective qualifications, processing requests and issuing lists with selectives.

**11—56.5(8A) Expiration of a list.** The expiration of a list shall be 90 calendar days following the date of issue unless otherwise approved by the director. All appointments or promotions must be reported to the director before the expiration date of the list. Effective dates of appointments or promotions must be no later than 60 days after the expiration date of the list unless otherwise authorized by the director, except that appointments or promotions "pending graduation" or "pending license" shall be allowed to be effective up to nine months following the expiration date of the list.

**11—56.6(8A) Incomplete lists.** If the number of names available on a nonpromotional list is less than six, the appointing authority will be granted provisional appointment authority.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—56.7(8A) Referral and appointment of "conditional" applicants.** The names of applicants who are on the eligible list for a class "pending graduation" or "pending license" are considered to be "conditional." If a "conditional" applicant is selected, the appointment shall not be effective until the applicant has met the minimum requirements for qualification. Appointments shall be made in accordance with 11—subrule 54.2(5) and rule 11—56.5(8A).

**11—56.8(8A) Adjustment of errors.** An error in the compilation or issuance of a list, if called to the attention of the director prior to the filling of the vacancy, shall be corrected and a new list issued. Except for a recall list, such correction shall not result in the removal of any eligible already certified nor invalidate any appointment already made.

These rules are intended to implement Iowa Code Supplement sections 8A.401, 8A.402, 8A.411, 8A.413, 8A.414, 8A.416 to 8A.418, 8A.453, 8A.456 and 8A.458.

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2 See IAB Personnel Department

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# CHAPTER 57
# APPOINTMENTS

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 2/18/04, see 581—Ch 8]

**11—57.1(8A) Filling vacancies.** Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies shall be subject to the provisions of these rules. No vacant position in the executive branch shall be filled until the position has been classified in accordance with Iowa Code chapter 8A and these rules.

An employee who has participated in the phased retirement program shall not be eligible for permanent employment for hours in excess of those worked at the time of retirement. A former employee who has participated in any early retirement or early termination program shall not be eligible for any state employment, except as provided for in the applicable program.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—57.2(8A) Probationary appointment.** Probationary appointments may be made only to authorized and established positions unless these rules provide otherwise. Appointments to positions covered by merit system provisions shall be made in accordance with 11—Chapter 56 when applicable.

**11—57.3(8A) Provisional appointment.** If the director is unable to provide at least six applicants for a position, an appointing authority may provisionally appoint a person who meets the minimum qualifications for the class to fill the position pending the person's appointment from an eligible list.

No provisional probationary appointment shall be continued for more than 30 calendar days after the date of original appointment.

Successive provisional appointments shall not be permitted. An employee with provisional status shall not be eligible for promotion, demotion, transfer, or reinstatement to any position nor have reduction in force or appeal rights, but provisional probationary employees shall be eligible for vacation and sick leave and other employee benefits.

An employee shall receive credit for time spent in provisional status that is contiguous to the period of probationary status.

**11—57.4(8A) Temporary appointment.** Persons may be appointed with temporary status to any class. They may be paid at any rate of pay within the range for the class to which appointed.

Temporary appointments may be made to temporary positions or to permanent positions, or on an overlap basis to unauthorized positions, and may be made to any class and at any rate of pay within the range for the class to which appointed.

A temporary appointment shall not exceed 780 work hours in a fiscal year.

A temporary employee shall have no rights to appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with temporary status shall only be given another temporary type of appointment to the extent that the total number of hours worked in all temporary appointments in a fiscal year does not exceed 780 hours.

**11—57.5(8A) Reinstatement.** A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require appointment from a list of eligibles. Former employees who retired and applied for retirement benefits under an eligible state retirement system or program are not eligible for reinstatement unless otherwise permitted by law.

A permanent employee who demotes may at any time be reinstated to a position in the class occupied prior to the demotion at the discretion of the appointing authority. Reinstatement shall not require appointment from a list of eligibles.

Former employees who are reinstated shall accrue vacation at the same rate as at the time they separated from state employment, and the employee's previous vacation anniversary date minus the period of separation shall be restored. This paragraph shall be effective retroactive to January 1, 1995.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—57.6(8A) Internship appointment.** The director may authorize an appointing authority to make an internship appointment to an established position, or if funds are available, to an unauthorized position.

**57.6(1)** Internship appointments shall expire upon attainment of a degree.

**57.6(2)** Employees with internship status shall have no rights of appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits of state employment, nor shall credit be given for future vacation accrual purposes.

**57.6(3)** Successful completion of an internship appointment of at least 90 calendar days shall authorize the appointee to be on promotional or all-applicant lists. Only persons formally enrolled in the department's intern development program are eligible to be on promotional lists. Successful completion shall be as determined by the director at the time of enrollment.

**11—57.7(8A) Seasonal appointment.** The director may authorize appointing authorities to make seasonal appointments to positions. Seasonal appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Seasonal appointments may, however, be made only during the seasonal period approved by the director for the agency requesting to make the appointment, and must be concluded by the end of that period. To be eligible to make seasonal appointments, the appointing authority must first submit a proposed seasonal period to the director for approval. Such period shall not exceed six months in a fiscal year; however, the appointment may start as early as the beginning of the pay period that includes the first day of the seasonal period and may end as late as the last day of the pay period that includes the last day of the seasonal period.

Persons appointed with seasonal status shall have no rights of appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with seasonal status to a classification covered by a collective bargaining agreement shall not work in excess of 780 hours in that status in such a class or classes, nor shall that person accumulate more than 780 hours worked in any combination of temporary statuses in any agency or any combination of agencies during a fiscal year.

**11—57.8(8A) Overlap appointment.** When it is considered necessary to fill a position on an overlap basis pending the separation of an employee, the appointment of a new employee may be made in accordance with these rules for a period not to exceed 60 calendar days. An overlap appointment must be in the same class as the authorized position being overlapped, unless otherwise approved by the director. Any overlap appointment for a longer period must first be approved by the director.

**11—57.9(8A) Rescinding appointments.** If, after being appointed, it is found that an employee should have been disqualified or removed as provided for in these rules, the appointing authority may rescind the appointment. An employee with permanent status may file a grievance in accordance with 11—Chapter 61.
[**ARC 8063B**, IAB 8/26/09, effective 9/30/09]

These rules are intended to implement Iowa Code Supplement sections 8A.401, 8A.402, 8A.411 to 8A.413, 8A.416 to 8A.418, 8A.453, 8A.456 and 8A.458.

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NOTE: Rule 8.12 inadvertently omitted 8/12/87 and added 9/9/87.

# CHAPTER 58
# PROBATIONARY PERIOD

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 2/18/04, see 581—Ch 9]

**11—58.1(8A) Duration.** All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Appointments to peace officer positions at the department of public safety require a 12-month probationary period following appointment. Employees with probationary status shall not be eligible for promotion, reinstatement following separation, or other rights to positions unless provided for in this chapter, nor have reduction in force, recall, or appeal rights.

A six-month period of probationary status may, at the discretion of the appointing authority and with notice to the employee and the director, be required upon reinstatement, and all rules regarding probationary status shall apply during that period.

The provisions of this chapter shall apply to all executive branch employees, except employees of the board of regents, unless collective bargaining agreements provide otherwise.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—58.2(8A) Disciplinary actions.** In addition to less severe progressive discipline measures, the appointing authority may demote, suspend, reduce pay within the same pay grade, or discharge an employee during the period of probationary status without right of appeal. The appointing authority shall notify the employee in writing of the effective date of the action, and in the case of a suspension or reduction in pay, the duration of the action. In no case shall suspension extend beyond 30 calendar days, nor beyond the end of the probationary period. A copy of the notice shall be sent to the director by the appointing authority.

Disciplinary demotion during the period of probationary status to a position covered by merit system provisions shall require that the employee meet the minimum qualifications for the class. If demoted, the total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 11—subrule 53.6(7).

**11—58.3(8A) Voluntary demotion during the period of probationary status.** Voluntary demotion during the period of probationary status to a position covered by merit system provisions shall require that the employee meet the minimum qualifications for the class. The total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 11—subrule 53.6(7).

**11—58.4(8A) Promotion during the period of probationary status.** A probationary employee who is promoted during the period of probationary status to a position covered by merit system provisions shall be hired in accordance with 11—subrule 56.3(3). The total required probationary period shall include the probationary service in the class from which the employee is promoted. The rate of pay shall be set in accordance with 11—subrule 53.6(6).
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—58.5(8A) Transfer during the period of probationary status.** A probationary employee who is transferred during the period of probationary status by the appointing authority to a position covered by merit system provisions must meet the minimum qualifications required for the class. The total required period of probationary status shall include the probationary time spent in the class from which transferred. The rate of pay shall be set in accordance with 11—subrule 53.6(8).

**11—58.6(8A) Reclassification during the period of probationary status.** An employee who is reclassified during the period of probationary status need only meet the minimum qualifications for the class. The total required period of probationary status shall include the probationary time spent in the previous class. The rate of pay shall be in accordance with 11—subrule 53.6(9).

**11—58.7(8A) Leave without pay during the period of probationary status.** A probationary employee may be granted leave without pay at the appointing authority's discretion in accordance with these rules. When a probationary employee is granted leave without pay, the employee's probationary period shall not be extended by the amount of leave granted unless the leave is for education or training.

**11—58.8(8A) Vacation and sick leave during the period of probationary status.** Probationary employees shall accrue and may be granted vacation and sick leave in accordance with the provisions of these rules.

**11—58.9(8A) Probationary period for promoted permanent employees.** This rule shall only apply to promotion within an appointing authority's department and to positions covered by merit system provisions.

An employee may be required to serve a six-month probationary period in the class to which promoted before the promotion becomes permanent.

At any time during the promotional probationary period the appointing authority may return the employee to the formerly held class. Return under this probationary period rule shall not be considered a demotion and there shall be no right to an appeal. The former salary and pay increase eligibility date shall be restored with credit allowed for the time spent in the higher class.

These rules are intended to implement Iowa Code Supplement sections 8A.401, 8A.411, 8A.413, 8A.415 to 8A.418, 8A.453, 8A.456 and 8A.458.

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See details following chapter analysis.

# CHAPTER 59
# PROMOTION, TRANSFER, TEMPORARY ASSIGNMENT, REASSIGNMENT AND VOLUNTARY DEMOTION

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 2/18/04, see 581—Ch 10]

**11—59.1(8A) Promotion.** An appointing authority may promote an employee with permanent status if the employee meets the minimum qualifications and other promotional screening requirements for the position. The employee must be on the list of eligibles for the position and available under the conditions stated on the list request.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—59.2(8A) Reassignment.** An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 11—60.2(8A), except as provided in this rule.

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.
[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—59.3(8A) Temporary assignments.**

**59.3(1)** An appointing authority may assign a permanent employee to special duty when that employee is temporarily needed in another position. This assignment shall be without prejudice to the employee's rights in or to the regularly assigned position. Unless there is a statutory requirement to the contrary, the employee need not be qualified for the class to which temporarily assigned.

**59.3(2)** An appointing authority may temporarily assign a permanent employee duties that are extraordinary for the employee's class. These duties may be of a level higher than, lower than, or similar to the duties regularly assigned to the employee's class, and may be in addition to or in place of some or all of the employee's regularly assigned duties.

**59.3(3)** Requests shall be submitted to the director in writing for assignments to special duty or extraordinary duty that exceed three complete pay periods and shall explain the need and the period of time requested. Temporary assignments shall not initially be approved for a period longer than one year. Extensions may be requested. Requests shall be submitted on forms prescribed by the director.

**59.3(4)** An appointing authority may make temporary assignments without additional pay for up to three consecutive pay periods in a fiscal year. Approval of temporary assignments without additional pay beyond three consecutive pay periods may be granted by the director.

**59.3(5)** An appointing authority shall provide restricted duty work assignments, without change to an employee's class and regular pay rate, for those employees who have a medical release to return to restricted duty following a job-related illness or injury. The original period of restricted duty shall be the hourly equivalent of 20 workdays (which shall be on a pro-rata basis for part-time employees), or until the employee is medically released for full duty, whichever is less. Extensions to the original period may be requested by the appointing authority for approval by the director. Exceptions to this subrule must be approved by the director.

**11—59.4(8A) Voluntary demotion.** An appointing authority may grant an employee's written request for a demotion to a lower class. If the voluntary demotion involves movement from a position covered by merit system provisions to one that is not, the request must clearly indicate the employee's knowledge of the change in merit system coverage. If the employee objects to the change in coverage, the demotion shall not take effect. Also, no demotion shall be made from one position covered by merit system

provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being qualified. A copy of the voluntary demotion request shall be sent by the appointing authority to the director at the time of the demotion.

Voluntary demotion may be either intra-agency or interagency, and shall not be subject to appeal under these rules.

**11—59.5(8A) Transfer.** An employee may request a voluntary transfer. The decision to grant or deny the request is the appointing authority's.

An appointing authority may involuntarily transfer an employee. To do so, any applicable collective bargaining agreement provisions regarding transfer must first be exhausted. Transfers may be interagency or intra-agency. Involuntary interagency transfers require the approval of both the sending and the receiving appointing authorities.

To be eligible to transfer, the employee must meet any minimum qualifications and selective requirements for the position.

If the transfer of an employee would result in the loss of merit system coverage, the transfer shall not take place without the affected employee's written consent to the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

These rules are intended to implement Iowa Code Supplement sections 8A.401, 8A.402, 8A.411, 8A.413, 8A.414, 8A.417, 8A.418, 8A.439, 8A.453, 8A.456 and 8A.458.

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[2] See IAB Personnel Department

# CHAPTER 60
# SEPARATIONS, DISCIPLINARY ACTIONS AND REDUCTION IN FORCE

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1986, see Executive Council[420] Ch 10]
[Prior to 1/21/04, see 581—Ch 11]

**11—60.1(8A) Separations.**

**60.1(1)** *Resignation, retirement, phased retirement, early retirement, or early termination.*

*a.* To resign or retire in good standing, an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 11—Chapter 61 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee of the authority's decision to remove the employee from the payroll. Notification shall be sent to the employee's last-known address, with delivery confirmation required. The appointing authority shall consider requests to review circumstances.

*b.* A full-time employee who is at least 60 years of age and who has completed at least 20 years as a full-time employee may, with approval of the appointing authority, participate in the phased retirement program. The request for participation shall specify the number of hours per week the employee intends to work for each year of the program.

Participants shall be in pay status a maximum of 32 hours per week and a minimum of 20 hours per week during the first four years in the program. After the completion of four years in the program, participants shall be in pay status a maximum of 20 hours per week for the fifth year in the program. An employee may not increase the number of hours in pay status once participation in the program has begun. An employee may participate for a maximum of five years in the program. At the conclusion of the agreed upon period of participation in the program, the employee shall retire from state employment.

An employee participating in the phased retirement program shall receive holiday pay and accrue vacation and sick leave on a pro rata basis in accordance with the number of hours in pay status in the pay period. During the period of participation in the program, all other benefits shall be commensurate with full-time employment.

Participation in the phased retirement program shall serve as a written notice of intent to retire on the date specified in the agreement unless the employee retires, resigns, is discharged, or receives long-term disability prior to that date. Participants are eligible to elect early retirement or early termination incentives in lieu of completing the phased retirement agreement.

An employee who participates in the phased retirement program shall not be eligible to return to permanent employment for hours in excess of those worked at the time of retirement.

*c.* Employees who received early retirement or early termination incentives provided by 1986 Iowa Acts, Senate File 2242, shall not be eligible for further state employment.

*d.* Separation from employment for purposes of induction into military service shall be in accordance with 11—subrules 63.6(2) and 63.9(2).

*e.* A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

**60.1(2)** *Expiration of appointment.* When an employee is separated upon the expiration of an appointment of limited duration, the appointing authority shall immediately report the separation to the department on forms prescribed by the director.

**60.1(3)** *Early retirement incentive program—1992.* This early retirement incentive program is provided for in 1992 Iowa Acts, chapter 1220. Employees who participated in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

**60.1(4)** *Sick leave and vacation incentive program—2002.* This termination incentive program is provided for in 2001 Iowa Acts, Second Extraordinary Session, chapter 5. An employee who elected participation in this program is not eligible to accept any further permanent employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

**60.1(5)** *Sick leave and vacation incentive program—Fiscal Year 2003.* This termination incentive program is provided for in 2002 Iowa Acts, Second Extraordinary Session, chapter 1001. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

**60.1(6)** *Sick leave and vacation incentive program—Fiscal Year 2005.* This termination incentive program is provided for in 2004 Iowa Acts, chapter 1035. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

**60.1(7)** *State employee retirement incentive program—Fiscal Year 2010.*

*a.* This state employee retirement incentive program is provided for in 2010 Iowa Acts, Senate File 2062.

*b.* To become a program participant, an employee must complete and file a program application form on or before April 15, 2010, and must terminate employment no later than June 24, 2010.

*c.* For purposes of this program, the following definitions shall apply:

*"Employee"* means an employee of the executive branch of this state, including an employee of a judicial district of the department of correctional services, an employee of the fair board, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, "employee" does not mean an elected official.

*"Eligible employee"* means an employee who is employed on February 10, 2010, who is 55 years of age or older on July 31, 2010, and who has submitted an application by the employee's last day of employment to the Iowa public employees' retirement system to begin monthly retirement benefits by July 2010. "Eligible employee" shall include an employee who began receiving IPERS monthly benefits prior to February 2010 if the employee is employed on February 10, 2010, and terminates employment on or before June 24, 2010. "Eligible employee" shall not include an employee who is eligible for the sick leave conversion program as described in Iowa Code section 70A.23, subsection 4, or a former employee who withdraws the application for monthly retirement benefits from the Iowa public employees' retirement system before receiving the first month of benefits.

*"Participant"* means an eligible employee who, on or before April 15, 2010, submits an application to participate and does participate in the state employee retirement incentive program established by this subrule. For the purposes of this program, a person remains a participant after all benefits under this program have been made.

*"Program"* means the state employee retirement incentive program established in 2010 Iowa Acts, Senate File 2062.

*"State"* means the state of Iowa and all of its branches, departments, agencies, boards, or commissions, including a judicial district department of correctional services and the state board of regents.

*d.* A participant who elects to remain in the state's retiree health insurance group plan may receive a health insurance contribution benefit. The health insurance contribution benefit consists of up to 5 years of contributions toward retiree health insurance. The contributions shall be used to pay the employer's portion of the health insurance premiums. The department shall determine the contribution rate based on the employer's contribution to an existing state plan.

A participant shall begin receiving the health insurance contribution benefit once payments, if any, under Iowa Code section 70A.23 cease, and shall continue to receive such benefits for 5 years after termination of employment. If a participant is not eligible for payments under Iowa Code section 70A.23, the participant will begin receiving health insurance contribution benefits the month following

termination of employment and shall continue to receive such benefits for 5 years after termination of employment.

*e.* All existing rules and policies regarding continuation of health insurance and changing health insurance plans shall apply to participants and surviving spouses covered by the program.

*f.* A participant will receive a years of service incentive payment for 5 years after termination of employment. The payments shall include the entire value of the participant's accrued but unused vacation leave and, for participants with at least 10 years of state employment, $1000 for each year of state employment, up to 25 years of employment. State employment shall include all past and present employment with the state, regardless of whether the employee took a refund of the contributions made to IPERS for a prior period of service, if the employee provides adequate documentation of prior periods of employment. The payment shall be paid in five equal installments beginning in September 2010 and ending in 2014.

*g.* If a participant dies within 5 years of termination of employment, the participant's beneficiary will receive any remaining years of service incentive benefits. If the participant's surviving spouse is covered on the participant's state retiree health insurance plan, the surviving spouse may elect to continue health insurance coverage and will receive any remaining health insurance contribution benefits under this program. If the surviving spouse was not covered by the participant's health insurance plan, or if there is no surviving spouse, any remaining health insurance contribution benefits are forfeited.

*h.* A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

*i.* The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

*j.* A participant is not eligible to accept any further employment with the state, other than as an elected official or a member of a board or commission, from the date of termination from employment. A participant may not enter into a contract to provide services to the state as an independent contractor or a consultant.

*k.* The state's obligations and duties under Iowa Code chapter 669 are not altered or diminished by a participant's signing of the program application and release form. Participants may pursue any remedy allowed in Iowa Code chapter 669 without regard to program eligibility.

[**ARC 8692B**, IAB 4/21/10, effective 3/29/10; **ARC 8727B**, IAB 5/5/10, effective 4/16/10; **ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—60.2(8A) Disciplinary actions.** Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

**60.2(1)** Suspension.

*a.* *Suspension pending investigation.* An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. If, upon investigation, it is determined that a suspension without pay was warranted as provided in 60.2(1)*"b"*(1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

*b. Disciplinary suspension.* An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

(1) Employees who are covered by the premium overtime provisions of the federal Fair Labor Standards Act may be suspended without pay.

(2) Employees who are exempt from the premium overtime provisions of the federal Fair Labor Standards Act will not be subject to suspension without pay except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director. Otherwise, when a suspension is imposed on such an employee, it shall be with pay and shall carry the same weight as a suspension without pay for purposes of progressive discipline. The employee will perform work during a period of suspension with pay unless the appointing authority determines that safety, morale, or other considerations warrant that the employee not report to work.

**60.2(2)** Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

**60.2(3)** Disciplinary demotion. A disciplinary demotion may be used to permanently move an employee to a lower job classification. A temporary disciplinary demotion shall not be used as a substitute for a suspension without pay or reduction in pay within the same pay grade. An employee receiving a disciplinary demotion shall only perform the duties and responsibilities consistent with the class to which demoted. An appointing authority may disciplinary demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reclassified to a lower class. A written statement of the reasons for the disciplinary demotion shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 11—58.2(8A).

An agency may not disciplinarily demote an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

**60.2(4)** Discharge. An appointing authority may discharge an employee. Prior to the employee's being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

**60.2(5)** Termination for failure to meet job requirements. When an employee occupies a position where a current qualification for appointment is based upon the required possession of a temporary work permit or on the basis of possession of a license or certificate, and that document expires, is revoked or

is otherwise determined to be invalid, the employee shall either be removed from the payroll for failure to meet or maintain license or certificate requirements, or otherwise appointed to another position in accordance with these rules. This action shall be effective no later than the pay period following the failure to obtain, revocation of, or expiration of the permit, license, or certificate.

When an employee occupies a position where a current qualification for appointment is based upon the requirement of an approved background or records investigation and that approval is later withdrawn or unobtainable, the employee shall be immediately removed from the payroll for failure to maintain those background or records requirements or may be appointed to another position in accordance with these rules.

**60.2(6)** Appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge shall be in accordance with 11—Chapter 61. The written statement to the employee of the reasons for the discipline shall include the verbatim content of 11—subrule 61.2(6).

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—60.3(8A) Reduction in force.** A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered employees in a class or the number of hours worked, as determined by the "full-time equivalent" funding attributed to the position, by a permanent merit system covered employee in a class, except as provided in subrule 60.3(1).

**60.3(1)** The following agency actions shall not constitute a reduction in force nor require the application of these reduction in force rules:

*a.* An interruption of employment for no more than 20 consecutive calendar days, with the prior approval of the director.

*b.* Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the director.

*c.* The promotion or reclassification of an employee to a class in the same or a higher pay grade.

*d.* The reclassification of an employee's position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized.

*e.* A change in the classification of an employee's position or the appointment of an employee to a vacant position in a class in a lower pay grade resulting from a disciplinary or voluntary demotion.

*f.* The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.

*g.* A reduction in the number of, or hours worked by, permanent employees not covered by merit system provisions.

**60.3(2)** The agency's reduction in force shall conform to the following provisions:

*a.* Reduction in force shall be by class.

*b.* The reduction in force unit may be by agency organizational unit or agencywide. If the agency organizational unit is smaller than a bureau, it must first be reviewed by the director.

*c.* An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit, as well as those who have probationary status in the same class.

*d.* The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if the unit(s) is smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director.

*e.* The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee's rights under these rules. A copy of the employee's retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency's reduction in force plan has been approved by the director, unless otherwise authorized by the director.

*f.* The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

**60.3(3)** Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record. The director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than "meets expectations" on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. Length of service and performance credits shall be calculated as follows:

*a.* Credit for length of service shall be given at the rate of one point for each month of employment, including employment credited to the employee during a probationary period. Any period of 15 calendar days of service in a month will be considered a full month. In computing length of service credit, the appointing authority shall include all continuous merit system covered nontemporary service in the executive branch. If a merit system covered nontemporary employee's employment is interrupted due to (1) a reduction in force, (2) qualification for long-term disability, or (3) a work-related injury, and the employee is subsequently reinstated to the same class in a different layoff unit or to a different class than that held at the time of separation in accordance with rule 11—57.5(8A), and the reinstatement occurs within two years of the interruption of employment, prior service credit shall be restored. Such credit will be subject to a reduction for the period of separation from state service.

Length of service credit shall not include the following periods:

(1) Any period of temporary or seasonal employment, if not credited toward the probationary period.

(2) Any period of suspension without pay of 15 days or more.

(3) Approved leaves of absence without pay in excess of 15 days.

(4) Any period of layoff of 15 days or more.

(5) Any period of long-term disability of 15 days or more.

(6) Any period of unpaid absence that was not subsequently used to establish or adjust the employee's date of hire.

*b.* Credit for the performance record shall be calculated using the results of documented performance evaluations completed in accordance with 11—subrule 62.2(2) as follows:

(1) A performance evaluation period rated overall as "less than competent" or "does not meet expectations" or for which the "overall sum of ratings" is less than 3.00 shall receive no credit.

(2) A performance evaluation period rated overall as "competent" or better, or "meets or exceeds expectations" or for which the "overall sum of ratings" is 3.00 or greater shall receive one retention point for each month of such rated service.

All employees shall be evaluated for performance in accordance with 11—subrule 62.2(2). If the period covered on the evaluation exceeds 12 months, the rating shall apply only to the most recent 12 months of the period. If the period covered by the evaluation exceeds 12 months and the employee's overall rating mandates the receipt of no credit pursuant to 60.3(3)*"b"*(1), then that overall rating shall

apply only to the first 12 months of the period and the remaining months shall be rated as competent. Time spent on approved military leave, workers' compensation leave, or educational leave with or without pay that is required by the appointing authority shall be counted as competent performance.

*c.* The total retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance record points.

**60.3(4)** Order of reduction in force. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the layoff unit. Reduction in force selections shall be made from the list in inverse order regardless of full-time or part-time status, except as provided in subrule 60.3(3). If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

*a.* The employee with the highest total performance record points; and then, if still tied,

*b.* The employee with the lower last four digits of the social security number.

**60.3(5)** Bumping (class change in lieu of layoff). Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights.

*a.* Supervisory employees, with the exception of supervisory employees of the department of public safety, may not bump or replace junior employees who are not being laid off. For purposes of this subrule, "junior" employee means an employee with less seniority or fewer retention points than a supervisory employee.

*b.* Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement.

The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of administrative services as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than "meets expectations" on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director.

*c.* When bumping as set forth in paragraph 60.3(5)*"b,"* the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points except as provided for in this subrule. If bumping occurs, the employee with the fewest total retention points in the class shall then be subject to reduction in force.

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

**60.3(6)** Recall. Eligibility for recall shall be for one year following the date of the reduction in force.

*a.* The following employees or former employees are eligible to be recalled:

(1) Former employees who have been laid off.

(2) Employees who have bumped in lieu of layoff.

(3) Employees whose hours have been reduced, constituting a reduction in force.

*b.* Current employees who exercised bumping rights in accordance with subrule 60.3(5) and former employees terminated due to layoff in accordance with subrule 60.3(6) shall only be on the recall list for the class and layoff unit occupied at the time of the reduction in force.

*c.* The following provisions shall apply to the issuance and use of recall lists:

(1) Recall lists shall be issued for merit system covered positions and contract-covered positions only.

(2) When one or more names are on the recall list for a class in which a vacancy exists, the agency must fill that vacancy with a former employee from that list. If no one from a recall list is selected, the agency shall justify that decision to the director before the position may be filled by other methods.

(3) The recall alternatives in (2) above must be exhausted before other eligible lists may be used to fill vacancies.

*d.* Recall shall be by class without regard to an employee's status at the time of layoff (full-time or part-time).

An employee may remain on the recall list for the same status as that held at the time of layoff after having declined recall to a position with a different status. However, the employee will be removed for the status declined.

*e.* One failure to accept appointment to a nontemporary position with the same status as that held prior to the reduction in force shall negate all further recall rights.

*f.* An appointing authority may refuse to recall employees who do not possess the documented special skills or abilities required for a position, with the prior approval of the director.

*g.* Notice of recall shall be sent with delivery confirmation. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

*h.* Vacation accrual and accrued sick leave of recalled employees shall be in accordance with 11—subrule 63.2(2), paragraph *"l,"* and 11—subrule 63.3(10), respectively.

*i.* An employee who bumps in lieu of layoff or has a work hours reduction, and subsequently leaves employment for any reason, shall be removed from the recall list.

*j.* Employees who are recalled shall be removed from the recall list unless otherwise provided for in these rules.

*k.* Pay upon recall shall be in accordance with rule 11—53.6(8A).

**60.3(7)** Reduction in force shall not be used to avoid or circumvent the provisions or intent of 2003 Iowa Code Supplement section 8A.413, or these rules governing reclassification, disciplinary demotion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 11—Chapter 61.

[**ARC 8764B**, IAB 5/19/10, effective 4/30/10; **ARC 0401C**, IAB 10/17/12, effective 11/21/12]

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1 Effective date of amendment to 11.1(1) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

2 IAB Personnel Department

3 Effective date of amendments to 7.3(1), 7.12(19A), 11.3(1)*"a,"* 11.3(2)*"d"* and *"e,"* 11.3(4), 11.3(5), 11.3(6)*"c"* and 11.3(6)*"l"* delayed 70 days by the Administrative Rules Review Committee at its meeting held May 13, 1992; delay lifted by the Committee at its meeting held June 10, 1992. See emergency adopted amendment to 11.3(6)*"c"* and *"d,"* 5/27/92 Iowa Administrative Bulletin, pages 2203 and 2204.

# CHAPTER 61
# GRIEVANCES AND APPEALS

[Prior to IAB 3/14/84, subject appeared in Chs 12 and 15]
[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1986, see Executive Council[420]Ch 10]
[Prior to 1/21/04, see 581—Ch 12]

**11—61.1(8A) Grievances.** The grievance procedure is an informal process. It is not a contested case. All employees shall have the right to file grievances. The right to file a grievance and the grievance procedure provided for in these rules shall be made known and available to employees throughout the agency by the appointing authority through well-publicized means. Employees covered by a collective bargaining agreement may use this grievance procedure for issues that are not covered by their respective collective bargaining agreements.

Grievances shall state the issues involved, the relief sought, the date the incident or violation took place and any rules involved and shall be filed on forms prescribed by the director. Grievances involving suspension, reduction in pay within the same pay grade, disciplinary demotion, or discharge shall be filed as appeals in accordance with subrule 61.2(6) and commence with Step 3 of the grievance procedure described in subrule 61.1(1).

**61.1(1)** *Grievance procedure.*

*a.* Step 1. The grievant shall initiate the grievance by submitting it in writing to the immediate supervisor, or to a supervisor designated by the appointing authority, within 14 calendar days following the day the grievant first became aware of, or should have through the exercise of reasonable diligence become aware of, the grievance issue. The immediate supervisor shall, within seven calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules and give a decision in writing to the grievant with a copy to the director.

*b.* Step 2. If the grievant is not satisfied with the decision obtained at the first step, the grievant may, within seven calendar days after the day the written decision at the first step is received or should have been received, file the grievance in writing with the appointing authority. The appointing authority shall, within seven calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules, by affirming, modifying, or reversing the decision made at the first step, or otherwise grant appropriate relief. The decision shall be given to the grievant in writing with a copy to the director.

*c.* Step 3. If the grievant is not satisfied with the decision obtained at the second step, the grievant may, within 7 calendar days after the day the written decision at the second step was received, or should have been received, file the grievance in writing with the director. The director shall, within 30 calendar days after the day the grievance is received, attempt to resolve the grievance and send a decision in writing to the grievant with a copy to the appointing authority. The director may affirm, modify, or reverse the decision made at the second step or otherwise grant appropriate relief. If the relief sought by the grievant is not granted, the director's response shall inform the grievant of the appeal rights in subrule 61.2(5).

*d.* If the grievant is not satisfied with the decision obtained from the third step the grievant may file an appeal in accordance with subrule 61.2(5).

**61.1(2)** *Exceptions to time limits.*

*a.* If the grievant fails to proceed to the next available step in the grievance procedure within the prescribed time limits, the grievant shall have waived any right to proceed further in the grievance procedure and the grievance shall be considered settled.

*b.* If any management representative fails to comply with the prescribed time limits at any step in the grievance procedure, the grievant may proceed to the next available step.

*c.* The maximum time periods at any of the three steps in the grievance procedure may be extended when mutually agreed to in writing by both parties.

**61.1(3)** *Group grievances.* When the appointing authority or the director determines that two or more grievances or grievants address the same or similar issues, they shall be processed and decided as a group grievance.

**61.1(4)** *Grievance meetings.*

*a.* When it is determined by a designated management representative or the director that a meeting with the grievant will be held, all reasonable attempts will be made to hold the meeting during the grievant's regularly scheduled hours of work.

*b.* The grievant may be represented at a grievance meeting by an employee of the grievant's choosing except where that would constitute a conflict of interest. A grievant who wishes to be represented and whose class is covered by a collective bargaining agreement may only be represented by an appointed or elected union representative from the same employee organization as the grievant. A grievant who wishes to be represented and whose class is not covered by a collective bargaining agreement may only be represented by an employee with the same bargaining status as the grievant.

*c.* The grievant, an employee who is the grievant's representative, and employees authorized to attend the grievance meeting by the appointing authority or the director shall be in paid status for that time spent at and traveling to and from the grievance meeting during their regularly scheduled hours of work. In addition, employees shall, if eligible for overtime compensation, be in paid status for that time spent at and traveling to and from the grievance meeting outside of their regularly scheduled hours of work.

*d.* The appointing authority shall not authorize mileage, or the use of a state vehicle for employees to attend or participate in a grievance meeting, except for those employees who are required to attend or participate in the meeting by the appointing authority or the director. In the case of group grievances, only one of the grievants shall be in paid status.

**61.1(5)** *Bypassing steps for discrimination grievances.* A grievance step may be bypassed by the grievant when the grievance alleges discrimination and the respondent at the step is the person against whom the grievance has been filed.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—61.2(8A) Appeals.**

**61.2(1)** *Appeal of position classification decisions.*

*a.* Appeal of a position classification decision shall be in accordance with rule 11—52.5(8A) and the contested case provisions of Iowa Code chapter 17A.

*b.* The appellant (including all appellants in the case of a group hearing), an employee who is the appellant's representative, and employees directed by the appointing authority to attend the classification appeal hearing by the appointing authority or the director shall be in paid status for the time spent at and traveling to and from the hearing during their regularly scheduled hours of work. In addition, only employees directed by management to attend the hearing shall, if eligible for overtime compensation, be in paid status for the time spent at and traveling to and from the hearing outside of their regularly scheduled hours of work.

*c.* The appointing authority shall not authorize mileage or the use of a state vehicle for employees to attend or participate in a classification appeal hearing, except for those employees who are directed to attend the hearing by the appointing authority or the director.

**61.2(2)** Reserved.

**61.2(3)** *Appeal of examination rating.* Following examination, an applicant may file a written appeal to the employment appeal board in the department of inspections and appeals for a review of the rating received on the examination for the sole purpose of assuring that uniform rating procedures were applied consistently and fairly. Right of appeal shall expire unless filed with the board within 30 calendar days following the notice of the examination results.

A rating on an examination may be corrected if it is found by the employment appeal board that a substantial error has been made by the department. The correction of a rating shall not, however, affect any certifications or appointments already made.

**61.2(4)** *Appeal of disqualification, restriction, or removal from eligible lists.* An applicant who has been disqualified or whose name has been restricted or removed from an eligible list in accordance with rule 11—54.2(8A) or 11—55.2(8A), or who has been restricted from certification in accordance with rule 11—56.7(8A) may file a written appeal to the employment appeal board in the department of inspections

and appeals for a review of that action. The written appeal must be filed with the board within 30 calendar days following the notice of disqualification, removal from the eligible list, or restriction from certification. The burden of proof to establish eligibility shall rest with the appellant.

When an appeal is generated as the result of an action initiated by the department, the department shall be responsible for representation. When an appeal is generated as the result of an action initiated by an appointing authority through the department, the appointing authority shall pay the costs of the appeal assessed to the department and shall participate in representation as requested by the department.

If the applicant's name is restored to an eligible list, that decision shall not affect any certifications or appointments already made.

**61.2(5)** *Appeal of grievance decisions.* An employee who has alleged a violation of Iowa Code sections 8A.401 to 8A.458 or the rules adopted to implement Iowa Code sections 8A.401 to 8A.458 may, within 30 calendar days after the date the director's response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the public employment relations board. A nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, may, if not satisfied with the decision of the director, request an appeal hearing before the public employment relations board within 30 calendar days after the date the director's decision was issued or should have been issued. However, when the grievance concerns allegations of discrimination within the meaning of Iowa Code chapter 216, the Iowa civil rights commission procedures shall be the exclusive remedy for appeal and shall, in such instances, constitute final agency action. In all other instances, decisions by the public employment relations board constitute final agency action.

**61.2(6)** *Appeal of disciplinary actions.* Any nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, shall bypass steps one and two of the grievance procedure provided for in rule 11—61.1(8A) and may file an appeal in writing to the director for a review of the action within 7 calendar days after the effective date of the action. The appeal shall be on the forms prescribed by the director. The director shall affirm, modify or reverse the action and shall give a written decision to the employee within 30 calendar days after the receipt of the appeal. The time may be extended by mutual agreement of the parties. If not satisfied with the decision of the director, the employee may request an appeal hearing before the public employment relations board as provided in subrule 61.2(5).

**61.2(7)** *Appeal of reduction in force.* An employee who is to be or has been laid off or who has changed classes in lieu of layoff, and who alleges that the reduction in force was used to circumvent the rights of appeal provided for in subrule 61.2(6) or subrule 61.2(1), paragraph *"a"* or *"d,"* may file an appeal with the director within 30 calendar days following receipt of the notice of reduction in force to the employee from the appointing authority.

**61.2(8)** *Remedies.* All remedies provided in rule 11—61.2(8A) must be exhausted pursuant to Iowa Code section 17A.19, subsection 1, prior to petition for judicial review.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—61.3(8A) Informal settlement.** The director or an appellant may request that an informal conference be held to determine if a dispute can be resolved in a manner agreeable to all parties prior to a contested case hearing. If the director and the appellant agree to negotiate a settlement, the various points of the proposed settlement shall be included in a written statement of facts. Negotiations for a settlement shall be completed at least five workdays prior to the date of the contested case hearing, unless additional time is agreed to by the director, the appellant and the public employment relations board, the department of inspections and appeals, or the classification appeal committee, as applicable. The settlement shall be binding when approved and signed by both the director and the appellant.

These rules are intended to implement 2003 Iowa Code Supplement section 8A.413.

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1 History relating also to "Grievances and Complaints", Ch 15, prior to IAB 3/14/84.

2 Effective date of amendments to 12.4(19A) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

3 See IAB Personnel Department

# CHAPTER 62
# PERFORMANCE REVIEW

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 3/17/04, see 581—Ch 13]

**11—62.1(8A) System established.** The director shall establish, administer and maintain a uniform system of performance planning and evaluation to be applied to all employees in the executive branch of state government, excluding board of regents employees, and shall prescribe forms and procedures for its use. Such forms and procedures shall be in accordance with the accountable government Act pursuant to Iowa Code section 8E.207, subsection 2. Appointing authorities shall determine and assign the job duties to be performed by employees.

**11—62.2(8A) Minimum requirements.**

**62.2(1)** *Performance plan.* The individual employee performance plan shall be based on the responsibilities, strategies or goals assigned during the rating period and shall include the standards or expectations, including action steps, performance criteria, and timetables, required for performance to be considered as meeting job expectations. The individual employee performance plan shall be given to and discussed with the employee at the start of the rating period. Significant changes in responsibilities, standards or expectations that occur during the rating period shall be included in the individual employee performance plan, and a revised copy shall be given to and discussed with the employee.

**62.2(2)** *Performance evaluation.* A performance evaluation shall be prepared for each employee at least every 12 months. Additional evaluations may be prepared at the discretion of the supervisor. Ratings on the evaluation form are to be accompanied by descriptive comments supporting the ratings. The evaluation may also include job-related comments concerning achievements or areas of strength, areas for improvement, and training/development plans. The supervisor or team shall discuss the evaluation with the employee, and the employee shall be given the opportunity to attach written comments. Periods of service during educational leave required by the appointing authority, or military leave, shall be considered as meeting job expectations.

Exit performance reviews shall be completed by the former supervisor on or before the last day before the movement of an employee to employment in another section, bureau, division or agency of state government. This review shall be for the period between the previous review up to the movement to the other position. A copy shall be forwarded to the new supervisor of the employee.

**11—62.3(8A) Copies of records.** The employee shall receive a copy of each individual employee performance plan and evaluation. The originals shall be retained by the employee's agency in accordance with the policies of the department. The performance evaluation and attachments are confidential records within the meaning of Iowa Code section 22.7, subsection 11.

These rules are intended to implement Iowa Code Supplement section 8A.413 and Iowa Code section 8E.207.

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# CHAPTER 63
# LEAVE

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1/7/04, see 581—Ch 14]

**11—63.1(8A) Attendance.** Appointing authorities shall establish the working schedules, regulations, and required hours of work for employees under their direction. All regulations and schedules shall be made known to the affected employees by appointing authorities. All absences of probationary and permanent employees shall be charged to one of the leave categories provided for in this chapter.

**11—63.2(8A) Vacation leave.**

**63.2(1)** Nontemporary employees shall earn vacation for continuous state employment as follows:

*a.* Two unscheduled holidays to be added to the vacation accrual each year.

*b.* Two weeks of vacation during the first and through the fourth year of employment.

*c.* Three weeks of vacation during the fifth and through the eleventh year of employment.

*d.* Four weeks of vacation during the twelfth year and through the nineteenth year of employment.

*e.* Four and four-tenths weeks of vacation during the twentieth year and through the twenty-fourth year of employment.

*f.* Five weeks of vacation during the twenty-fifth and all subsequent years of employment.

**63.2(2)** Vacation is subject to the following conditions:

*a.* Vacation shall be subject to the approval of the appointing authority. The appointing authority shall approve vacation so as to maintain the efficient operation of the agency; take into consideration the vacation preferences and needs of the employee; and make every reasonable effort to provide vacation to prevent any loss of vacation accrual.

*b.* Probationary and permanent part-time employees shall accrue vacation in an amount proportionate to that which would be accrued under full-time employment.

*c.* Vacation shall not accrue during any absence without pay.

*d.* An employee who is transferred, promoted, or demoted from one state agency to another shall be credited with the vacation accrued.

*e.* Employees, including employees who are paid from a pay plan having annual salary rates, who leave state employment for any reason shall be paid, or have payment made according to law, for all accrued vacation. Payment shall be included with the employee's final paycheck and shall be based on the employee's total biweekly regular rate of pay at the time of separation. When other pay is to be included in the calculation, that other pay must have been in effect for at least three pay periods. Vacation shall not be granted after the employee's last day of work.

*f.* An employee may, at the appointing authority's discretion, be required to use all accrued vacation before being granted any leave without pay, except as otherwise provided in these rules.

*g.* Vacation shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's vacation shall not be counted against the employee's accrued vacation.

*h.* In the event of an illness or disability while on vacation, that portion of the vacation spent under the care of a physician shall be switched retroactively to and charged against the employee's accrued sick leave upon satisfactory proof from the physician of the illness or disability and its duration.

*i.* Vacation shall not be used in excess of the amount accrued, and shall not be used until the pay period after it is accrued.

*j.* Vacation shall be cumulative to a maximum of twice the employee's annual rate of accrual, including sick leave conversion. An appointing authority may require an employee to take vacation whenever it would be in the best interests of the agency. The employee shall be given reasonable notice of the appointing authority's decision to require the use of accrued vacation. However, an employee shall not be required to reduce accrued vacation to less than 80 hours.

*k.* One week of vacation shall be equal to the number of hours in the employee's normal, regular workweek.

*l.* Any employee who is laid off, or an employee who separated due to qualification for long-term disability benefits or an on-the-job injury or illness and subsequently returns to state employment within

two years following the date of separation, shall have previous continuous service and the period of separation counted toward the vacation accrual rate.

*m.* Reserved.

*n.* Time spent in military service, within the specified time limits of the military training and service Act, shall be considered continuous service for the purpose of computing vacation accrual, provided the employee returns to state service within 90 calendar days following discharge from military duty. Vacation shall not accrue to an employee while on military leave without pay.

*o.* If on June 1 an employee has a balance of 160 or more hours of accrued leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid on a separate warrant on the payday which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules. This paragraph applies only to employees not covered by a collective bargaining agreement.

**11—63.3(8A) Sick leave with pay.** Probationary and permanent full-time employees, except peace officer employees of the department of natural resources and the department of public safety, shall accrue sick leave as set forth in this paragraph. If the employee's accrued sick leave balance is 750 hours or less, the employee shall accrue one and one-half days of sick leave per month, which is 5.538462 hours per pay period. If the employee's accrued sick leave balance is 1500 hours or less but more than 750 hours, the employee shall accrue one day of sick leave per month, which is 3.692308 hours per pay period. If the employee's accrued sick leave balance is more than 1500 hours, the employee shall accrue one-half day of sick leave per month, which is 1.846154 hours per pay period. Peace officer employees of the department of natural resources and department of public safety shall accrue sick leave at the same rate as the rate provided under the State Police Officers Council collective bargaining agreement. The use of sick leave with pay shall be subject to the following conditions:

**63.3(1)** Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

**63.3(2)** Sick leave shall not be used as vacation.

**63.3(3)** Sick leave shall not be granted in excess of the amount accrued.

**63.3(4)** There is no limit on the accumulation of sick leave. An employee who has accrued at least 240 hours of sick leave may elect to accrue additional vacation in lieu of the normal sick leave accrual. An employee who has made an election to convert sick leave to vacation will be credited with four hours of vacation for each full month when sick leave is not used during that month. A conversion shall not be made if the accrued sick leave is less than 240 hours in the pay period in which the conversion would be made. The conversion of sick leave shall be prorated for employees who are normally scheduled to work less than full-time (40 hours per week). An employee's maximum vacation accrual may be increased under this subrule up to 96 hours.

**63.3(5)** In all cases when an employee has been absent on sick leave, the employee shall immediately upon return to work submit a statement that the absence was due to illness or other reasons stated in this rule. Where absence exceeds three working days, the reasons for the absence shall be verified by a physician or other authorized practitioner if required by the appointing authority. An appointing authority may require verification for lesser periods of absence and at any time during an absence. In all cases, sick leave shall not be deducted from that accrued until authorized by the appointing authority.

**63.3(6)** Sick leave shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's sick leave shall not be counted against the employee's accrued sick leave.

**63.3(7)** Sick leave shall not accrue during any absence without pay.

**63.3(8)** Probationary and permanent part-time employees shall accrue sick leave in an amount proportionate to that which would be accrued under full-time employment.

**63.3(9)** An employee who is transferred, promoted, or demoted from one agency to another shall be credited with the sick leave accrued.

**63.3(10)** All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23, or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee is separated due to an on-the-job injury or illness and is reemployed by any state agency within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa Code section 70A.23 and the provisions of 11—64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

**63.3(11)** Employees may also use accrued sick leave, not to exceed a total of 40 hours per fiscal year, for the following purposes:

*a.* When a death occurs in the immediate family;

*b.* For the temporary care of, or necessary attention to members of the immediate family.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

**63.3(12)** If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave. Employees shall, upon request, be paid accrued compensatory leave in a lump sum. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4).

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09; **ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—63.4(8A) Family and Medical Leave Act leave.** An employee who has been employed for a cumulative total of 12 months or more in the most recent seven-year period and who has worked at least 1,250 hours during the 12-month period immediately preceding the date leave is to begin shall be eligible for family and medical leave in accordance with the federal Family and Medical Leave Act (FMLA) and 29 CFR Part 825, these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. The FMLA leave year begins on the first day of each fiscal year. Eligible employees are entitled to FMLA leave subject to the following conditions:

**63.4(1)** It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph *"a"* or *"c"* below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous 12 months. Leave may be for one or more of the following reasons:

*a.* The birth or placement with the employee of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) for adoption or foster care provided the leave is taken within 12 months following any such birth, adoption or foster placement;

*b.* The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

*c.* The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

*d.* A serious health condition that makes an employee unable to work at all or perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12101 et seq., and the regulations at 29 CFR Section 1630.2(n).

*e.* A qualifying exigency, as defined in federal FMLA regulations, arising out of the fact that the employee's spouse, son, daughter or parent is a covered servicemember on covered active duty, or has been notified of an impending call or order to covered active duty, in a foreign country.

*f.* To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the FMLA regulations.

**63.4(2)** Leave may be taken on an intermittent basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph *"a"* of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph *"b," "c," "d," "e,"* or *"f"* of subrule 63.4(1) is mandatory if certified by a health care provider or proper military authority.

**63.4(3)** Use of sick leave shall be in accordance with rule 11—63.3(8A). When FMLA leave is taken pursuant to paragraph *"a," "b," "c," "e,"* or *"f"* of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

When FMLA leave is taken pursuant to paragraph *"d"* of subrule 63.4(1), an employee must exhaust all paid sick leave, compensatory leave, and vacation before unpaid leave is granted.

**63.4(4)** An employee shall submit a written request, using forms prescribed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice as soon as practicable after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline of the employee.

The appointing authority shall provide the employee with all notices required by the federal Family and Medical Leave Act and the policies of the department. Notices shall be provided to employees within the time frames prescribed by the federal regulations and the policies of the department. The appointing authority shall notify the employee using forms prescribed by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within five workdays.

**63.4(5)** The appointing authority may, at the agency's expense, require a second opinion. The appointing authority will designate the health care provider to furnish the second opinion. In making the designation, the appointing authority shall select a provider that is not employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

**63.4(6)** During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to the same level of benefits as prior to the commencement of leave upon completion of the necessary insurance applications and other forms required by the department.

**63.4(7)** Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than the employee would have received had the leave not been taken. If an employee does not return from leave because of the continuation, reoccurrence or onset of a serious health condition, the appointing

authority shall require written certification from the health care provider. If the reason for the employee's failure to return is not a certified serious health condition or other circumstances beyond the control of the employee, the state may recover its share of health and dental benefit insurance premiums paid during the period of leave.

**63.4(8)** The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that:

*a.* If a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.

*b.* The employee's pay increase eligibility date shall be adjusted for absences of more than 30 calendar days.

**63.4(9)** If an employee unequivocally advises the employer that the employee does not intend to return to work, the employee's entitlement to FMLA leave and associated benefits cease. The failure to return to work upon the expiration of FMLA leave may be considered to be job abandonment.

**63.4(10)** If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans with Disabilities Act.

**63.4(11)** An employee remains a participant in the deferred compensation and dependent care programs while on FMLA leave as authorized by these rules and the policies of the department.

**63.4(12)** FMLA leave runs concurrently with other leave programs administered by the department to the extent the leave qualifies as FMLA leave.

**63.4(13)** FMLA leave runs concurrently with a workers' compensation absence when the workers' compensation absence is one that meets the FMLA criteria.

An employee can be offered "restricted light duty," and if such restricted duty is refused, it may result in the loss of workers' compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers' compensation benefits but is still protected by the FMLA.

Employees on workers' compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers' compensation laws and will have no job restoration rights under the FMLA.

**63.4(14)** Retention of vacation leave. Notwithstanding subrule 63.4(3), non-contract-covered employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, using forms prescribed by the department, to retain vacation by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

For employees covered by a collective bargaining agreement, the retention of vacation leave will be governed by the collective bargaining agreement.

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09; **ARC 8979B**, IAB 8/11/10, effective 9/15/10; **ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—63.5(8A) Leave without pay.** A permanent or probationary employee, on written request and written approval by the appointing authority, may be granted leave without pay for any reason deemed satisfactory to the appointing authority, subject to the following conditions:

**63.5(1)** Leave without pay shall not originally be granted for more than 12 consecutive months. Accrued leave need not be exhausted before leave without pay is granted except that accrued sick leave must be exhausted if the reason for leave without pay is due to a medically related disability. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority except as provided in subrule 63.5(4). On written request, prior to the expiration of a granted leave, the appointing authority may, in writing, grant an extension of the leave without pay. The approved leave without pay extension may not be for more than an additional 12 consecutive months, unless otherwise approved by the director.

**63.5(2)** Failure by the employee to report back to work on the date specified in the written request shall be considered a voluntary resignation unless otherwise approved by the appointing authority. A written statement accepting the resignation shall be sent to the employee by the appointing authority and a copy sent to the director.

**63.5(3)** Employees who do not supplement workers' compensation with sick leave, vacation or compensatory leave, and who are kept on the payroll in a nonpay status for more than 30 calendar days, shall be placed on leave without pay for purposes of probationary periods, pay increase eligibility, and other benefits. A written statement to this effect shall be sent to the employee within three days following the action by the appointing authority.

**63.5(4)** When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave for at least an eight-week period when the purpose is to provide recovery from a medically related disability. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules. The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave, the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

*a.* The employee fails or refuses to supply the requested verification of continued disability.

*b.* The verification does not clearly show sufficient continuing reason that would prevent the performance of the employee's regular work duties.

*c.* The employee is shown to be performing work which is incompatible with the purpose for which the leave without pay was granted.

**63.5(5)** If an employee applies for leave under the Family and Medical Leave Act, any leave without pay under the Family and Medical Leave Act shall run concurrently with the leave granted under this rule.

[**ARC 0401C**, IAB 10/17/12, effective 11/21/12]

**11—63.6(8A) Rights upon return from leave.**

**63.6(1)** An employee who is on approved leave without pay, disaster service volunteer leave or educational leave must notify the appointing authority from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. An employee on leave without pay, disaster service volunteer leave, or educational leave may request permission from the appointing authority to return to work sooner than the original approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

**63.6(2)** An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

**63.6(3)** At the conclusion of a period of military service, an employee who is on approved military service leave must notify the appointing authority of the intent to return to employment. Upon return from military leave, the employee shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334.

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—63.7(8A) Compensatory leave.** Compensatory leave accrued in accordance with 11—subrule 53.11(5) shall be granted at the request of the employee whenever possible. However, the appointing authority need not grant a request for compensatory leave if granting the leave would cause an undue disruption.

**11—63.8(8A) Holiday leave.** Holidays shall be granted in accordance with statutory provisions to employees who are eligible to accrue vacation and sick leave.

**63.8(1)** The value of a holiday for full-time employees shall be eight hours or the number of hours the employee is scheduled to work on that day, whichever is greater. The value of a holiday that falls on a full-time employee's scheduled day off shall be eight hours. Employees who are normally scheduled to work full-time shall not have their holiday compensation prorated for time on leave without pay during the pay period if the employee meets the conditions of subrule 63.8(3).

Compensation for holidays shall be prorated for employees who are normally scheduled to work less than 80 hours in a pay period. Compensation shall be based on the number of hours in pay status during the pay period in which the holiday falls plus the hours that would normally be scheduled for the holiday which shall be included when determining the number of pro-rata holiday hours.

Leave accrued under Iowa Code section 1C.2 as vacation shall be based on the employee's hours in pay status.

Compensation for holidays under this rule shall be either in pay or compensatory leave. The decision to pay or grant compensatory leave shall be made by the appointing authority.

**63.8(2)** For employees who work Monday through Friday, a holiday falling on Sunday shall be observed on the following Monday and a holiday falling on Saturday shall be observed on the preceding Friday. For all other employees, the designated holiday shall be observed on the day it occurs.

**63.8(3)** To be eligible for holiday compensation an employee must be in pay status the last scheduled workday before and the first scheduled workday after the holiday.

An employee who separates from employment and whose last day in pay status precedes a holiday shall not be eligible for payment for that holiday.

**63.8(4)** When the holiday falls on an overtime-covered employee's scheduled workday, and the employee does not get the day off, the employee shall be compensated for the holiday in accordance with subrule 63.8(1) in addition to a premium rate for time worked. The premium rate shall be paid for hours worked during the 24-hour period from 12 a.m. through 11:59 p.m. on the holiday. However, hours compensated at the premium rate shall not be counted as part of the 40 hours when calculating overtime pay.

When the holiday falls on an overtime-covered employee's day off, the employee shall be compensated for the holiday to a maximum of eight hours.

**63.8(5)** When an overtime exempt employee is required to work on a holiday, the employee may be compensated for the time worked in addition to regular holiday pay at the discretion of the appointing authority. When granted, compensation shall be at the employee's regular rate of pay for all hours worked.

**11—63.9(8A) Military leave.**

**63.9(1)** A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in each calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee's work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

**63.9(2)** A nontemporary employee who is ordered by proper authority to military duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll.

**63.9(3)** Nontemporary employees who elect to separate from employment when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ordered by proper authority to military duty shall continue to receive regular pay and benefits for 30 days. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

**63.9(4)** At the conclusion of military service, the employee must notify the employee's appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344.

**63.9(5)** An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa's benefits program policies and procedures. Upon return to employment, the employee's accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

**63.9(6)** An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

**63.9(7)** A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—63.10(8A) Educational leave.** Educational leave, with or without pay, may be granted at the discretion of the appointing authority for the purpose of assisting state employees to develop skills that will improve their ability to perform their present job responsibilities or to provide training and developmental opportunities for employees that will enable the agency to better meet staffing needs. Education financial assistance shall be in accordance with rule 11—64.10(8A).

**63.10(1)** *Length of leave.* Educational leave shall be requested for a period not to exceed 12 consecutive months. Accrued vacation or compensatory leave need not be exhausted before educational leave is granted. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority. The appointing authority may grant an extension of the original leave for an additional 12 months.

**63.10(2)** *Selection of applicants.* While the selection of applicants is at the discretion of the appointing authority, it is the express policy of the state to offer all qualified employees an equal opportunity to be considered for educational leave within the limitations imposed by agency staffing requirements.

**63.10(3)** *Educational institutions.* An employee on educational leave may take course work at any accredited educational institution within the state. Attendance at out-of-state institutions may be approved provided there are geographical or educational considerations which make attendance at institutions within the state impractical.

**63.10(4)** *Agency report.* The appointing authority shall report to the director and the legislative council, not later than October 1 of each year, the direct and indirect costs to the agency of educational leave granted to employees during the preceding fiscal year in a manner prescribed by the director.
[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—63.11(8A) Election leave.** An employee who is not covered by the federal Hatch Act and who becomes a candidate for paid, partisan elective office shall, upon the employee's request, be granted leave 30 calendar days before a contested primary, special, or general election. The employee may choose to use accrued vacation or compensatory leave, or leave without pay to cover these periods.

An employee who is elected to a paid, partisan office or appointed to an elective paid, partisan office shall, upon written request to the appointing authority, be granted leave to serve in that office, except where prohibited by federal law. The use of accrued vacation or compensatory leave, or leave without pay to cover this period shall be at the discretion of the employee. The leave provided for in this rule need not exceed six years. An employee shall not be prohibited from returning to employment before the expiration of the period for which the leave was granted.

**11—63.12(8A) Court appearances and jury duty.** When in obedience to a subpoena, summons, or direction by proper authority, an employee appears as a witness or a jury member in any public or private litigation in which the employee is not a party to the proceedings, the employee shall be entitled to time off during regularly scheduled work hours with regular compensation, provided the employee gives to the appointing authority any payments received for court appearance or jury service, other than reimbursement for necessary travel or personal expenses. If the employee is directed to appear as a witness by the appointing authority, all time spent shall be considered to be worktime.

**63.12(1)** Hours spent on court or jury leave by an employee outside the employee's scheduled work hours are not subject to this rule, nor shall any payments received for court appearance or jury service be remitted to the appointing authority.

**63.12(2)** The employee shall notify the appointing authority immediately upon receipt of a subpoena, summons, or direction by proper authority to appear.

**63.12(3)** An employee may be required to report to work if there will be at least two hours in the workday, following necessary travel time, during which the employee is not needed for jury service or as a witness.

**63.12(4)** Upon return to work, the employee shall present evidence to the appointing authority of any payments received for court appearance or jury service.

**11—63.13(8A) Voting leave.** An employee who is eligible to vote in a public election in the state of Iowa may request time off from work with regular pay for a period not to exceed three hours for the purpose of voting. Leave shall be granted only to the extent that the employee's work hours do not allow a period of three consecutive hours outside the employee's scheduled work hours during which the voting polls are open.

A request for voting leave must be made to the appointing authority on or before the employee's last scheduled shift prior to election day. The time to be taken off shall be designated by the appointing authority.

**11—63.14(8A) Disaster service volunteer leave.** Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request

of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for the purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

**11—63.15(8A) Absences due to emergency conditions.** When a proper management authority closes a state office or building or directs employees to vacate a state office or building premises, employees may elect to use compensatory leave, vacation, or leave without pay to cover the absence. Employees may, with the approval of the appointing authority, elect to work their scheduled hours even though the state office or building is closed to the general public. Employees may, with the approval of the appointing authority, be permitted to make up lost time within the same workweek.

Employees who are unable to report to work as scheduled or who choose to leave work due to severe weather or other emergency conditions may, with the approval of the appointing authority, use compensatory leave, vacation, or leave without pay to cover the absence.

**11—63.16(8A) Particular contracts governing.** Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreements shall prevail for the employees covered by those agreements.

**11—63.17(8A) Examination and interviewing leave.**

**63.17(1)** Employees may be granted leave to take examinations for positions covered by merit system provisions. Employees may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

**63.17(2)** Employees may be granted the use of paid work time to attend interviews during scheduled work hours for jobs within their agency. For agencies that have statewide operations, the appointing authority may restrict the use of paid time to interviews within the central office, institution, county, region, or district office. A reasonable time limit for interviews may be designated by the appointing authority. Employees may be granted leave for interviews outside the agency, central office, institution, county, region, or district office in which case they may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

**63.17(3)** Appointing authorities shall post and make known to employees the provisions of this rule.

**11—63.18(8A) Service on committees, boards, and commissions.** State employees who are appointed to serve on committees, boards, commissions, or similar appointments for Iowa state government shall be entitled to regular compensation for such service. Employees shall be paid in accordance with these rules for time spent.

Pursuant to Iowa Code section 70A.1, employees shall not be entitled to additional compensation for such service.

Employees shall have actual and necessary expenses paid.

Employees shall notify the appointing authority at the time of the appointment.

**11—63.19(8A) Donated leave for catastrophic illnesses of employees and family members.** Employees are eligible to donate or receive donated leave hours for catastrophic illnesses of the employee or an immediate family member. Contributions shall be designated as "donated leave" and shall be subject to the rules, policies and procedures of the department.

**63.19(1)** *Definitions:*

*"Catastrophic illness"* means a physical or mental illness or injury of the employee, as certified by a licensed physician, that will result in the inability of the employee to work for more than 30 workdays on a consecutive or intermittent basis; or that will result in the inability of the employee to report to work for more than 30 workdays due to the need to attend to an immediate family member on a consecutive or intermittent basis.

*"Donated leave"* means vacation leave (hours) donated to employees as a monetary benefit only. Recipient employees will not accrue vacation or sick leave benefits on donated leave hours.

*"Employee"* means a full-time or part-time executive branch employee who is eligible to accrue vacation.

*"Immediate family member"* means the employee's spouse, parent, son, or daughter, as defined in the federal Family and Medical Leave Act.

**63.19(2)** *Program eligibility for employee illness.* In order to receive donated leave for a catastrophic illness, an employee must:

*a.* Have a catastrophic illness as defined by subrule 63.19(1); and

*b.* Have exhausted all paid leave; and

*c.* Not be supplementing workers' compensation to the extent that it exceeds more than 100 percent of the employee's pay for the employee's regularly scheduled work hours on a pay-period-by-pay-period basis; and

*d.* Not be receiving long-term disability benefits; and

*e.* Be approved for and using or have exhausted Family and Medical Leave Act (FMLA) leave hours if eligible; and

*f.* Be on approved leave without pay for medical reasons during any hours for which the employee will receive donated leave.

**63.19(3)** *Program eligibility for immediate family member illness.* In order to receive donated leave for a catastrophic illness of an immediate family member, the immediate family member must have a catastrophic illness as defined in subrule 63.19(1). The employee must:

*a.* Have exhausted all paid leave for which eligible; and

*b.* Be approved for and using or have exhausted Family and Medical Leave Act leave hours if eligible; and

*c.* Be on approved leave without pay for the medical reasons of an immediate family member during any hours for which the employee will receive donated leave.

**63.19(4)** *Certification requirements.* The employee shall submit an application for donated leave on forms developed by the department. Appointing authorities may, at their department's expense, seek second medical opinions or updates from physicians regarding the status of an employee's or employee's immediate family member's illness or injury. If the employee is receiving FMLA leave, a second opinion must be obtained from a physician who is not regularly employed by the state.

**63.19(5)** *Program requirements.*

*a.* Vacation hours shall be donated in whole-hour increments; however, they may be credited to the recipient in other than whole-hour increments. All of the recipient's accrued leave must be used before donations will be credited to the recipient. Hours will be credited in increments not to exceed the employee's regularly scheduled work hours on a pay-period-by-pay-period basis. Recipients will not accrue vacation and sick leave on donated leave hours.

*b.* Approval of use of donated leave shall be for a period not to exceed one year either on an intermittent or continuous basis for each occurrence.

*c.* Donated leave shall be irrevocable after it is credited to the recipient. Donated hours not credited to the recipient will not be deducted from the donor's vacation leave balance. Donated leave shall be credited on a first-in/first-out basis.

*d.* Donated leave for catastrophic illness will not restrict the right to terminate probationary employees. The period of probationary status and the pay increase eligibility date, if in excess of 30 days, will be extended by the amount of time the employee received donated leave.

*e.* Appointing authorities shall post a form developed by the department indicating that the employee is eligible to receive donated leave and the name of the person to contact for the donation. The appointing authority is not responsible for posting outside the employing department; however, donated leave hours can be received from executive branch employees outside the employing department.

*f.* Leave without pay rules and procedures shall apply to the following benefits: health, dental, life, and long-term disability insurances; pretax; deferred compensation; holiday pay, sick leave and vacation leave accrual, shift differential pay, longevity pay and cash payments. In addition, employees

receiving donated leave for catastrophic illness for themselves or their immediate family member will not be eligible for leadworker pay, extraordinary duty pay or special duty pay. If FMLA leave and donated leave for a catastrophic illness are used concurrently, the state is obligated to pay its share of health and dental insurance premiums. The state also maintains an employee's basic life and long-term disability insurances during periods of FMLA leave.

*g.* Employees may choose to continue or terminate optional deductions (e.g., miscellaneous insurance, savings bonds, charitable contributions, or credit union deductions) while using donated leave. Mandatory deductions are taken from gross pay first, then optional deductions as funds are available and as authorized by the employee. Union dues deductions will continue as long as the employee has sufficient earnings to cover the dollar amount certified to the employer after deductions for social security, federal taxes, state taxes, retirement, health and dental insurance, and life insurance.

*h.* Contributions to the employee's dependent care account will not be allowed during a period of leave without pay. Claims will not be paid for dependent care while an employee is on leave without pay.

*i.* If an employee applies for and is approved to receive long-term disability, the employee may continue to receive leave contributions for up to one year on an intermittent or continuous basis or the effective date of the employee's long-term disability, whichever comes first. Donated leave hours not used are not credited to the recipient and are not deducted from the donor's vacation leave balance.

**11—63.20(8A,70A) Bone marrow and organ donation leave.** Employees, excluding employees covered by a collective bargaining agreement that provides otherwise, shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act.

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapter 70A.

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[1] Effective date of subrule 14.2(12) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83.

# CHAPTER 64
# BENEFITS

[Prior to 8/15/86; See Deferred Compensation Program, 270—Ch 4]
[Prior to 1/7/04, see 581—Ch 15]

**11—64.1(8A) Health benefits.** The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A. The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.
[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.2(8A) Dental insurance.** The director is authorized by the executive council of Iowa to administer dental insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A.
[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.3(8A) Life insurance.** The director is authorized by the executive council of Iowa to administer life insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.
[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.4(8A) Long-term disability insurance.** The director is authorized by the executive council of Iowa to administer long-term disability insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

Employees who receive loss of time benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.
[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.5(8A) Health benefit appeals.** A member who disagrees with a group health benefit company's decision on the application of group contract benefits may:

1. File a written appeal with the respective company as defined in the group contract, or
2. File a written appeal with the commissioner of insurance at the department of commerce.

**11—64.6(8A) Deferred compensation.**

**64.6(1)** *Definitions.* The following definitions shall apply when used in this rule:

*"Account"* means any fixed annuity contract, variable annuity contract, life insurance contract, documents evidencing mutual funds, variable or guaranteed investments, or combination thereof provided for in the plan.

*"Beneficiary"* means the person or estate entitled to receive benefits under the plan following the death of the participant.

*"Director"* means the director of the Iowa department of administrative services.

*"Employee"* means a nontemporary (permanent full-time or permanent part-time) employee of the employer, including full-time elected officials and members of the general assembly, except employees of the board of regents. For the purposes of enrollment, elected officials-elect and members-elect of

the general assembly shall be considered employees. Persons in a joint employee relationship with the employer shall not be considered employees eligible to participate in the plan.

*"Employer"* means the state of Iowa and any other governmental employer that participates in the plan. Effective July 1, 2003, "employer" shall also include any governmental entity located within the state of Iowa that enters into an agreement to allow its employees to participate in the plan.

*"Fiduciary"* means a person or company that manages money or property for another and that must exercise the standard of care imposed by law or contract. For the purpose of these rules, "fiduciary" means the trustee, the plan administrator, investment providers, and the persons they designate to carry out or help carry out their duties or responsibilities as fiduciaries under the plan.

*"Governing body"* means the executive council of the state of Iowa.

*"Group"* means one or more employees.

*"Investment provider"* means a company authorized under this rule to issue an account or administer the records of such an account or accounts under the deferred compensation plan authorized by Iowa Code section 509A.12 and 2003 Iowa Code Supplement section 8A.402.

*"Normal retirement age"* means 65 years of age, unless an employee declares a different age pursuant to the plan's catch-up provision. The age cannot be earlier than a year in which the employee is eligible to receive retirement benefits without an age reduction penalty from the employer-sponsored retirement plan.

*"Participating employee"* or *"participant"* means any employee or former employee of the employer who is currently deferring or who has previously deferred compensation under the plan and who retains the right to benefits under the plan.

*"Plan"* means the state of Iowa employee contribution plan for deferred compensation as authorized by Internal Revenue Code Section 457, Iowa Code section 509A.12, and 2003 Iowa Code Supplement section 8A.434.

*"Plan administrator"* means the designee of the director who is authorized to administer the plan.

*"Plan year"* means a calendar year.

*"Retirement investors' club"* means the voluntary retirement savings program for employees designed to increase personal long-term savings. The program contains three plans, the 457 employee contributions plan, the 401(a) employer contribution plan, and the 403(b) tax-sheltered annuity plan.

*"Trust"* means the Iowa state employee deferred compensation trust fund created in the state treasury and under the control of the department.

*"Trustee"* means the director of the Iowa department of administrative services.

**64.6(2)** *Plan administration.*

*a. Director's authorization.* The director is authorized by the governing body to administer a deferred compensation program for eligible employees and to enter into contracts and service agreements with deferred compensation investment providers for the benefit of eligible employees and on behalf of the state of Iowa and other eligible employers. This rule shall govern all investment options and participant activity for the funds placed in the program.

*b. Plan modification.* The trustee may at any time amend, modify, or terminate the plan without the consent of the participant (or any beneficiary thereof). The plan administrator shall provide to participating employees and investment providers sufficient notice of all amendments to the plan. No amendment shall deprive participants of any of the benefits to which they are entitled under the plan with respect to deferred amounts credited to their accounts before the effective date of the amendment. If the plan is curtailed or terminated, or the acceptance of additional deferred amounts is suspended permanently, the plan administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred before the amendment, modification, or termination. Payment of benefits will be deferred until the participant would otherwise have been entitled to a distribution pursuant to the provisions of the plan.

*c. Location of account documentation.* The investment providers shall send the original annuity policies, contracts or account forms to the plan administrator. Failure to do so may result in termination of an investment provider's contract or service agreement. The plan administrator shall keep all such original documents. Participating employees may review their own documentation during normal work

hours at the department, but may not under any circumstances remove the documentation from the premises.

*d. Not an employment contract.* Participation in this plan by an employee shall not be construed to give a contract of employment to the participant or to alter or amend an existing employment contract of the participant, nor shall participation in this plan be construed as affording to the participant any representation or guarantee regarding the participant's continued employment.

*e. Tax relief not guaranteed.* The employer, trustee, and the investment providers do not represent or guarantee that any particular federal or state of Iowa income, payroll, personal property or other tax consequences will result because of the participant's participation in the plan. The participant is obligated to consult with the participant's own tax representative regarding all questions of federal or state of Iowa income, payroll, personal property or other tax consequences arising from participation in the plan.

*f. Investment agents.* The investment providers shall, subject to the trustee's consent, have the power to appoint agents to act for the investment providers in the administration of accounts according to the terms, conditions, and provisions of their contracts or service agreements with the plan. Investment providers are responsible for the conduct of their agents, including their adherence to the plan document and administrative rules. The plan administrator may require an investment provider to remove the authority of any agent to provide services to the plan or plan participants when cause has been shown that the agent has violated these rules or state or federal law or regulation related to the governance of the plan or agent conduct.

*g. Plan expenses.* Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, record-keeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term interest that has accrued in the deferred compensation trust fund created by Iowa Code section 8A.434 prior to the allocation of funds to a participant's chosen investment provider. Such expenses may also be funded from fees assessed to eligible employers who choose to offer the plan to their employees.

*h. Time periods.* As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan administrator, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution methods.

*i. Supplementary information and procedures.* Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes only and shall not override any provision of the plan or give any person any claim or right not provided for under the plan. In the event any form or other document used in administering the plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.

*j. Binding plan.* The plan, and any properly adopted amendments, shall be binding on the parties and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.

**64.6(3)** *Rights of participating employees.*

*a. Exclusive benefit.* The trustee shall hold the assets and income of the plan for the exclusive benefit of the participating employee or the participating employee's beneficiary.

*b. Creditors.* The accounts of a participating employee under the plan shall not be subject to creditors of the participating employee or the participant's beneficiary and shall be exempt from execution, attachment, prior assignment, or any other judicial relief, or order for the benefit of creditors or other third persons.

*c. Designation of beneficiary.* Upon enrollment, a participating employee must designate a beneficiary or beneficiaries. An employee who has an open account with an investment provider that is no longer able to open new accounts may change the employee's designated beneficiary or beneficiaries

at any time thereafter by providing the plan administrator with written notice of the change on the form prescribed by the plan administrator. An employee who has an open account with an investment provider that is able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by completing the investment provider's beneficiary change form.

*d. Assignment.* Neither a participating employee, nor the participating employee's beneficiary, nor any other designee shall have the right to commute, sell, assign, transfer, borrow, alienate, use as collateral or otherwise convey the right to receive any payments.

**64.6(4)** *Trust provisions.*

*a. Investment options.* The trustee shall adopt various investment options for the investment of deferred amounts by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

*b. Designation of fiduciaries.* The trustee, the plan administrator, and the persons they designate to carry out or help carry out their duties or responsibilities are fiduciaries under the plan. Each fiduciary has only those duties or responsibilities specifically assigned to fiduciaries under the plan, contractual relationship, trust, or as delegated to fiduciaries by another fiduciary. Each fiduciary may assume that any direction, information, or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction, or information. No fiduciary will be responsible for the malfeasance, misfeasance, or nonfeasance of any other fiduciary, except where the fiduciary participated in such conduct, or knew or should have known of such conduct in the discharge of the fiduciary's duties under the plan and did not take reasonable steps to compel the cofiduciary to redress the wrong.

*c. Fiduciary standards.*

(1) All fiduciaries shall discharge their duties with respect to the plan and trust solely in the interest of the participating employees and their beneficiaries and in accordance with Iowa Code section 633.123. Such duties shall be discharged for the exclusive purpose of providing benefits to the participating employees and beneficiaries and, if determined applicable, defraying expenses of the plan.

(2) The investment providers shall discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and as defined by applicable Iowa law.

*d. Trustee powers and duties.* The trustee may exercise all rights or privileges granted by the provisions of the plan and trust and may agree to any alteration, modification or amendment of the plan. The trustee may take any action respecting the plan or the benefits provided under the plan that the trustee deems necessary or advisable. Persons dealing with the trustee shall not be required to inquire into the authority of the trustee with regard to any dealing in connection with the plan. The trustee may employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist, and may act without independent investigation upon their recommendations. Instead of acting personally, the trustee may employ one or more agents to perform any act of administration, whether or not discretionary.

*e. Trust exemption.* This trust is intended to be exempt from taxation under IRC Section 501(a) and is intended to comply with IRC Section 457(g). The trustee shall be empowered to submit or designate appropriate agents to submit the plan and trust to the IRS for a determination of the eligibility of the plan under IRC Section 457, and the exempt status of the trust under IRC Section 501(a), if the trustee concludes that such a determination is desirable.

*f. Held in trust.* Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Iowa. All plan assets shall be held under one or more of the following methods:

(1) Compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, compensation deferred under the plan shall be transferred

to a trust established under the plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(2) Notwithstanding any contrary provision of the plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the plan or held in a custodial account as described in subparagraph (3) below. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract. Amounts of compensation deferred under the plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a contract described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(3) Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the plan or held in an annuity contract as described in subparagraph (2) above. For purposes of this subparagraph, the custodian of any custodial account created pursuant to the plan must be a bank, as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of Treasury Regulations Section 1.408-2(e)(2) to (6) relating to the use of nonbank trustees.

Amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

**64.6(5)** *Absolute safeguards of the employer, trustee, their employees, and agents.*

*a. Questions of fact.* The trustee and the plan administrator are authorized to resolve any questions of fact necessary to decide the participating employee's rights under the plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

*b. Plan construction.* The trustee and the plan administrator are authorized to construe the plan and to resolve any ambiguity in the plan and to apply reasonable and fair procedures for the administration of the plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

*c. No liability for loss.* The participating employee specifically agrees that the employer, the plan, the trustee, the plan administrator, or any other employee or agent of the employer shall not be liable for any loss sustained by the participating employee or the participating employee's beneficiary for the nonperformance of duties, negligence, or any other misconduct of the above-named persons except that this paragraph shall not excuse malicious or wanton misconduct.

*d. Payments suspended.* The trustee, plan administrator, investment providers, their employees and agents, if in doubt concerning the correctness of their actions in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment, or until the filing of an administrative appeal under Iowa Code chapter 17A, and thereafter in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them.

*e. Court costs.* The employer, the plan, the trustee, the plan administrator, their employees and agents are hereby held harmless from all court costs and all claims for the attorneys' fees arising from

any action brought by the participating employee, or any beneficiary thereof, under the plan or to enforce their rights under the plan, including any amendments of the plan.

**64.6(6)** *Eligibility.* Except employees of the board of regents, any nontemporary executive, judicial or legislative branch employee, or employee of a governmental employer that enters into an agreement to join the plan, who is regularly scheduled for 20 or more hours of work per week or who has a fixed annual salary is eligible to defer compensation under this rule. An elected official-elect and elected members-elect of the general assembly are also eligible provided that deductions meet the requirements set forth in the plan. Final determination on eligibility shall rest with the plan administrator.

**64.6(7)** *Communications.*

*a. Forms.* All enrollments, elections, designations, applications and other communications by or from an employee, participant, beneficiary, or legal representative of any such person regarding that person's rights under the plan shall be made in the form and manner established by the plan administrator and shall be deemed to have been made and delivered only upon actual receipt by the person designated to receive such communication. The employer or the plan shall not be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form.

*b. Notices mailed.* All notices, statements, reports, and other communications from the plan to any employee, participant, beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first-class mail to, such person at that person's last mailing address appearing on the plan records.

**64.6(8)** *Disposition of funds while employed.*

*a. Unforeseeable emergency.* A participating employee may request that the plan administrator allow the withdrawal of some or all of the funds held in the participating employee's account based on an unforeseeable emergency. Forms must be completed and returned to the plan administrator for review in order to consider a withdrawal request. The plan administrator shall determine whether the participating employee's request meets the definition of an unforeseeable emergency as provided for in federal regulations. In addition to being extraordinary and unforeseeable, an unforeseeable emergency must not be reimbursable:

(1) By insurance or otherwise;

(2) By liquidation of the participating employee's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or

(3) By cessation of deferrals under the plan.

Upon the plan administrator's approval of an unforeseeable emergency distribution, the participating employee will be required to stop current deferrals for a period of no less than six months.

A participating employee who disagrees with the initial denial of a request to withdraw funds on the basis of an unforeseeable emergency may request that the trustee reconsider the request by submitting additional written evidence of qualification or reasons why the request for withdrawal of funds from the plan should be approved.

*b. Voluntary in-service distribution.* A participant who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the participant under the plan if the following requirements are met:

(1) The total amount payable to the participant under the plan does not exceed $5,000 (or the dollar limit under IRC Section 411(a)(11), if greater);

(2) The participant has not previously received an in-service distribution of the total amount payable to the participant under the plan;

(3) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

(4) The participant elects to receive the distribution.

The plan administrator may also elect to distribute the accumulated account value of a participant's account without consent, if the above criteria are met.

This provision is available only once in the lifetime of the participating employee. If funds are distributed under this provision, the participating employee is not eligible under the plan to utilize this provision at any other time in the future.

*c. Transfers under domestic relations orders.*

(1) To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a participating employee's account may be paid or set aside for payment to a spouse, former spouse, or child of the participating employee. The plan will determine whether the judgment, decree, or order is valid and binding on the plan and whether it is issued by a court or agency with jurisdiction over the plan. The judgment, decree or order must specify which of the participating employee's accounts are to be paid or set aside, the valuation date of the accounts and, to the extent possible, the exact value of the accounts. Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose investment providers in the same manner as the participating employee. Unless otherwise subsequently suspended or altered by federal law, all applicable taxes shall be withheld and paid from this lump sum distribution. The provisions of this subparagraph shall not be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under IRC Section 457.

(2) A right to receive benefits under the plan shall be reduced to the extent that any portion of a participating employee's account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to these rules or to the extent that the employer or the plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of any account or of any distributions therefrom. The participating employee shall be deemed to have released the employer and the plan from any claim with respect to such amounts in any case in which:

1. The department, the retirement investors' club, or the plan has been served with legal process or otherwise joined in a proceeding relating to such amounts,

2. The participating employee has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the employer or a plan representative to the participating employee's last-known mailing address, and

3. The participating employee fails to obtain an order of the court in the proceeding relieving the employer and the plan from the obligation to comply with the judgment, decree, or order.

(3) The department, the retirement investors' club or the plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the participating employee's account or of any distribution therefrom.

**64.6(9)** *Investment providers.*

*a. Participation.* The investment providers under the plan are authorized to offer new accounts and investment products to employees only if awarded a contract or service agreement through a competitive bid process. A list of active investment providers shall be provided, upon request, to any employee or other interested party. Inactive investment providers shall participate to the extent necessary to fully discharge their duties under the applicable federal and state laws and regulations, the plan, their service agreements or contracts with the employer, and their investment accounts or contracts with participating employees.

*b. Investment products.* Investment products shall be limited to those that have been approved by the plan administrator. No new accounts shall be available to employees for life insurance under the plan.

*c. Reports and consolidated statements.* The investment providers will provide various reports to the plan administrator as well as consolidated statements, newsletters, and performance reports to participants as specified in the service agreements or contracts with investment providers.

*d. Dividends and interest.* The only dividend or interest options available on policies or funds are those where the dividend or interest remains within the account to increase the value of the account.

*e. Minimum contract requirements.* In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.

*f. Removal from participation.* Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.

**64.6(10)** *Marketing and education.*

*a. Orientation and information meetings.* Employers may hold orientation and information meetings for the benefit of their employees during normal work hours using materials developed and approved by the plan administrator. Active investment providers may make authorized presentations upon approval of individual agency or department authorities during nonwork hours. There shall be no solicitation of employees by investment providers at an employee's workplace during the employee's working hours, except as authorized in writing by the plan administrator.

*b. General requirements for solicitation.*

(1) An active investment provider may solicit business from participants and employees through representatives, the mail, or direct presentations.

(2) Active investment providers and representatives may solicit business at an employer's work site only with the prior permission of the agency director or other appropriate authority.

(3) Investment providers or representatives may not conduct any activity with respect to a registered investment option unless the appropriate license has been obtained.

(4) An investment provider or representative may not make a representation about an investment option that is contrary to any attribute of the option or that is misleading with respect to the option.

(5) An investment provider or representative may not state, represent, or imply that its investment options are endorsed or recommended by the plan administrator, the employing agency, the state of Iowa, or an employee of the foregoing.

(6) An investment provider or representative may not state, represent, or imply that its investment option is the only option available under the plan.

*c. Disclosure.*

(1) Enrollment. When soliciting business for an investment product, an active investment provider or representative shall provide each participating employee or eligible employee with a copy of the approved disclosure for that option. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. An active investment provider shall notify the plan administrator in writing if the investment provider will be marketing its investment options through representatives. The notification must contain a complete identification of the representatives who will be marketing the options. Every representative and agent who enrolls eligible employees in the plan and is authorized by the investment provider to sign plan forms must be included on this notification.

(2) Disbursement methods and account values. When discussing distribution methods for an investment option, investment providers or representatives shall disclose to each participating employee or eligible employee all potential distribution methods and the potential income derived from each method for that option.

*d. Approval of a disclosure form.*

(1) An investment provider shall complete and submit to the plan administrator a disclosure form for each approved investment product. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. An investment provider shall complete a disclosure form on each investment product that has participating employee funds (including those no longer offered).

(2) If changes occur during the plan year, any changes must be submitted to the plan administrator for approval prior to their implementation. Disclosure forms will be updated quarterly. Even if no changes occur, an investment provider shall resubmit its disclosure form to the plan administrator for approval every year.

(3) If an investment provider or representative materially misstates a required disclosure or fails to provide disclosure, the plan administrator may sanction the investment provider or bind the investment provider to the disclosure as stated on the form.

*e. Confidentiality.* The plan administrator may provide to all active investment providers any information that can be made available under the department's rules. Notwithstanding any rule of the department to the contrary, the plan administrator shall make available to all active investment providers the names and home addresses of all state employees. The plan administrator may assess reasonable costs to the active investment providers to defray the expense of producing any requested information. All information obtained under the plan shall be confidential and used exclusively for purposes relating to the plan and as expressly contemplated by the service agreement or contract entered into by the investment provider.

*f. Number of investment providers.* Only investment providers that are selected through a competitive bid process, that are subsequently awarded a contract or service agreement, and that are authorized to do business in the state of Iowa may sell annuities, mutual funds or other approved products under the plan, and then only if the investment providers agree to the terms, conditions, and provisions of the contract or service agreement.

**64.6(11)** *Investment option removal/replacement.* The plan administrator may determine that an investment option offered under the plan is no longer acceptable for inclusion in the plan. If the plan administrator decides to remove an investment option from the plan as the result of the option's failure to meet the established evaluation criteria and according to the recommendations of consultants or advisors, the option shall be removed or phased out of the plan. Employees newly enrolling in the plan shall be informed in writing that investment options that do not meet the evaluation criteria are not open to new enrollments.

*a. Notice to participant.* Any participating employees already deferring to the investment option being phased out shall be informed in writing that they need to redirect future deferrals from this option to an alternative investment option offered under the plan by notifying the investment provider, unless otherwise directed, of their new investment choice.

*b. Automatic transfer.* If any participating employee has failed to move a remaining account balance from the investment option being phased out, the plan administrator shall instruct an investment provider to automatically move that participating employee's account balance into another designated alternative investment option offered under the plan.

*c. Reexamination.* At any time during this process, the plan administrator may reexamine the performance of the investment option being phased out and the recommendations of consultants and advisors to determine if continued inclusion of the investment option in the plan is justified.

**64.6(12)** *Demutualization of investment providers.*

*a. Ballots.* An investment provider that is a mutual company and that provides any annuity product or life insurance product held under the plan shall provide the plan administrator with a ballot(s) for official vote registration. The ballot(s) shall be completed and returned to the company according to the specified deadline in the instructions. The ballot(s) shall include the owner's name, policy numbers of affected contracts, name of annuitant or insured, number of shares anticipated, and the control number for the group of shares.

*b. Policyholder booklet.* The company shall provide the plan administrator with a policyholder booklet, as well as instructions and guide information, prior to or in conjunction with the delivery of the ballot(s). Notices of progress, time frames and meetings will also be provided to the plan administrator as such information becomes available.

*c. Method of compensation.* Compensation will be provided in cash according to the terms of the demutualization plan. In the event that stocks are issued in lieu of cash, the company shall provide a listing which includes participants' names, social security numbers, policy numbers, and number of shares pro rata.

*d. Liquidation of stock.* An arrangement will be entered into between the plan administrator and a stockbroker as soon as administratively possible in order to liquidate the stock for cash. The broker

shall retain commission fees according to the arrangement entered into from the value obtained at the time of sale. The employer will not realize a tax liability nor will the participating employees.

*e. Deposit of proceeds.* The proceeds of the sale of the stock, less the broker commission, and any dividends issued prior to the sale of the stock, shall be made payable to the plan. Cash shall be deposited into the plan's trust fund until payment instructions are received from the participant or the participant's beneficiary.

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.7(8A) Dependent care.** The director administers the dependent care flexible spending account plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. The plan is also a dependent care assistance plan under IRC Section 129. Administration of the plan shall comply with all applicable federal regulations, the Plan Document, and the Summary Plan Description. For purposes of this rule, the plan year is a calendar year.

**64.7(1)** *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the dependent care flexible spending plan. Temporary employees are not eligible to participate in this plan.

**64.7(2)** *Enrollment.* An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing dependent care deduction amounts during the plan year provided that they have a qualifying change in family status as defined in the Plan Document and the Summary Plan Description. To continue participation, employees shall reenroll each year during the open enrollment period.

**64.7(3)** *Termination of participation in the plan.* An employee may terminate participation in the plan provided that the employee has a qualifying change in status as defined in the Summary Plan Description. Employees who terminate state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

**11—64.8(8A) Premium conversion plan (pretax program).** The director administers the premium conversion plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. Pursuant to IRC Section 105, the plan is also an insured health care plan to the extent that participants use salary reduction to pay for health or dental insurance premiums. In accordance with IRC Section 79, the plan is also a group term life insurance plan to the extent that salary reduction is used for life insurance premiums. Administration of the plan shall comply with all federal regulations and the Plan Document. For purposes of this rule, the plan year is January 1 to December 31 of each year.

**64.8(1)** *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the pretax conversion plan. Temporary employees are not eligible to participate in the plan.

**64.8(2)** *Enrollment.* An enrollment and change period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless an election form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in status as defined in the Plan Document.

**64.8(3)** *Termination of participation in the plan.* An employee may terminate participation in the plan during an open enrollment period. Otherwise, an employee may terminate participation if the employee has a qualifying change in status as defined in the Plan Document.

[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.9(8A) Interviewing and moving expense reimbursement.**

**64.9(1)** *Interviewing expenses.* If reimbursement is approved by the appointing authority, a person who interviews for state employment shall be reimbursed for expenses incurred in order to interview. Reimbursement shall be at the same rate at which an employee is reimbursed for expenses incurred during the performance of state business.

**64.9(2)** *Moving expenses for reassigned employees.* A state employee who is reassigned at the direction of the appointing authority shall be reimbursed for moving and related expenses in accordance with the policies of the department of administrative services or the applicable collective bargaining agreement. Eligibility for reimbursement shall occur when all of the following conditions exist:

*a.* The employee is reassigned at the direction of the appointing authority;

*b.* The reassignment requires a permanent change in duty station beyond 25 miles;

*c.* The employee must change the employee's place of personal residence beyond 25 miles unless the department of administrative services has given prior written approval; and

*d.* The reassignment is for the primary benefit of the state.

**64.9(3)** *Moving expenses for newly hired or promoted employees.* If reimbursement is approved by the appointing authority, a person newly hired or promoted may be reimbursed for moving and related expenses. Reimbursement shall be at the same rates used for the reimbursement of a current employee who has been reassigned. Reimbursement shall not occur until the employee is on the payroll.

**64.9(4)** *Temporary living expenses.* An employee may be reimbursed for up to 90 days of temporary living expenses. Such reimbursement shall be included as part of the total amount reimbursable under the relocation policy.

**64.9(5)** *Repayment.* As a condition of receiving reimbursement for moving expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period following the date of receipt of reimbursement that is deemed by the appointing authority to be commensurate with the amount of reimbursement received. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority a proportionate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

**11—64.10(8A) Education financial assistance.** Education financial assistance may be granted for the purpose of assisting employees in developing skills that will improve their ability to perform job responsibilities. Assistance may be in the form of direct payment to the organization or institution or by reimbursement to the employee as provided for in subrule 64.10(4).

**64.10(1)** *Employee eligibility.* Any nontemporary employee may be considered for education financial assistance.

**64.10(2)** *Workshop, seminar, or conference attendance.* The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

*a.* Assistance may be approved for meeting continuing education requirements when necessary to maintain a professional registration, certification, or license related to the duties and responsibilities of the employee's position.

*b.* Payment of registration fees and other costs, such as lodging, meals, and travel, shall be in accordance with the policies and procedures of the department of administrative services.

*c.* If attendance is outside the state of Iowa, travel must first be authorized by the executive council pursuant to 2003 Iowa Code Supplement section 8A.512.

**64.10(3)** *Educational institution coursework.* Education financial assistance to an employee taking academic courses at an educational institution, with or without educational leave, shall require the preapproval of the appointing authority and the director. Requests for reimbursement shall be on forms prescribed by the director.

*a.* An employee may take academic courses at any accredited educational institution (university, college, area community college) within the state. Attendance at an out-of-state institution may be approved provided that there are geographical or educational considerations which make attendance within the state impractical.

*b.* Reimbursement requests shall be made to the director before the employee takes the courses. If the director does not approve the request, the employee shall not be reimbursed.

*c.* Reimbursement may be approved for courses taken to meet continuing education requirements when necessary to maintain a professional registration, certification, or license when the courses relate to the duties and responsibilities of the employee's position.

*d.* An employee receiving other financial assistance, such as scholarship aid or Veterans Administration assistance, shall be eligible to receive education financial assistance only to the extent that the total of all methods of reimbursement does not exceed 100 percent of the payment of expenses.

*e.* In order for the employee to be reimbursed, the employee's department shall submit to the department of administrative services the employee's original paid receipt from the educational institution, the approved education financial assistance form, and proof of the employee's successful completion of the courses as follows:

(1) Undergraduate courses shall require at least a "C-" grade.

(2) Graduate courses shall require at least a "B-" grade.

(3) Successful completion of vocational or correspondence courses or continuing education courses shall require an official certificate, diploma or notice.

**64.10(4)** *Repayment.* As a condition of applying for reimbursement for education expenses, the recipient must sign an agreement to continue employment with the appointing authority. The agreement must be signed prior to approval and will stipulate the period of time deemed by the appointing authority to be commensurate with the amount of reimbursement received. The period of time commences upon successful completion of the course. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority an appropriate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

**64.10(5)** *Annual report.* The appointing authority shall report to the director and legislative council, not later than October 1 of each year, the direct and indirect costs to the department for education financial assistance granted to employees during the preceding fiscal year in a manner prescribed by the director.
[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.11(8A) Particular contracts governing.** Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreement shall prevail for employees covered by the collective bargaining agreements.

**11—64.12(8A) Tax-sheltered annuities (TSAs).**

**64.12(1)** *Administration.* The director is authorized by 2003 Iowa Code Supplement section 8A.402 to administer a tax-sheltered annuity program for eligible employees.

**64.12(2)** *Definitions.* The following definitions shall apply when used in this rule:

*"Company"* means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under Iowa Code section 8A.438.

*"Employee"* means an employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system, or an employee of a participating employer.

*"Employer"* means the state of Iowa, a public school district in the state of Iowa, an area education agency in the state of Iowa, or a community college in the state of Iowa.

*"Participating employee"* means an employee participating in the plan.

*"Participating employer"* means an employer that has elected to join the state's tax-sheltered annuity plan.

*"Plan"* means the tax-sheltered annuity plan authorized in Iowa Code section 8A.438.

*"Plan administrator"* means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

*"Plan year"* means a calendar year.

*"Policy"* means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and Iowa Code section 8A.438.

*"Salary reduction form"* means the tax-sheltered annuity form signed by the participating employee to begin or change payroll deductions.

**64.12(3)** *Eligibility.*

*a. Initial eligibility.* Any employee who works for the department of education, the board of regents administrative office, or a participating employer is eligible to participate in this plan. Participating employers may establish different eligibility requirements, as long as the requirements conform to IRC Section 403(b) and the applicable federal regulations. Final determination on eligibility shall rest with the plan administrator.

*b. Eligibility after terminating reduction of compensation.* Any employee who terminates the reduction of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4)*"a"* and *"b"* and 64.12(6)*"a."*

**64.12(4)** *Enrollment and termination.*

*a. Enrollment.* State employees may enroll in the plan at any time. Participating employers may establish different enrollment periods, as long as the periods conform to IRC Section 403(b) and the applicable federal regulations. The salary reduction form must be submitted to the employing agency's personnel assistant or payroll office for approval.

*b. Forms submission.* State personnel assistants shall provide the plan administrator with the salary reduction form in a timely manner.

*c. Termination of salary reductions.* A participating employee may terminate salary reductions by providing to the employing agency's personnel assistant or payroll office written notification on a form required by the plan administrator.

*d. Availability of forms.* It is the responsibility of each employee interested in participating in the plan to obtain the necessary forms from the investment provider.

**64.12(5)** *Tax status.*

*a. FICA and IPERS.* The amount of compensation reduced under the salary reduction form shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

*b. Federal and state income taxes.* The amount of earned compensation reduced under the form is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

**64.12(6)** *Reductions from earnings.*

*a. Salary reduction amount changes.* Participating employees may increase or decrease their salary reduction amount by providing to their personnel assistant or payroll office written notice on a form required by the plan administrator. Salary reduction amounts may be changed to permit a one-time lump sum contribution from the last paycheck due to termination of employment.

*b. Maximum salary reduction limits.* Employees' salary reductions may not exceed the maximum limit set forth in federal law.

*c. Minimum salary reduction amount.* Participating employers may establish a minimum amount as long as the minimum conforms to IRC Section 403(b) and the applicable federal regulations.

**64.12(7)** *Companies.*

*a. Time of payment.* Participating employers shall transmit amounts within 15 business days after the end of the calendar month.

*b. Cooperation with third-party administrator.* Companies are required to cooperate with the plan's third-party administrator, including the provision of daily account information as well as any other data or information required for administration of the plan.

*c. Annual status report.* Each company shall provide to the participating employee at the employee's home address an annual status report stating the value of each participant's policy. This practice shall be continued even after the participating employee terminates or stops contributions to the

plan. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

*d. Crediting of accounts.* Companies must minimize crediting errors and provide timely and reasonable credit resolution.

*e. Solicitation.* There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator or participating employer.

*f. Dividends.* The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

*g. Removal from participation.* Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

**64.12(8)** *Disposition of funds.*

*a. Distribution eligibility.* An employee is eligible for a distribution of funds based upon any of the following circumstances: severance of employment; reaching age 59½; becoming disabled; qualifying for a financial hardship; or becoming eligible for a reservist distribution. Distribution will be made in accordance with applicable IRS regulations.

*b. Financial hardship.* A participating employee may request to withdraw some or all of the salary reduction contributions to the policy, but not the income earned thereon, based on a financial hardship and in accordance with 401(k) regulations. New contributions to the plan will not be allowed after the receipt of a distribution based on financial hardship until such time as allowed by law.

*c. Federal and state withholding taxes.* It is the company's responsibility, when making payments to an employee, to withhold the required federal and state income tax, to timely remit the tax to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099-R.

*d. Federal penalties.* Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). An IRC Section 403(b) contract is a qualified plan for these purposes.

**64.12(9)** *General.*

*a. Orientation and information meetings.* Employers may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings without employer approval.

*b. Company changes.*

(1) If a participating employee wishes to redirect contributions to another company, the employee shall submit a form to the personnel assistant or payroll office in accordance with paragraph 64.12(6)*"a."*

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy, if allowed under the participating employer's plan elections, in accordance with the plan's policies and applicable IRC Section 403(b) provisions.

*c. Deferred compensation or tax-sheltered annuity participation—maximum contribution.* State employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to contribute to one plan or the other, but not to both at the same time.

*d. Direct transfer/rollover.*

(1) Effective January 1, 2002, a former employee may request a direct transfer/rollover to an eligible retirement plan as defined in IRC Section 402(c)(8)(B). Eligible rollover amounts that are received by a former employee are subject to mandatory federal and state withholding as required by law.

(2) An employee may request a trustee-to-trustee transfer of funds to a defined benefit governmental plan for the purchase of permissive service credit.

**64.12(10)** *Forfeiture.* IRC Section 403(b)(1)(C) provides that an employee's interest in an IRC Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

**64.12(11)** *Nontransferability.* The employee's interest in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.
[**ARC 8265B**, IAB 11/4/09, effective 12/9/09]

**11—64.13(8A) Health flexible spending account.** The director administers the health flexible spending account plan for employees of the state of Iowa. The program is permitted under IRC Section 125. Administration of the plan shall comply with all applicable federal regulations and the Plan Document. To the extent that the provisions of the Plan Document or administrative rule conflict with IRC Section 125, the provisions of IRC Section 125 shall govern. For purposes of this rule, the plan year is a calendar year.

**64.13(1)** *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the health flexible spending account plan. Temporary employees are not eligible to participate in this plan. Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.

**64.13(2)** *Enrollment.* An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing health flexible spending account salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. To continue participation, employees shall reenroll each year during the open enrollment period.

**64.13(3)** *Modification or termination of participation in the plan.* An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. Employees who have terminated state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

**64.13(4)** *Continuation of coverage.* The health flexible spending account plan shall provide the opportunity to continue coverage as required by applicable state and federal laws.

**64.13(5)** *Eligible health care expenses.* The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC Section 213.

**64.13(6)** *Acceptable proof of eligible expense.* Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC Sections 105 and 106; and the amount of such expense.

**64.13(7)** *Appeal process.* In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account plan, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the plan, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

**64.13(8)** *Third-party administrator.* The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account plan.

**11—64.14(8A) Deferred compensation match plan.** The director is authorized by the governing body to administer a deferred compensation match plan for employees of the state of Iowa and employees of other eligible participating governmental employers. The plan shall be qualified under IRC Section 401(a) and Iowa Code section 509A.12. The assets and income of the plan shall be held in trust for the exclusive benefit of the participating employee or the participating employee's beneficiary. The trustee shall be the director of the department of administrative services. The director shall adopt various

investment options for the investment of plan funds by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

The plan shall match eligible participant contributions to the deferred compensation plan with contributions by the employer. Eligibility of participants and the rate of employer matching contributions shall be subject to determination by the trustee and the governing body. The only voluntary contributions by participants that the plan shall accept are eligible rollover contributions.

**11—64.15(8A) Insurance benefit eligibility.**

**64.15(1)** Full-time and part-time employees with probationary or permanent status who work 20 or more hours a week are eligible for health and dental insurance coverage. For employees working 20 to 29 hours per week, the state's share of the premium is one-half the amount paid for full-time employees (30 to 40 hours per week). Temporary employees are not eligible for health or dental insurance.

**64.15(2)** Full-time employees with probationary or permanent status who work 30 or more hours a week are eligible for life and long-term disability insurance coverage. Temporary employees are not eligible for life and long-term disability insurance.

**11—64.16(8A) Sick leave insurance program.** The director is authorized to establish a sick leave insurance program (program) for employees not covered by a collective bargaining agreement. The program shall allow eligible employees to convert a portion of their sick leave balance at retirement into a sick leave bank with which the state will pay the state's share of retiree health insurance. Employees of the department of natural resources or department of public safety who are classified as peace officers and are not covered by a collective bargaining agreement shall receive benefits at retirement consistent with the provisions of the negotiated collective bargaining agreement with the State Police Officers Council. The benefits for sick leave banks earned by all department of public safety peace officer employees shall be administered by the department of public safety.

**64.16(1)** To be eligible to participate in the program, the employee must be employed on or after July 1, 2006, and must retire under a retirement system in the state maintained in whole or in part by public contributions or payment prior to reaching Medicare eligibility.

*a.* Participation in the program ceases when any one of the following occurs:

(1) The employee's sick leave balance is exhausted;

(2) The employee reaches Medicare eligibility;

(3) The employee terminates participation in the state's group insurance program;

(4) The employee returns to permanent employment with the state;

(5) The employee fails to pay any required amount; or

(6) The employee dies.

*b.* A deceased employee's sick leave bank is not transferable to another person, including a spouse.

**64.16(2)** Upon a participating employee's termination of employment, the employee's sick leave hours are multiplied by the employee's regular hourly wage. The employee receives up to $2,000 of this amount on the employee's final paycheck. The remainder is multiplied by a conversion factor, and that amount is placed into the employee's sick leave bank. The conversion factors are as follows: If an employee has up to 750 hours, the rate is 60 percent; if an employee has over 750 hours and up to 1,500 hours, the rate is 80 percent; and if the employee has more than 1,500 hours, the rate is 100 percent. The employee's sick leave balance before payment of up to $2,000 is used to determine the number of hours an employee has for conversion purposes. The amounts placed into the employee's sick leave bank have no cash value, other than for purposes of paying the state's share of retiree health insurance premiums under this program. The value of sick leave hours for peace officer employees of the department of natural resources and the department of public safety shall be calculated in the same manner as for those employees covered by the collective bargaining agreement with the State Police Officers Council.

**64.16(3)** An employee who retires and participates in the program and becomes reemployed by the state in a permanent position is no longer eligible for the program and shall not be eligible for the program upon successive termination of employment.

**64.16(4)** To participate in the program, an employee must complete a sick leave insurance program enrollment form upon retirement. Upon commencement of participation in the program, the employee may choose to continue the employee's current health insurance plan selection or may choose any other state group health plan whose total cost is the same or lower than the total cost of the current plan selection. Except for employees eligible for benefits negotiated consistent with the collective bargaining agreement negotiated with the State Police Officers Council, employees may not apply the sick leave balance to a private insurance plan.

These rules are intended to implement Iowa Code sections 8A.402, 8A.433 to 8A.438, and 8A.454 and Iowa Code chapter 509A.

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# CHAPTER 65
# POLITICAL ACTIVITY

[Prior to 11/5/86, Merit Employment Department [570]]
[Prior to 2/18/04, see 581—Ch 16]

**11—65.1(8A) Political activity of employees.** All employees have the right to express their opinions as individuals on political issues and candidates. Such expressions may be either verbal or demonstrative in the form of pictures, buttons, stickers, badges, pins, or posters. Employees' rights to express their opinions on political matters in this form or manner shall not be restrained while on duty unless:

**65.1(1)** It is a violation of the law; or

**65.1(2)** The display of such items would cause or constitute a real and present safety risk or would substantially and materially interfere with the efficient performance of official duties; or

**65.1(3)** The employee has substantial contact with the public and the level of trust and confidence associated with the employee's position is perceived to be such that political expressions in any form, while on duty, might influence the public.

**11—65.2(8A) Restrictions on political activity of employees.** All employees are prohibited from:

**65.2(1)** Using the influence of their positions, public property, or supplies to secure contributions or to influence an election for any political party or any person seeking political office.

**65.2(2)** Soliciting or receiving anything of value in excess of the limits in Iowa Code section 68B.5 as a political contribution or subterfuge for a contribution from any other person for any political party or any person seeking political office during scheduled working hours, while on duty, when using state equipment, or on state property.

**65.2(3)** Promising or using influence to secure public employment or other benefits financed from public funds as a reward for political activity.

**65.2(4)** Discriminating in favor of or against any employee or applicant on account of their political contributions or permitted political activities.

Employees of the alcoholic beverages division of the department of commerce, in addition to the foregoing subrules, are subject to the prohibitions set forth in Iowa Code section 123.18. All employees are further subject to the provisions of Iowa Code chapter 721.

**11—65.3(8A) Application of Hatch Act.** In addition to the restrictions set forth in rules 65.1(8A) and 65.2(8A), employees occupying state positions financed in whole or in part by federal "grant-in-aid" or other specific federal funding, are subject to the provisions of the federal Hatch Act. Where compliance with the political restrictions of the Hatch Act are required for the receipt of federal funds, the appointing authority shall identify those state positions so covered. The employees under those further political activity restrictions shall be made aware of the additional restrictions by posting or other written notification from the appointing authority.

Persons found by proper authority to have violated the provisions of the federal Hatch Act are subject to summary discharge.

These rules are intended to implement Iowa Code Supplement sections 8A.413, 8A.416 and 8A.418.

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# CHAPTER 66
# CONDUCT OF EMPLOYEES

[Prior to 11/5/86, Merit Employment Department [570]]
[Prior to 2/18/04, see 581—Ch 18]

**11—66.1(8A) General.** Employees shall fulfill to the best of their ability the duties and responsibilities of the position to which appointed. In carrying out their official job duties, employees shall work for the appointing authority's efficient and effective delivery of services. Employees shall perform assigned responsibilities in such a manner as neither to endanger their impartiality nor to give occasion for distrust or question of their impartiality.

**11—66.2(68B) Selling of goods or services.** Rescinded IAB 11/10/04, effective 10/20/04. See rules 351—6.10(68B) to 351—6.12(68B) and 11—1.7(68B).

**11—66.3(68B) Outside employment or activity.** Rescinded IAB 3/11/09, effective 4/15/09.

**11—66.4(8A) Performance of duty.** Employees shall, during scheduled hours of work, devote their full time, attention and efforts to assigned duties and responsibilities subject to the Iowa Code and the Iowa Administrative Code. Continued employment is dependent upon the satisfactory performance of assigned duties and responsibilities, i.e., "meets job expectations," as well as appropriate conduct as provided for in these rules and the work rules of their agency of employment. This rule shall not be interpreted to prevent the separation or reduction of employees because of the lack of funds or work, reorganization done in accordance with these rules, or the provisions of the Iowa Code or a collective bargaining agreement.

**11—66.5(8A) Prohibitions relating to certain actions by state employees.**

**66.5(1)** Employees shall not be prohibited from disclosing any information to members or employees of the general assembly, or to any other public official or law enforcement agency if the employee believes the information is evidence of the violation of a law, rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. An employee need not inform the appointing authority about such disclosure unless the employee presented the information as the official position of the appointing authority.

*a.* This subrule does not apply to the disclosure of information prohibited by statute.

*b.* Agencies are prohibited from any reprisals in the form of a disciplinary action or failure to appoint or promote an employee who discloses information, fails to inform the appointing authority of the disclosure of information, or who declines to contribute to a charity or organization. Reprisals for disclosing information shall be subject to civil action.

**66.5(2)** Employees may contact the office of the Iowa citizens' aide at (888)426-6283 to report violations of this rule.

These rules are intended to implement Iowa Code Supplement section 8A.413 and Iowa Code section 68B.4.

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# CHAPTER 67
Reserved

# CHAPTER 68
# EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

[Prior to 10/8/86, Civil Rights[240]]
[Prior to 3/17/04, see 581—Ch 20]

**11—68.1(19B) Definitions.** The following definitions shall be applied to the rules in this chapter.

*"Affirmative action"* means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

*"Availability" means* the extent to which protected class members are qualified or qualifiable to be employed in classes within state and local government job categories.

*"Disabled person"* means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

*"EEO-4 income bracket"* means the annual salary ranges as defined by the Equal Employment Opportunity Commission. Where employees are paid on other than an annual basis, their regular earnings shall be expanded and expressed in terms of an annual income.

*"EEO-4 report"* means the annual state employment data report as required by the federal Equal Employment Opportunity Commission.

*"Equal employment opportunity"* means equal access to employment or training opportunities regardless of race, creed, color, religion, sex, age, national origin or physical or mental disability.

*"Organizational unit"* means those agency units which lend themselves to the most reasonable system of grouping for analysis even though they may not necessarily coincide with the agency's administrative divisions.

*"Protected class"* means racial or ethnic minorities, sex, age, creed, color, national origin, religion, mental and physical disability.

*"Racial or ethnic minorities"* means Black, Hispanic, Asian and Pacific Islander, American Indian and Alaskan natives.

*"Relevant labor force"* means that group of persons in the general population of a specified geographic area who are qualified to perform a particular type of work.

*"Sexual harassment"* means persistent, repetitive, or highly egregious conduct that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs. It may be directed at a specific individual or group of individuals. Conduct of a sexual nature will be considered harassing if it (1) threatens to impair the ability of a person to perform the duties of employment; (2) promises, threatens or in some manner affects a tangible employment benefit; or (3) threatens to impair the ability of a person to otherwise function normally within an institution responsible for the person's care, rehabilitation, education, or training.

*"State and local government job categories"* means officials and administrators, professionals, technicians, protective service workers, paraprofessionals, administrative support workers, skilled craft workers and service maintenance workers, as defined by the federal Equal Employment Opportunity Commission guidelines.

*"Utilization"* means the extent to which minorities, females, and persons with disabilities are represented within an agency's work force as compared to their availability in the relevant labor force.

*"Work force*" means an agency or organizational unit's full-time employees and other than full-time employees.

**11—68.2(19B) Plans, policies and records.**

**68.2(1)** Each agency or an entity approved by the director shall prepare and implement a written affirmative action plan with goals and timetables which conform to the requirements of Iowa Code chapter 19B.

**68.2(2)** Each agency shall adhere to the provisions of the "State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy for Executive Branch Employees," made effective by the governor on November 1, 2001.

**68.2(3)** Each agency shall keep records as required by the director. These records shall, at a minimum, include tracking of the composition of applicant groups, their movement through steps in the hiring processes, and the impact of personnel actions on various group members when records are not otherwise available in centralized information systems. Each agency shall submit to the director, as requested, timely, complete, and accurate reports related to required records in accordance with rule 11—68.5(19B).

**11—68.3(19B) Planning standards.** Each affirmative action plan shall include, but not be limited to, the following standards:

**68.3(1)** *Affirmative action statement.* The affirmative action statement shall include, but not be limited to, the following:

*a.* *Policy statement.* The policy statement shall be a clear and unambiguous declaration of commitment to the principles of equal employment opportunity and affirmative action in the application of all personnel rules, policies, and practices. It shall contain the following or similarly worded language.

(1) The agency prohibits discrimination in its employment policies and practices on the basis of race, creed, color, religion, national origin, sex, age, or mental and physical disability.

(2) The agency is an equal employment opportunity and affirmative action employer.

*b.* *Administration statement.* The administration statement shall be a declaration of how the agency's affirmative action policy is to be implemented. It shall contain the following:

(1) The name, job title, and work location of the responsible equal employment opportunity or affirmative action official.

(2) The internal system for auditing and reporting.

*c.* *Signature.* The affirmative action statement shall be signed and dated by the appointing authority.

**68.3(2)** *Work force analysis.* A work force analysis shall show the numerical and percentile breakdown of the agency's full-time employees, and other than full-time employees, separately by racial or ethnic minorities, sex, and disability. Full-time and other than full-time employees shall be arrayed according to the state and local government job categories with further census occupational subcategory breakdowns as required by the director. For the purposes of confidentiality, disability figures shall be totaled only by an organizational unit covered by an individual affirmative action plan or the department as a whole.

*a.* *Exemptions.* The work force analysis shall not include elected officials; such officials' immediate secretary, administrative, legislative, or other immediate or firstline aides; and such officials' legal advisor.

*b.* *Organizational unit.* An agency with a large number of employees may be required to conduct a separate work force analysis for each of its organizational units. The organizational units may be determined by the agency based on the size, geographic dispersion and administrative lines of authority of its work force.

*c.* *Confidentiality.* An agency may suppress work force data which is likely to identify specific employees and violate their confidentiality.

*d.* *Analysis report.* The work force analysis shall be reported on forms available from the department. An agency may request approval of a similar report required by another regulatory agency as part of its work force analysis.

**68.3(3)** *Availability analysis.* An availability analysis shall show the percentile breakdown by racial or ethnic minorities and sex of the relevant labor force arrayed according to their state and local government job categories and relevant subcategories. The analysis shall include an assessment of the relevant available labor force by using the geographic area from which work force recruitment can reasonably occur for each state and local government job category. The geographic area will usually be larger for high-paid or high-ranked classifications for recruitment purposes. The labor force availability of disabled persons shall be based on census reports of persons with a work disability residing in the most relevant geographic area defined by the census bureau.

*a.* *Organizational unit.* An availability analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph *"b."*

*b.* *Analysis report.* The availability analysis shall be reported in a format prescribed by the department. In lieu of completing all parts of the availability analysis form, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, as part of its availability analysis, if approved by the department.

**68.3(4)** *Quantitative utilization analysis.* A quantitative utilization analysis shall compare work force analysis with availability analysis to show the numerical and percentile underrepresentation in the agency's work force, if any, by racial or ethnic minorities, sex, and disability.

*a.* *Rounding.* All partial numerical figures for state and local government job categories that contain .5 or more shall be rounded upward and .49 or less shall be rounded downward to the nearest whole number.

*b.* *Organizational unit.* A quantitative utilization analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph *"b."*

*c.* *Analysis report.* The quantitative utilization analysis shall be reported in the format prescribed by the department. In lieu of completing all parts of the quantitative utilization analysis format, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, if approved by the department.

**68.3(5)** *Qualitative utilization analysis.* A qualitative utilization analysis shall show whether and where an agency's employment policies and practices do or tend to exclude, disadvantage, restrict or result in adverse impact on the basis of age, sex, disability, and racial or ethnic minorities. It shall also show whether and where effects of prior illegal discrimination are left uncorrected. The analysis may include, but not be limited to, the following areas:

*a.* Recruitment efforts and methods.

*b.* Applicant flow characteristics study.

*c.* Interview, selection, appointment, and placement policies and practices.

*d.* Policies and practices affecting transfers, promotions, and reallocations.

*e.* Selection of employees for training.

*f.* Policies and practices in demotion, discipline, termination, and reduction in force.

*g.* Laws, policies, and practices external to the agency that discourage effective results in affirmative action.

**68.3(6)** *Goals and timetables.* An agency's affirmative action goals and timetables shall specify the appropriate actions and time frames in which problems identified under subrules 68.3(4) and 68.3(5) are targeted to be remedied.

*a.* *Appropriate action.* In setting goals, an agency may consider, but not be limited to, the following:

(1) Devising a recruitment program in conjunction with the state recruitment coordinating committee authorized under the department.

(2) Validating the selection instruments in conjunction with the department.

(3) Revising and improving other personnel policies and practices.

(4) Providing affirmative action training internally or externally through organizations such as the Iowa management training system.

(5) Devising a plan so that agency personnel who impact EEO and affirmative action can have part or all of their performance evaluated on their contribution to meeting the established goals and timetables.

*b.* *Timetable.* Each agency shall determine the timetable in which it expects to meet its goals. In setting timetables, an agency should consider, but not be limited to, the following:

(1) Anticipated vacancies and positions.

(2) Work force turnover rate.

*c.* *Organizational unit.* Goals and timetables shall be prepared for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph *"b."*

*d.* *Numerical goals.* Numerical goals shall be established by each agency to remedy any underrepresentation identified in subrule 68.3(4). When setting numerical goals, agencies shall utilize the following procedure:

(1) Underutilized classes in which women represent more than 70 percent of the relevant available labor force for that occupational subcategory are exempt from this procedure when setting goals for women.

(2) Annual goals for hires shall be based on underutilization analysis and projected vacancies and set at a percentage rate that is equal to or greater than the labor force availability rate established in subrule 68.3(3).

(3) The percentage rate established in subparagraph (2) of this paragraph shall be multiplied by the projected number of openings anticipated in the following year by occupational subcategory to establish the actual numerical hiring goals for each underutilized subcategory.

(4) Goals established for each occupational subcategory shall be totaled to establish goals for each state and local government job category.

(5) Where projected goals indicate that a period greater than five years is required to remedy any underrepresentation, agencies may be required to revise their goals established in subparagraph (2) of this paragraph.

(6) Goals shall not be rigid and inflexible quotas. They must be targets reasonably attainable through good faith effort and must not cause any group of applicants to be excluded from the hiring process.

**68.3(7)** *Consolidation.* An agency may consolidate the racial or ethnic minorities and state and local government job categories into broader groupings in conducting its analysis under subrules 68.3(2) to 68.3(6) with department prior approval.

*a.* *Applicability.* Consolidation is applicable when the agency or organizational unit work force has been analyzed according to all the racial or ethnic minorities or occupational categories, and the resultant figures are determined to be too small for significant statistical analysis.

*b.* *Racial or ethnic minorities.* The minority racial or ethnic groups may be consolidated into one single group.

*c.* *Occupational categories.* The occupational categories may be consolidated into one or more groups.

**68.3(8)** *Comparable plan.* An agency plan which is consistent with 41 Code of Federal Regulations, Chapter 60, Revised Order No. 4, Affirmative Action Guidelines, issued by the Office of Federal Contract Compliance Programs, shall be considered to be in compliance with the aforementioned planning standards if the plan is approved as meeting the requirements of subrules 68.3(2), 68.3(5), and 68.3(6).

**11—68.4(19B) Dissemination.** Each agency shall have an internal and external system for disseminating its affirmative action plan.

**68.4(1)** *Affirmative action plan.* The plan shall be distributed to agency employees charged with the responsibility for its implementation and be made available to other agency employees and the public upon request.

**68.4(2)** *Affirmative action statement.* The statement shall be disseminated in, but not limited to, the following manner:

*a.* A copy shall be given to all agency employees.

*b.* It shall be posted on bulletin boards and other conspicuous places throughout the agency.

*c.* It shall be distributed to the agency's recruiting sources.

**11—68.5(19B) Reports.**

**68.5(1)** Each agency shall annually submit an affirmative action report and plan for approval to the department at the time specified by the department that shall conform to the standards specified in these rules.

**68.5(2)** Each agency may be required to submit progress reports in accordance with the due dates and procedures established by the director.

**11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints.** Each agency shall take proper and immediate action to investigate complaints of alleged discrimination. The director shall investigate any discrimination complaint against an agency as the director deems necessary, and attempt to negotiate a settlement to resolve a complaint. All information gathered in the course of an investigation, including, but not limited to, investigative reports prepared by the department, is confidential and shall not be released to persons outside the department unless the director deems such disclosure to be in the best interest of the state or unless ordered by a court. This rule does not supersede the remedies provided under Iowa Code chapter 216.

**68.6(1)** *General procedures.* Each agency shall:

*a.* Identify employees who are to receive and investigate discrimination complaints.

*b.* Investigate all complaints of discrimination using, at a minimum, the procedural guidelines established by the department, and fully document all such investigations.

*c.* Provide, where possible, for the informal resolution of all complaints.

*d.* Report the filing of all discrimination complaints to the director as follows:

(1) Inform the director immediately upon receipt or notice of any alleged employment discrimination complaints filed against the agency under any federal, state, or local regulations.

(2) Provide the director with information describing allegations and issues involved.

(3) Provide a copy of any proposed resolution and supporting documentation to the director for review prior to the final disposition of complaints.

(4) Inform the director within five workdays following official notice of any suit filed in a court of law alleging employment discrimination and naming the state or the agency as a party to the alleged discrimination.

**68.6(2)** *Sexual harassment complaint procedures.* All employees shall have access to agency internal grievance procedures as authorized by Iowa Code section 19B.12. Each agency shall investigate all allegations of sexual harassment and utilize, at a minimum, procedural guidelines established by the department. Agencies shall additionally:

*a.* Identify the employee who is to receive and investigate complaints of sexual harassment.

*b.* Affirmatively address issues of sexual harassment and take immediate and effective measures to investigate and correct any sexual harassment identified.

*c.* Provide that sexual harassment complaints shall be resolved as follows:

(1) Aggrieved employees shall bring work-related complaints against employees and nonemployees to the attention of their immediate supervisor. Employees may also direct their complaints to the next higher supervisor, the employee identified by the agency to receive and investigate complaints of sexual harassment, or to the director.

(2) Aggrieved nonemployees shall bring work-related complaints against employees to the attention of the agency management or supervisory personnel, the employee identified by the agency to receive and investigate complaints of sexual harassment, or to the director. The agency shall take into consideration the extent of the agency's control.

*d.* Submit investigation findings and remedies to the director for review prior to the final disposition of complaints.

These rules are intended to implement Iowa Code chapter 19B.

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# CHAPTER 69
Reserved

# CHAPTER 70
# EMPLOYEE ORGANIZATION DUES

[Prior to 8/12/87, Comptroller, State[270]Ch 2]
[Prior to 2/18/04, see 581—Ch 23]

**11—70.1(20) General provisions.** The state of Iowa may extend to recognized employee organizations the right to membership dues deduction upon presentation of dues deduction authorization cards signed by state employees.

*"Employee organization"* means an organization of any kind which includes state employees and which has as its primary purpose the representation of state employees in their employment relationship with the employer.

**11—70.2(20) Membership qualifications for payroll deductions.** Payroll deductions for employee organization dues shall be implemented if the membership includes 50 state employees. To qualify for payroll deduction of membership dues an approved employee organization must have at least 50 state employees as members. In addition, each approved organization must have at least 50 members enrolled in payroll deduction of membership dues. Payroll deduction under this chapter shall cease at the end of the calendar year for an employee organization if the organization has less than 50 state employees participating in payroll deductions as of September 30 of each year.

**11—70.3(20) Prior approval.** All employee organizations eligible under rule 11—70.2(20) shall submit to the director for approval a written application stating when the organization was formed, its purpose, documentation to support the minimum requirements provided for in rule 70.2(20), and the annual organization dues amount per employee. Payroll deductions for approved organizations shall be implemented within three months following the date the written application is submitted.

**11—70.4(20) Annual certification.** After the initial application has been approved, each employee organization shall be required to certify by November 1 of each year the annual dues for the following year and the number of participating state employees as of September 30 of that year.

**11—70.5(20) Limitations.** All eligible employees under this chapter may be limited to having a payroll deduction with only one authorized employee organization at any one time.

**11—70.6(20) Conditions to be met for payroll deduction.**

**70.6(1)** *When deducted.* The employee's authorized deduction shall be made from the second pay date of each calendar month.

**70.6(2)** *Authorization form.* Authorizations to deduct shall be certified by the employee on a form prescribed by the director.

**70.6(3)** *Minimum amount.* The minimum deduction shall be 25 cents per month.

**70.6(4)** *Effective date.* Authorization cards received by the appointing authority by the thirtieth day of the month shall be effective the first day of the following month. The deduction amount shall be calculated by dividing the annual dues for the organization by 12. Employees enrolling during a calendar year shall only have dues for that portion of the year remaining deducted through December of that year.

**70.6(5)** *Authorization cards.* All employee organizations authorized under this chapter shall be required to issue an authorization card to all participating state employees. The authorization cards are to be given to the appointing authority of the department in which the employee works, and are to be filed in the employee's personnel file in the agency to substantiate the payroll deduction. Any employee in a unit not covered by a collective bargaining agreement wishing to terminate the deduction shall be required to give 30 days' notice in writing to the appointing authority of the department in which the employee works. Any employee who has authorized the deduction of dues pursuant to a collective bargaining agreement and who wishes to terminate the deduction shall do so in accordance with the provisions of the current agreement.

**11—70.7(20) Letter of authorization.** All employee organizations eligible under this chapter shall send a letter to the director, certified by their executive board, stating the organization name to whom the monthly dues warrant is to be made payable (individuals cannot be used), and the address of the organization where the warrant is to be mailed. The department of administrative services shall mail the monthly payment to each organization within five work days after the second pay date of each calendar month. Supporting documentation shall be limited to a listing of employees and the amounts deducted.

**11—70.8(20) State held harmless.** Employee organizations shall indemnify and hold the state harmless against any and all claims, demands, suits, or other forms of liability which may arise out of any action taken or not taken by the state for the purpose of complying with the provisions of this chapter.

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# CHAPTER 71
# COMBINED CHARITABLE CAMPAIGN

[See also 681—12.7, 13.7, 14.2, 15.8, 16.9]
[Prior to 1/7/04, see 581—Ch 25]

**11—71.1(8A) Policy.** These rules define and structure the state's charitable organization campaign program. The intent of the campaign is to provide an opportunity for state employees to contribute to eligible charitable agencies through the state's payroll deduction process, to ensure accountability of participants with regard to the funds contributed, and to minimize workplace disruption and administrative costs by allowing solicitation at the work site only once per year. Nothing about this program shall be construed as support or endorsement by the state of Iowa for any individual charitable agency or federation of agencies.

**11—71.2(8A) Definitions.**

*"Campaign administrator"* means the individual appointed by the director to administer the combined charitable campaign program.

*"Charitable agency"* means an agency or federation of agencies that is eligible to receive contributions which may be deducted on the contributor's Iowa individual tax return in accordance with U.S. Internal Revenue Code Sections 501(a) and 501(c)3, and which otherwise meets the criteria provided for in rule 11—71.6(8A).

*"One gift campaign"* means the annual fundraising solicitation for charitable agencies which meet the eligibility requirements established in these rules.

*"State employees"* means any employees subject to a state payroll system, except for employees of the board of regents for whom rules shall be promulgated by the board of regents.

**11—71.3(8A) Basic premises.**

**71.3(1)** *Solicitation period.* The solicitation period shall fall within the period of September 1 through September 30, although that period may be extended with the approval of the director.

**71.3(2)** *Workplace solicitation.* Individual charitable agencies or federations of agencies may not ever solicit state employees at their workplace. Workplace solicitation of employees will occur only during the solicitation period, only in accordance with the procedures contained in this chapter, and only with the approval of the campaign administrator.

**71.3(3)** *Employee solicitations.* Employee solicitation is to be conducted using only methods that encourage voluntary giving. Actions that do not allow for and encourage free choice or that even create the appearance that employees may not have a totally free choice to give or not give are absolutely prohibited. This should in no way be interpreted as restricting the need for an effective, well-organized education program for employees. All employees will be given the necessary information to make an informed, free-will decision. Group meetings for this purpose are permitted. Employees may choose to attend or not attend such meetings.

Employees shall be free to publicize their gifts or keep them confidential. Individual employee contribution records are confidential records in the meaning of Iowa Code section 22.7(11).

**71.3(4)** *Pledge authorization forms.* The campaign administrator shall approve the pledge authorization form. Pledge authorization forms shall conform to the provisions of rule 11—43.13(70A).

**71.3(5)** *Terminations.* Employees wishing to terminate their deductions shall be required to give 30 days' advance notice in writing to the appointing authority of the department in which they work, as required by rule 11—43.12(70A).

**11—71.4(8A) Administration.** The director shall select a campaign administrator to organize and manage the program. The state accounting enterprise shall serve as the campaign's fiscal agent. It shall be the sole responsibility of the campaign administrator to determine, using the criteria set forth in these rules, which charitable agencies or federations of agencies shall be eligible to participate in the campaign.

**71.4(1)** *Request to participate.* Charitable agencies and federations of charitable agencies wishing to participate in the one gift campaign program shall forward the completed application packet developed by the campaign administrator to the campaign administrator prior to the date publicized in January of each year by the campaign administrator. Applications received prior to the publicized date and subsequently approved shall be eligible for inclusion in the list of approved charities published prior to each annual solicitation period. Applications received after the publicized date may be accepted with the approval of the campaign administrator.

**71.4(2)** *Notification of agencies.* The campaign administrator shall, within 30 calendar days following the closing date for applications, send letters of denial or acceptance on behalf of the director, and include reasons for denial when applicable.

**71.4(3)** *Request for reconsideration.* A charitable agency that has been denied participation will be allowed ten calendar days following the date of the notice of denial to file a written request for reconsideration with the director. The director shall notify agencies of the final decision within ten calendar days following the date the request was received. The director's decision shall constitute final agency action.

**71.4(4)** *Distribution of campaign moneys.*

*a.* An approved pledge authorization form shall be used. Pledge authorization forms shall be developed by the campaign administrator and fiscal agent as provided for in rule 11—43.6(70A). State employees shall be allowed to specifically designate their gifts to agencies or federations of agencies described in the campaign materials, and the pledge authorization form shall be designed to accommodate such designations.

*b.* Gifts not specifically designated shall be distributed to participating agencies or federations of agencies based on the same percentage ratio as the designated dollars are distributed. This fact shall be prominently displayed in the campaign materials.

*c.* The one gift campaign shall charge the actual administrative costs of managing the campaign to each participating charitable agency based on the percentage of total campaign moneys received by that agency. Such charges shall not include the salaries of state employees involved in the ongoing administration of the program.

*d.* Any shrinkage (moneys pledged but not contributed) shall reduce the moneys distributed to charitable agencies in the same ratio as the designated moneys.

*e.* Moneys collected will be sent to the charitable agencies monthly by the department of revenue.

*f.* Moneys collected that cannot be distributed to a charitable agency because the agency has ceased to do business or the agency has been disqualified from participation in the campaign shall be distributed to participating agencies or federations of agencies based on the same percentage ratio as the designated dollars are distributed. This fact shall be prominently displayed on the campaign materials.

**11—71.5** Reserved.

**11—71.6(8A) Eligibility of charitable agencies.**

**71.6(1)** *Criteria to be included in campaign.* Any charitable agency or federation of agencies may participate in the campaign provided it meets the following criteria:

*a.* Be a charitable agency as defined in rule 11—71.2(8A).

*b.* Make available to the general public and the campaign administrator an annual financial report which is prepared by an independent certified public accountant, and provide for an annual external audit by an independent certified public accountant. The campaign administrator may, in lieu of the annual external audit, accept Internal Revenue Service Form 990.

*c.* Receive its funds from either a communitywide solicitation or a statewide solicitation.

*d.* Be a nonprofit, tax-exempt charitable organization within the meaning of Section 501(c)3 of the United States Internal Revenue Code and any relevant state laws.

*e.* Have an active and responsible governing board that meets at least semiannually whose members have no conflict of interest and who, except for a paid staff director, serve without compensation.

*f.* Be providing or supporting services that are readily accessible to residents of the state of Iowa.

*g.* Have a direct and substantial local presence in the state of Iowa. A telephone number alone shall not constitute a local presence.

*h.* Operate without discrimination in employment, in accordance with Iowa Code chapter 216, and in the delivery of services and the distribution of funds.

*i.* Make a report available on an annual basis to the general public detailing the local activities of the agency.

*j.* Have a detailed annual budget approved by its governing board in a form consistent with generally accepted accounting principles and procedures wherein the organization's administrative (management and general) and fund-raising expenses do not exceed 25 percent of its total expenses as reflected in the organization's audited financial statements.

**71.6(2)** *Federations (umbrella organizations).* Applications submitted on behalf of federations shall list all participating constituent agencies and shall include a certification that all participating constituent agencies meet these eligibility criteria, and that they agree to comply with the rules set forth in this chapter. No charitable agency may participate both individually and as a member of a federation.

**71.6(3)** *Criteria for ongoing participation.* Once approved for participation, annual reapplication is not necessary. The campaign administrator may at any time, however, review a charitable agency's continuing eligibility and may require additional information which demonstrates that the criteria for participation are still being met. The campaign administrator will send notice on behalf of the director to any charitable agency which may be disqualified from further participation in the campaign stating the reason(s) for disqualification. Reasons for disqualification include, but shall not be limited to:

*a.* Failure to comply with the rules contained in this chapter.

*b.* Filing an application to participate in the campaign which contains false or misleading information.

*c.* Failure to provide eligibility information requested by the campaign administrator.

**71.6(4)** *Reconsideration of decertification.* Any disqualified agency may request reconsideration of the director's decision using the procedures for reconsideration in subrule 71.4(3).

**71.6(5)** *Contributions to decertified agencies.* Any charitable agency decertified under the provisions of subrule 71.6(3) shall have any further payment of contributions terminated. Future collections of pledges to the decertified agency shall be distributed in the same ratio as other undesignated gifts.

These rules are intended to implement 2003 Iowa Code Supplement section 8A.432.

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CHAPTERS 72 to 99
Reserved

TITLE V
*GENERAL SERVICES*

# CHAPTER 100
# CAPITOL COMPLEX OPERATIONS

[Prior to 9/17/03, see 401—Chapter 3]

**11—100.1(8A) Definitions.** The definitions contained in 2003 Iowa Code Supplement sections 8A.101 and 8A.301 shall be applicable to such terms when used in this chapter. In addition, the following definitions apply:

*"Assignment of office space"* means space allocated by the department to a state agency for its use.

*"Capitol complex"* means an area within the city of Des Moines in which the Iowa state capitol building is located. This area includes the state capitol building and all real property and appurtenances thereto owned by the state of Iowa within an area bounded on the north by Interstate Highway 235, on the east by East 14th Street, on the south by the northernmost railroad tracks south of Court Avenue and on the west by East 6th Street.

*"Control of assigned office space"* means the ability of an agency to modify its use of assigned space without consultation with the department as long as changes do not include relocating wiring, replacing, adding or deleting modular office components, or making other modifications that would affect the floor plan.

*"Dangerous weapon"* means any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the person possessing the instrument or device intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon as defined in Iowa Code section 724.1, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

*"Facilities"* means the capitol complex buildings, grounds, and all related property.

*"Memorandum of understanding"* or *"MOU"* means a written agreement that specifies terms, conditions and any related costs.

*"Modular office components"* means parts of a modular office system.

*"Modular office systems"* means standard cubicle furniture; generally, two-foot, three-foot and four-foot sections that have attached work surfaces and file storage space. Modular office systems are available in new, remanufactured and recycled condition.

*"Nonstandard modular office systems"* means office systems that do not meet standards set by the department of administrative services.

*"Office furniture"* means any furnishing that is free standing and does not require installation with component parts. Examples are desks, chairs, file cabinets, tables, lounge seating, and computer desks.

*"Public"* means a person on the capitol complex who is not employed by the state of Iowa.

*"Recycled modular office components"* means used components that have been cleaned and have had broken parts replaced, but have not been disassembled and rebuilt.

*"Remanufactured modular office components"* means used components that have been disassembled, repainted or reupholstered, rebuilt, and have had broken parts replaced. Remanufactured components are intended to be like new.

*"Seat of government"* means office space at the capitol, other state buildings and elsewhere in the city of Des Moines for executive branch agencies, except those areas exempted by law.

*"Waiver"* means a waiver or variance as defined in 11—Chapter 9, Iowa Administrative Code.

**11—100.2(8A) Security.**

**100.2(1)** *Dangerous weapons.* No member of the public shall carry a dangerous weapon in state buildings on the capitol complex. This provision applies to any member of the public whether or not the individual possesses a valid Iowa permit to carry weapons. This provision does not apply to:

*a.* A peace officer as defined in Iowa Code section 801.4 or a member of the armed forces of the United States or of the national guard, when the person's duties or lawful activities require or permit possession of a dangerous weapon.

*b.* A person possessing a valid Iowa professional permit to carry a weapon whose duties require that person to carry a dangerous weapon.

*c.* A person who possesses a dangerous weapon for any purpose authorized by a state agency to further the statutory or regulatory responsibilities of that agency. An authorization issued pursuant to this paragraph shall not become effective until it has been issued in writing to the person or persons to whom it applies and until copies of the authorization have been received by the director and by the commissioner of public safety.

*d.* Members of recognized military veterans organizations performing honor guard service as provided in 2001 Iowa Acts, chapter 96, section 1.

Violation of this subrule is a simple misdemeanor, pursuant to 2003 Iowa Code Supplement section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

**100.2(2)** *Building access and security.* The department of administrative services and the department of public safety shall take reasonable and appropriate measures to ensure the safety of persons and property on the capitol complex. These measures may include, but are not limited to, the following:

*a.* Requiring any member of the public entering a state building on the capitol complex to (1) provide identification upon request; (2) allow the member of the public to be scanned with metal detecting equipment; and (3) allow any parcel, package, luggage, purse, or briefcase that the person is bringing into the building to be examined with X-ray equipment or to have the contents thereof examined, or both.

*b.* Requiring any member of the public who is inside a state building on the capitol complex outside normal business hours, other than when the building or portion of the building is open to the public during a scheduled event, to provide identification and to state the nature of the person's business in the building. A member of the public who is in a state building on the capitol complex outside normal business hours, other than during a scheduled event, and who does not have authorization to be on the premises may be required to exit the building and be escorted from the building.

*c.* Limiting public access to state buildings on the capitol complex to selected entrances. Access to each building through at least one entrance accessible to persons with disabilities shall be maintained.

*d.* Limiting hours during which public access is allowed to state buildings on the capitol complex. Hours during which public access is allowed shall be posted at each entrance to a building through which public access is allowed.

*e.* Confiscating any container including, but not limited to, packages, bags, briefcases, or boxes that are left in public areas when the state building is not open to the public. Any confiscated container may be searched or destroyed, or both, or may be returned to the owner. Any container that is left unattended in a public area during hours in which the state building is open to the public may be examined.

Violation of this subrule is a simple misdemeanor, pursuant to 2003 Iowa Code Supplement section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of the individual who knowingly violates the subrule. Charges may be filed under any other criminal statute if appropriate. Officers

employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

**100.2(3)** *Access barriers.* The director may cause the temporary or permanent placement of barricades, ropes, signs, or other barriers to access certain parts of state buildings or grounds. Unauthorized persons beyond the barriers may be removed with the assistance of officers of the department of public safety or charged with a criminal offense if appropriate, or both.

**11—100.3(142B) Smoking.**

**100.3(1)** Use of tobacco products is prohibited in all space in capitol complex buildings controlled by the executive branch including tunnels and enclosures, unless otherwise designated by appropriate signs. The department shall post signs at the entrances to capitol complex buildings to publicize this rule.

NOTE: The secretary of the senate, the clerk of the house and the court administrator are responsible for areas under their control.

**100.3(2)** Use of tobacco products is prohibited on the grounds of the capitol complex, except as permitted by the director in designated areas or structures designated for smoking. The department shall post signs at designated smoking areas.

**100.3(3)** This rule shall be enforced by peace officers of the department of public safety. Peace officers other than those employed by the department of public safety may enforce this rule at the request of the commissioner of public safety or at the request of a peace officer employed by the department of public safety.

This rule is intended to implement Iowa Code section 8A.322 and chapter 142B and Executive Order Number 68 signed November 23, 1998, by Governor Terry Branstad.

**11—100.4(8A) Use and scheduling of capitol complex facilities.**

**100.4(1)** *Scheduling conference rooms.* Conference rooms, auditoriums and common areas within the capitol complex are for use by state agencies, boards and commissions for authorized purposes only. Arrangements may be made by contacting the agency responsible for scheduling the facility. The department of administrative services is responsible for scheduling all common areas not under control of other agencies. Questions about usage shall be resolved by the director of the responsible agency. General questions about scheduling may be directed to the department's customer service center at (515)242-5120.

**100.4(2)** *Legislative and judicial building contacts.* The secretary of the senate, the clerk of the house and the court administrator are responsible for areas under their control. Common areas in and around the Capitol Building are under the control of the department of administrative services.

**100.4(3)** *Iowa Historical Building events.* Scheduling of events by the public as well as by state agencies, boards and commissions to be held in the Iowa Historical Building will be coordinated by the department of cultural affairs. Groups or individuals wishing to use the Iowa Historical Building for an event should contact the Facilities Coordinator, State Historical Society of Iowa, Iowa Historical Building, 600 East Locust Street, Des Moines, Iowa 50319.

**100.4(4)** *Event request.* State agencies or the general public may request use of capitol complex facilities, grounds or parking lots for public events by contacting the director and completing an application provided by the department. This shall not be interpreted as an infringement on the right of assembly and petition guaranteed by Section 20, Article I, Constitution of Iowa.

*a.* The director shall notify the applicant of approval or denial to use the requested areas. Notification of approval may take the form of a letter to the event sponsor(s) or a memorandum of understanding (MOU) signed by the director and the event sponsor(s). The MOU specifies the conditions under which the event will take place.

*b.* The director may allow events if appropriate security and supervision are provided and the director determines that granting the approval is consistent with the underlying purpose of these rules and that the public interest so demands.

*c.* Approval for the event may contain such terms and conditions as are consistent with the protection, health and safety of occupants of the buildings and visitors to the capitol complex as well as preservation of the buildings, facilities, and grounds. The approval may also contain limitations on equipment used and its location, and the time and area within which the event is allowed.

**100.4(5)** *Refusal of usage.* The director may refuse to allow use of the facilities that, in the director's judgment, would be disruptive of official state business or of the public health, safety and welfare, or is inconsistent with subrule 100.4(4). The director may consider such factors as recommendations of the department of public safety, previous experience with the requesting group or other events similar to that requested.

**100.4(6)** *Liability.* Any state agency or public group granted permission to use the capitol complex facilities shall be responsible for any damage occurring during the event.

*a.* Prior to granting approval, the director may require the requesting group to acquire liability insurance in which the "State of Iowa" is named as an additional insured to protect the state.

*b.* As a condition of granting approval of a request for an event at the capitol complex, the director may also require that a damage deposit or bond be posted by the group making the request. The director may require the filing of a bond payable to the director in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used, damages and other costs resulting from this event. In lieu of a bond, an event requester may elect to deposit cash equal to the amount of the required bond.

**100.4(7)** *Event cleanup.* Any state agency or public group granted permission to use the capitol complex facilities shall be responsible for a thorough cleanup after the event is concluded. All debris and animal waste shall be removed.

[1]**100.4(8)** *Alcoholic beverages at events.* Consumption of alcoholic beverages, as defined in Iowa Code chapter 123, is not permitted on the capitol complex except for special events in the Iowa Historical Building, 600 East Locust Street, with the prior written approval of the director and the director of the department of cultural affairs.

**100.4(9)** *Distribution of literature.* Permission to distribute literature on the capitol complex grounds or in state-owned or occupied areas of leased buildings in metropolitan Des Moines must be obtained from the director. The director may designate specific locations from which literature may be distributed in order to ensure control of litter, unobstructed access to public buildings and the conduct of public business.

**100.4(10)** *Private parties.* No state-owned facilities, equipment or state personnel shall be used for such events as private parties, weddings, demonstrations, and rallies without the prior written consent of the director.

**100.4(11)** *Access hours.* Public use of state buildings is restricted to normal office hours. Hours during which public access is allowed shall be posted at each entrance to a building through which public access is allowed.

**100.4(12)** *After-hours use.* After-hours use of capitol complex buildings is restricted to use by state agencies and must directly relate to the mission of the state agency sponsoring the event.

*a.* For all buildings except the Capitol Building and the Iowa Historical Building, normal office hours are 7 a.m. to 5 p.m., Monday through Friday. Buildings are closed to the public on weekends and state-designated holidays.

*b.* For the Capitol Building, normal office hours are 6 a.m. to 6 p.m., Monday through Friday, except that if a legislative session lasts past 6 p.m., the closing hour is extended until one-half hour beyond the session's end. Weekend hours of public access shall be posted at public entrances. Inquiries regarding the hours the building is open may be directed to the information desk at (515)281-5591.

*c.* For the Iowa Historical Building, normal office hours are 8 a.m. to 4:30 p.m. every day, excluding weekends and holidays. The Iowa Historical Museum and the State Historical Library, located within the Iowa Historical Building, have different hours. Hours of public access shall be posted at public entrances. Inquiries regarding the hours the building is open may be directed to the information desk at (515)281-5111.

*d.* Hours listed above are subject to change. Changes in hours shall be posted on the main entrance doors to each affected building.

**100.4(13)** *Capitol grounds hours.* Public use of the capitol complex grounds is restricted to the hours of 6 a.m. to 11 p.m. daily. Public access hours are subject to change. Changes in hours shall be posted prominently on the capitol complex.

This rule is intended to implement 2003 Iowa Code Supplement section 8A.322.

[1] See 2004 Iowa Acts, HJR 2005 and SJR 2007.

**11—100.5(8A) Solicitation.**

**100.5(1)** Canteens, cafeterias and vending machines under the control of the department for the blind, gift shops under the control of the department of cultural affairs and concessions authorized by the director pursuant to subrule 100.4(4) are authorized methods of direct sales to employees and visitors in state-owned and occupied buildings in metropolitan Des Moines.

**100.5(2)** Functions involving sales to state employees or to the public in the capitol complex or in state-owned and occupied buildings in metropolitan Des Moines must receive prior approval through the event request process in subrule 100.4(4). Sales by state employees are governed by Iowa Code chapter 68B.

**100.5(3)** Event sponsors are responsible for contracting with vendors for sales during the event. The MOU may contain terms and conditions for vendors and shall specify the responsibility of the event sponsor to ensure that all approved vendors comply with all applicable city, state and federal laws, ordinances, rules and regulations. Vendors must have all required city, state and federal permits and licenses.

**100.5(4)** For the convenience of employees and visitors, the director may enter into agreements with private vendors for providing services and products within state buildings under the jurisdiction of the department. Provision of services and products shall not interfere with the business of government or negatively affect building aesthetics. The director shall solicit competitive proposals when it is probable that more than one vendor may desire to offer a similar service or product. Agreement terms and conditions shall protect the state's interest regarding liability, reasonable compensation to the state, performance and appearance standards, and other relevant concerns.

**100.5(5)** The director reserves the right to deny or remove any vendor who does not comply with these rules and applicable laws and regulations.

This rule is intended to implement 2003 Iowa Code Supplement section 8A.322 and Iowa Code section 303.9 and chapter 216D.

**11—100.6(8A) Office space management.**

**100.6(1)** *Purpose.* The purpose of this rule is to standardize office space management at the seat of government in order to effectively plan and utilize office space and to promote connectivity and reuse of modular office systems. The rules outline the responsibilities of state agencies relative to use of office space assigned to them by the department of administrative services and the responsibilities of the department to manage and coordinate changes to an agency's use of its assigned space.

**100.6(2)** *Scope and applicability.* The department's authority for office space assignment applies to all state office space, including leased office space, at the seat of government except for buildings and grounds described in Iowa Code section 216B.3, subsection 6; section 2.43, unnumbered paragraph 1; and any buildings under the custody and control of the Iowa public employees' retirement system.

**100.6(3)** *Office space standards.* State agencies are required to use the following standards:

*a.* The department of administrative services has developed and shall maintain, in cooperation with state agencies, office space standards, expressed in square feet for individual offices classified by type of work, and by occupancy, expressed as the number of occupants per building floor or major unit thereof. These standards will be used to facilitate space planning, but are not intended to be applied in an exact manner to each cubicle or office. Some flexibility may be allowed in the work plan created for managing changes to use of office space to provide for unique agency needs. All office space layouts shall comply with applicable federal and state regulations and codes.

*b.* The department of administrative services has defined and shall maintain, in cooperation with state agencies and Iowa Prison Industries (IPI), modular office systems standards, expressed by function and connectivity, for use by state agencies. These standards are for the purpose of facilitating reuse of modular office system components.

The requirement to follow these standards may be waived by the director when supported by a written factual and objective business case analysis that provides clear and convincing evidence to support the waiver.

**100.6(4)** *Notification of intended office space or office systems modifications.* To facilitate office space planning and cost-effective space utilization, an agency shall notify the department in writing at least 45 days prior to expected completion of the work whenever an agency becomes aware of possible modifications to an agency's organization, programs or mission which may require a corresponding increase or decrease in an agency's current office space requirements; or when an agency first identifies a need to modify use of assigned office space including relocating wiring, replacing, adding or deleting modular office components, or making other floor plan modifications.

**100.6(5)** *Work plan.* Upon written notification of intended office space or office systems modifications, the department of administrative services and the agency will negotiate and complete a work plan including but not limited to the following items:

*a.* A description of the intended space modification result;

*b.* The tasks required to achieve the intended result, such as creating construction specifications, identifying wiring needs, selection of a space planner and a moving service, and identifying related purchases;

*c.* The party responsible for accomplishing each task; and

*d.* The scheduled time line for tasks included in the design, installation (construction and move) and completion of the project.

An agency may not proceed with office space modifications in the absence of a work plan agreed to and approved in writing by the agency and the department of administrative services. The work plan shall be modified to reflect any changes in intended results, tasks, responsibilities and time schedule.

**100.6(6)** *Purchase of modular office components.* To obtain office furniture and modular office components, an agency may purchase standard modular office components and other furniture items from Iowa Prison Industries in accordance with Iowa Code section 904.808 without further competition.

To obtain office furniture and modular office components, an agency may purchase standard modular office components and other furniture items from a targeted small business (TSB) when the purchase will not exceed $5,000, per 2003 Iowa Code Supplement section 8A.311, without further competition.

Use of a competitive selection process is required for all purchases, unless the agency chooses to use one of the procedures above. However, competitive selection may be used for any purchase. When an agency elects to obtain standard office modular components and other furniture items through the department of administrative services' competitive procurement process, IPI and TSBs shall be part of the bidding process.

The portion of the work plan for purchasing modular office systems or office furniture shall allow for the issuance of purchase orders at least 30 days prior to the desired delivery date.

Regardless of how an agency purchases or obtains modular office components, the department of administrative services shall retain responsibility for management and coordination of office space planning.

**100.6(7)** *Disposal of surplus office modular components, furniture and equipment.* State agencies may dispose of unfit or unnecessary office modular components, furniture and equipment by contacting the state surplus office, as identified by the department; offering items in good repair to other agencies either through the department or directly to other agencies; or trading in used items when purchasing replacements.

Any costs associated with disposal of nonstandard modular office components are the responsibility of the state agency.

These rules are intended to implement 2003 Iowa Code Supplement sections 8A.104, 8A.321, and 8A.322 and Iowa Code section 303.9 and chapters 142B and 216D.

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[1] At its meeting held June 11, 2002, the Administrative Rules Review Committee imposed a 70-day delay on the effective date of rule 401—3.4(18); the delay was lifted by the Committee at its meeting held July 9, 2002, effective July 10, 2002.

# CHAPTER 101
# PARKING
[Prior to 5/26/04, see 401—Ch 4]

**11—101.1(8A) Purpose.**

**101.1(1)** The purpose of these rules is to provide citizens with the most convenient access to Iowa state offices on the capitol complex, to provide state employees a parking space within a reasonable distance of their offices, to remove the hazards inherent in unregulated parking, to define prohibited parking, and to set forth fines and the means of enforcement.

**101.1(2)** Parking spaces or lots will be assigned to three classes of drivers: (1) visitors and employees with disabilities, (2) other visitors, and (3) other employees.

**101.1(3)** Capitol complex parking area designations may be found on the department's Web site at http://das.gse.iowa.gov/gen_info/parking3.pdf.

**11—101.2(8A) Definitions.** The following definitions shall apply to this chapter.

*"Access coordinator"* means an employee, designated within each agency, with the assigned duties of disseminating information on capitol complex parking and building access and requesting and distributing employee parking permits and access cards from the department of administrative services, the department of public safety, and the house of representatives or the senate, as appropriate, for employee parking lot assignment and building access.

*"Capitol complex"* means an area within the city of Des Moines in which the Iowa state capitol building is located. This area includes the state capitol building and all real property and appurtenances thereto owned by the state of Iowa within an area bounded on the north by Interstate Highway 235, on the east by East 14th Street, on the south by the northernmost railroad tracks south of Court Avenue and on the west by East 6th Street.

*"Capitol complex parking area"* means a parking lot or parking structure for employees or visitors that is within the boundaries of the capitol complex and that is under the control of the executive branch of state government.

*"Combined lot"* or *"overflow lot"* means a parking area designated by the department of administrative services for both employees and visitors.

*"Controlled lot"* means a parking area for which access or usage is designated by any of the following: parking gates, vehicle decals, signs, symbols, or markings.

*"Council member"* means a member of a state board, committee, commission, or council who is not a full-time state employee and who is present on the capitol complex only on an occasional basis in the member's official capacity.

*"Delinquent"* means a parking fine that has not been paid within 30 days of issuance. If the owner or operator of the vehicle contests the parking citation by filing a written request for hearing within 10 days of the issuance of the citation, the fine will be suspended pending the outcome of the contested case. If the appeal decision upholds the citation, an unpaid fine shall become delinquent 10 days after issuance of the final decision or 31 days after issuance of the ticket, whichever is later.

*"Department"* means the department of administrative services.

*"Director"* means the director of the department of administrative services or the director's designee.

*"Employee"* means any person employed full-time or part-time by the state of Iowa, including legislators, judges, and temporary workers. "Employee" includes a contractor and the contractor's employees who regularly work on the capitol complex. "Employee" shall also mean a council member who is at the capitol complex in the member's official capacity.

*"Habitual violator"* means any owner or operator of a vehicle who has received six or more separate and distinct parking citations in the past 12 months regardless of whether payment for the citations is made in a timely manner.

*"Legislative parking area"* means a parking lot within the boundaries of the capitol complex that is under the control of the legislative branch of state government.

*"Operator"* means any person who is in actual physical control of a vehicle.

*"Overnight parking"* means parking on the capitol complex between 11 p.m. and 6 a.m.

*"Overtime parking"* means parking in a space or parking area longer than the posted time limit.

*"Owner"* means a person who is named on the legal title of a vehicle as the owner or, in the case of a vehicle without a title certificate, the person who is lawfully seized of the vehicle.

*"Parking permit"* means a device such as but not limited to a decal, placard or tag distributed by the department of administrative services or the legislative branch and used to identify the vehicle of a state employee or council member in capitol complex and legislative parking areas.

*"Peace officer"* means a person defined as a peace officer in Iowa Code section 801.4, who is assigned to the Iowa state patrol district 16 on either a permanent or temporary basis.

*"Persons with disabilities parking permit"* means a permit as defined in Iowa Code section 321L.2 that bears the international symbol of accessibility and that is issued by the department of transportation or by the corresponding agency of another state that allows the holder to park in a persons with disabilities parking space.

*"Persons with disabilities parking sign"* means a sign that bears the international symbol of accessibility and that meets the requirements of Iowa Code section 321L.6.

*"Persons with disabilities parking space"* means a parking space, including the access aisle, that is designated for use only by motor vehicles displaying a persons with disabilities parking permit and that meets the requirements of Iowa Code sections 321L.5 and 321L.6 and 661—Chapter 18.

*"Person with a disability,"* as defined in Iowa Code section 321L.1, means a person who has a disability that limits or impairs the person's ability to walk.

*"Reserved parking"* means a parking area designated by a "reserved" parking sign or other assignment indicator pursuant to subrule 101.3(2), and assigned by the director to a specific agency, vehicle or individual.

*"Vehicle"* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include any device moved by human power.

*"Visitor"* means a member of the public at the capitol complex who is not included in the definition of employee.

**11—101.3(8A) Parking space assignments.**

**101.3(1)** Each parking space on the capitol complex will be assigned, on an individual or lot basis, by the director, except legislative parking areas which shall be assigned by the chief clerk of the house of representatives or the secretary of the senate or by the legislative council. Parking assignments may be dependent upon factors including, but not limited to, office location, type of vehicle (such as an oversized vehicle or a motorcycle), or the need to park after normal working hours.

**101.3(2)** The assignment of parking spaces will be indicated and designated by traffic control devices including but not limited to signs, instructions, lines or symbols painted on curbs or on parking surfaces, or by curbs, barricades, blocks, and lights.

**101.3(3)** A parking permit must be displayed by all vehicles parked by employees on the capitol complex.

**11—101.4(8A) Parking for persons with disabilities.**

**101.4(1)** Spaces designated for persons with disabilities in visitor parking areas, unless specifically posted for employee parking, shall be used only by visitors with disabilities or by persons transporting visitors with disabilities. Such visitors are required to display a persons with disabilities parking permit in or on their vehicle pursuant to Iowa Code section 321L.4.

**101.4(2)** Spaces designated for employees with disabilities shall be used only by employees with disabilities, or persons who are transporting employees with disabilities, who display a persons with disabilities parking permit in or on their vehicle pursuant to Iowa Code section 321L.4 and who display a capitol complex parking decal.

**11—101.5(8A) Visitor parking.** Visitors to the capitol complex shall park in areas designated for visitor parking, in combined lots, or on the street where parking is not prohibited. A visitor shall not park in a parking area posted for employee parking except as provided in subrule 101.9(4).

**11—101.6(8A) Deliveries.** Most buildings on the capitol complex have delivery entrances with limited space for parking while a person loads or unloads a vehicle. Drivers of delivery vehicles and others needing to load or unload their vehicles near the building shall use these entrances. Each of the restrictions and regulations contained in these rules, all traffic control devices, and state laws shall apply to delivery vehicles.

**11—101.7(8A) Employee parking.** Employees shall park only in assigned capitol complex employee parking areas or combined lots, and not in areas designated solely for visitors or otherwise reserved or restricted except as provided in subrule 101.9(4). An employee who is a council member shall be assigned a parking permit that, when displayed, will allow the council member to park in either an employee or a visitor parking area.

**101.7(1)** *Access card issuance.* The director or Iowa state patrol district 16 will issue to each employee an access card, if needed, for access to the employee's assigned lot. An access card shall be assigned to an employee by name for access granted to that employee. Generic or spare access cards shall not be issued.

**101.7(2)** *Parking permit issuance.* All employees who park any vehicle, other than a state vehicle, on the capitol complex shall register the vehicle through their access coordinator and obtain a parking permit and a space or lot assignment. The parking permit will be coded and shall be used only in the assigned space or lot(s).

*a.* All employees, except legislative employees, who park any vehicle, other than a state vehicle, on the capitol complex shall register the vehicle with the department of administrative services through their access coordinator.

*b.* Legislative employees must register with the chief clerk of the house of representatives or the secretary of the senate for a parking permit and a parking space or lot assignment, unless such registration and assignment are delegated by the legislative branch to another entity.

*c.* The department may establish a process for issuing nonadhesive capitol complex parking permits to an access coordinator for temporary use by employees from the coordinator's agency who normally do not work on the capitol complex and to council members associated with the coordinator's agency. Access coordinators shall record the number from the temporary permit and forward this information to the department as requested. The access coordinator shall collect the temporary permit from the driver when the driver no longer needs a parking permit.

**101.7(3)** *Failure to obtain a parking permit.* An employee who fails to register a vehicle pursuant to subrule 101.7(2) or fails to obtain a parking permit and a space or lot assignment shall not park in capitol complex parking areas.

**101.7(4)** *Display of permits.*

*a.* Parking decals with adhesive backing must be permanently affixed to the lower corner of the vehicle's windshield on the driver's side within 48 hours of issuance. The use of tape or adhesive other than that found on the decal to affix the parking decal is prohibited.

*b.* Dash placards shall be placed on the vehicle's dashboard so they are visible through the windshield on the driver's side.

*c.* Hangtags shall be hung from the vehicle's rearview mirror.

**101.7(5)** *Replacement of parking permits.*

*a.* *Lost parking permit.* An employee or a council member shall replace a lost parking permit by contacting the access coordinator and making application to the department of administrative services or the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

*b.* *Damaged parking permit.* An employee or a council member shall replace a parking permit that becomes damaged or unidentifiable or a decal that is affixed to a vehicle being reassigned to a parking

area that requires a different parking permit by contacting the access coordinator and making application to the department, or legislative branch, as appropriate.

**101.7(6)** *Removal of parking permits.* A parking permit used in or affixed to a vehicle that is no longer being driven to the capitol complex by the employee or council member to whom the parking permit was issued shall be removed from the vehicle. When the individual to whom the parking permit was issued is no longer an employee, the parking permit shall be removed from the vehicle and returned to the individual's access coordinator.

**101.7(7)** *Replacement access cards.*

*a.* *Replacement fee.* If an access card is lost or stolen, it shall be replaced upon approval of an application submitted through the access coordinator and payment of the fee prescribed by the director. The replacement fee shall be based on the costs of replacing the card.

*b.* *No replacement fee.* The first card issued to an individual and any card replacing one that failed and is returned to the Iowa state patrol district 16 shall be issued free of charge.

**101.7(8)** *Access coordinator responsibilities.* An agency access coordinator shall:

*a.* Assist employees from the coordinator's agency with completing and filing an application for an access card or parking permit.

*b.* Ensure that employees of the coordinator's agency are familiar with the rules of this chapter and the procedures for obtaining a parking permit and access card.

*c.* Assist with distribution of parking permits to employees of the coordinator's agency.

**11—101.8(8A) Temporary parking.**

**101.8(1)** A request to park temporarily for the purpose of loading or unloading a vehicle in an area where parking is prohibited shall be directed to the Iowa state patrol district 16 at (515)281-5608. The requester shall provide the driver's name, license plate number of the vehicle and where it is parked.

**101.8(2)** An individual who is a visitor on the capitol complex and who drives a vehicle with a parking decal assigned to a specific employee lot may park in a visitor's space provided permission is granted by the Iowa state patrol district 16. The driver shall immediately telephone the Iowa state patrol district 16 at (515)281-5608 and give the driver's name, license plate number of the vehicle and where it is parked. The driver will receive instructions on obtaining permission.

**101.8(3)** An employee who drives a vehicle that has not been registered pursuant to subrule 101.7(2) or is without a parking decal pursuant to subrule 101.7(4) must obtain permission from Iowa state patrol district 16 to temporarily park on the capitol complex. The driver shall immediately telephone Iowa state patrol district 16 at (515)281-5608 and give the driver's name, license plate number of the vehicle and where it is parked. The driver will receive instructions on obtaining permission.

**101.8(4)** Temporary parking permission granted under subrule 101.8(1), 101.8(2), or 101.8(3) shall not constitute a waiver of the rules in this chapter.

**11—101.9(8A) Prohibited parking.** Failure to locate a space where parking is permitted in a designated capitol complex parking area does not entitle the operator to park in a manner prohibited by this chapter or state law.

**101.9(1)** Vehicles shall not be parked in a manner that violates any of the rules in this chapter or state law.

**101.9(2)** Vehicles shall not be parked in a manner that causes:

*a.* More than one space to be occupied by a single vehicle.

*b.* A street, parking lot lane or traffic lane within a capitol complex parking lot to be blocked.

*c.* A building entrance to be blocked or obstructed.

*d.* Access to fire hydrants, emergency equipment or vehicles to be blocked or obstructed.

*e.* Obstruction of the egress of another vehicle.

*f.* Pedestrian walkways or sidewalks to be obstructed or blocked.

*g.* Occupation of an area where vehicle parking is prohibited.

*h.* Overtime parking.

**101.9(3)** A vehicle shall not be parked in a space designated for use by visitors with disabilities unless the driver is a visitor with disabilities or is transporting a visitor with disabilities. A vehicle shall not be parked in a space designated for use by employees with disabilities unless the driver is an employee with disabilities or is transporting an employee with disabilities.

**101.9(4)** A vehicle shall not be parked in a space or lot unless that space or lot is designated for use by or assigned to the driver. However, general employee or visitor spaces or lots that are not otherwise designated (by sign or symbol that indicates a restricted or continuous reserved status, such as legislator, emergency or delivery vehicle, or persons with disabilities) may be used between 6 p.m. and 6 a.m. and during weekends and state government holidays, except as otherwise specified by this rule.

**101.9(5)** Vehicles shall not be parked on curbs, on grass or in any area not intended for vehicle parking.

**101.9(6)** Delivery vehicles shall not be parked in a manner or for a period of time that does not comply with the restrictions established for those vehicles by the director or with a traffic control device.

**101.9(7)** A vehicle with a delinquent parking ticket shall not be allowed to be parked on the capitol complex.

**101.9(8)** Vehicles of habitual violators shall not be allowed to be parked on the capitol complex.

**101.9(9)** If any vehicle is found stopped, standing or parked in any manner in violation of the provisions of these rules and the identity of the operator cannot be determined, the owner or operator or corporation in whose name the vehicle is registered shall be held responsible for the violation.

**101.9(10)** Vehicles shall not be parked on the capitol complex overnight in parking areas not specifically designated for overnight parking when there are conditions of snow or ice or when the department closes an area for maintenance.

**11—101.10(8A) Waiver.** As the purpose of these rules is to facilitate the system of parking, to encourage compliance and to reduce conflict, any rule contained herein, unless otherwise provided by law, may be suspended or waived by the director to aid law enforcement, to prevent undue hardship in any particular instance or to prevent unnecessary conflict or injustice. All suspensions and waivers shall be in writing. The director may change space and lot designations, excluding those in legislative parking areas, temporarily or permanently, to maintain appropriate availability of parking on the capitol complex. Waiver of these rules shall be requested in accordance with 11—Chapter 9.

**11—101.11(8A) Enforcement.**

**101.11(1)** Peace officers assigned to the Iowa state patrol district 16 shall be primarily responsible for the enforcement of these rules.

**101.11(2)** The Iowa state patrol peace officers may in their discretion enforce these rules by:

*a.* Issuing oral or written orders or directions to an owner or operator.

*b.* Issuing a citation.

*c.* Removing a vehicle or causing a vehicle to be removed in accordance with subrule 101.11(6).

**101.11(3)** The director may rescind the privilege to park on the capitol complex for any vehicle for which there is a delinquent parking ticket.

**101.11(4)** The director may rescind the privilege to park on the capitol complex for any vehicle of a habitual violator.

**101.11(5)** Removal of vehicles.

*a.* A vehicle may be removed for nonpayment of all parking fines whether or not the vehicle is illegally parked at that time, when there are delinquent parking fines for the vehicle or registration plates.

*b.* A peace officer shall have the right to remove from the capitol complex the vehicle of a habitual violator.

**101.11(6)** If a peace officer determines that a vehicle is to be removed, the peace officer shall have the vehicle removed by the use of state equipment or by a private towing firm or contractor.

**101.11(7)** The director may contract with an individual or firm to provide services for removing (towing) vehicles found in violation of these rules or state law and to store such vehicles until claimed by the owner or disposed of as abandoned vehicles.

**101.11(8)** A peace officer, upon impounding a vehicle, shall give notice in person, by telephone or by ordinary mail to the owner of the vehicle. The notice shall state the specific violation or other reason for which the vehicle was impounded, its location and the fee for the removal, storage and notice. The towing firm or individual shall release the vehicle to the owner upon notification by the department of administrative services that the owner or operator has paid all outstanding citations and after the service fee has been paid to the towing firm or individual. The amount of this fee will be determined by the agreement between the director and the individual or firm.

**101.11(9)** If an owner or operator returns to the vehicle prior to its removal, but after the towing contractor has been summoned, the peace officer may require that the vehicle remain on the capitol complex until the towing contractor arrives. Upon the towing contractor's arrival, the vehicle may be allowed to be moved after the operator pays the towing contractor the cost of the service call and after the department of administrative services notifies the peace officer that all delinquent parking fines have been paid. The towing firm or individual shall issue a receipt for payment of the cost of the service call to the owner or operator.

**101.11(10)** An operator who enters a parking lot in a manner not consistent with usual parking lot access procedures shall be subject to a parking citation and possible charges for damages. Access to parking lots inconsistent with usual access procedures includes, but is not limited to: closely following another vehicle into a parking lot in a manner that prevents the gate from closing between vehicles; opening a gate for unauthorized persons with another operator's access card; driving over the curb or around the gate; driving through a gate that is not fully raised; or lifting a parking gate without authorization.

**101.11(11)** In addition to any enforcement action taken under this rule, charges may be filed under other criminal statutes if appropriate.

**11—101.12(8A) Fines.**

**101.12(1)** A fine of $10 is hereby established for the violation of any of these rules, except those pertaining to persons with disabilities parking.

**101.12(2)** The parking fine shall be increased by $10 for all outstanding delinquent violations if the fine is not or has not been paid within 30 days of the date upon which the violation occurred.

**101.12(3)** Improper use of a persons with disabilities parking space is subject to a fine pursuant to Iowa Code section 321L.4(2).

**101.12(4)** A violator may be notified of a violation by being served with a parking violation ticket which:

*a.* May be served personally to the operator or placed upon the vehicle that is parked in violation of a rule.

*b.* Advises the operator of the rule violated.

*c.* Instructs the operator that the operator is required for each violation to pay $10 to the department of administrative services within 10 days by submitting the ticket or the ticket number and payment in cash or a check or money order payable to the Department of Administrative Services, Customer Service Center, Hoover State Office Building, Level A, Des Moines, Iowa 50319.

*d.* Warns the operator that:

(1) The director may rescind the parking privilege of any owner or operator who has a delinquent parking ticket.

(2) The director may rescind the parking privilege of any owner or operator who meets the definition of "habitual violator."

When the parking privilege is rescinded, the vehicle shall not be allowed to be parked in any capitol complex parking area until all fines are paid or the owner or operator no longer meets the definition of "habitual violator." Peace officers may tow any vehicle parked on the capitol complex for which parking privileges have been rescinded.

*e.* Warns the violator that failure to pay the fine may result in the director's proceeding against the violator in an Iowa district court.

*f.* Advises the operator of how to obtain a hearing on the charges.

*g.* Warns that the fine for each separate violation shall be increased by $10 if the parking ticket is not paid within 30 days of the date upon which the violation occurred.

**11—101.13(8A) Appeals.** Appeals regarding enforcement of parking rules shall be pursuant to 11—Chapter 7, Contested Cases.

If the owner or operator wishes to contest a parking citation, the fees paid because of the removal or attempted removal of the vehicle, or any other action arising from these rules, the owner or operator shall notify the director in writing within ten days of the action. Upon such notification, the owner or operator will be provided with written instructions that describe the procedure the director will use to conduct a hearing to consider the owner's or operator's evidence and arguments.

These rules are intended to implement Iowa Code Supplement sections 8A.322 and 8A.323.

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# CHAPTER 102
# STATE PRINTING
[Prior to 8/18/04, see 401—Ch 5]

**11—102.1(8A) Purpose.** The purpose of this chapter is to provide for the operation of printing services by the department, the use of office copiers by state agencies, and the establishment of the publication rates of certain legal notices.

**11—102.2(8A) Definitions.**

*"Agency"* or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

*"Department"* means the department of administrative services.

*"Director"* means the director of the department of administrative services or the director's designee.

*"Printing"* means the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink, the reproduction of an impression by a photographic process, or the reproduction of an image by electronic means and shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books, journals, pamphlets, magazines and literary articles by a library of the state or any of its offices, departments, boards, and commissions held as a part of their library collection.

*"Printing equipment"* means offset presses, gravure presses, silk-screen equipment, large format ink jet printers, digital printing/copying equipment, letterpress equipment, office copiers and bindery equipment.

**11—102.3(8A) Location.** The state printing office is located at the capitol complex in Des Moines, Iowa. Correspondence shall be addressed to State Printing, Department of Administrative Services, Grimes State Office Building, Des Moines, Iowa 50319.

**11—102.4(8A) State printing.** The state printing operation maintains a centralized printing facility in the Grimes State Office Building with satellite offices in other locations not necessarily at the capitol complex.

State printing provides short-run turnaround printing services. When a request is made for state printing and the quantity of a printing order is such that it can be handled economically by state printing, state printing will produce it. Other work will be contracted out by state printing. State printing equipment is available at all times to serve the best interests of the state and provide high-quality, cost-effective printing services to state agencies, state officials, and other branches of state government.

**11—102.5(8A) Printing equipment.**

**102.5(1)** *Use of printing equipment.* A state agency may consult with the department regarding the agency's purchase of printing equipment, including office copiers, for direction on how to best meet the needs of the agency.

**102.5(2)** *Private use of printing equipment.* No state-owned printing equipment may be used to produce printing for private purposes. Items produced on state printing equipment shall be items for state agencies. However, state employees, persons doing business with the state of Iowa, and those requesting copies of public records may purchase copies produced on office copiers. The selling price of these copies will be the actual cost of the copy including any search or supervisory costs involved, pursuant to 11—subrule 4.3(7).

**11—102.6(8A,49) Publication of ballot and notice.** A sample ballot as prescribed in Iowa Code section 49.53 may be published in a reduced size. When a ballot is reduced, the candidates' names on the ballot must not be smaller than six-point type.

This rule is intended to implement Iowa Code section 49.53.

**11—102.7(8A,49) Cost of publication—sample ballot.** The charges for the publication of a sample ballot shall not be more than the usual or customary display advertising rate that the newspaper charges its regular advertisers. In a city in which no newspaper is published and with a population of 2000 or less, a maximum cost has been established. The maximum cost for a quarter-page sample ballot must not exceed $250 and maximum cost for a half-page sample ballot must not exceed $350.

This rule is intended to implement Iowa Code Supplement section 49.54.

**11—102.8(8A,618) Fees paid to newspapers.** The fees paid to newspapers for official publications, notices, orders, citations or other publications required or allowed by law shall not exceed the rate set June 1 of each year by the director. The director shall calculate a new rate for the following fiscal year as prescribed in Iowa Code Supplement section 618.11 and shall publish this rate as a notice in the Iowa Administrative Bulletin prior to the first day of the following calendar month. The new rate shall be effective on the first day of the calendar month following its publication. The calculation and publication of the rate by the director shall be exempt from the provisions of Iowa Code chapters 17A and 25B.

This rule is intended to implement Iowa Code Supplement section 618.11.

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# CHAPTER 103
# STATE EMPLOYEE DRIVING GUIDELINES
[Prior to 9/17/03, see 401—Chapter 11]

**11—103.1(8A) Purpose.** The purpose of this chapter is to provide for the assignment of state motor vehicles and for the administration of a self-insurance program for motor vehicles owned by the state.

**11—103.2(8A) Definitions.**

*"At-fault accident"* means an accident in which the state driver is determined to be 50 percent or more responsible for the accident.

*"Cargo payload"* means the net cargo weight transported. The weight of the driver, passengers, and fuel shall not be considered in determining cargo payload.

*"Cargo volume"* means the space calculated in cubic feet behind the vehicle driver and passenger seating area. In station wagons, the cargo volume is measured to the front seating area with the second seat laid flat behind the driver.

*"Defensive driving course"* means an eight-hour course with instruction provided by the Iowa state patrol.

*"Driver improvement course"* means an eight-hour course with instruction provided by a local area college.

*"Gross vehicle weight rating (GVWR)"* means the weight specified by the manufacturer as the loaded weight of a single vehicle.

*"Habitual violation"* means that the person has been convicted of three or more moving violations committed within a 12-month period.

*"Passengers"* means the total number of vehicle occupants transported on a trip, including the driver.

*"Pool car"* means a vehicle assigned to the state of Iowa, department of administrative services, division of fleet and mail pool.

*"Preventable accident,"* for purposes of this chapter, means an accident that could have been prevented or in which damage could have been minimized by proper evasive action.

*"Primary use"* means the utilized application exceeds 50 percent of the miles driven annually for United States Environmental Protection Agency (EPA)-designated light-duty trucks and vans and exceeds 75 percent of the miles driven annually for EPA-designated passenger sedans and wagons.

*"Private vehicle"* means any vehicle not registered to the state of Iowa.

*"Special work vehicle"* means but is not limited to fire trucks, ambulances, motor homes, buses, medium- and heavy-duty trucks (25,999 lbs. GVWR and larger), heavy construction equipment, and other highway maintenance vehicles, and any other classes of vehicles of limited application approved by the state vehicle dispatcher.

*"State driver"* means any person who drives a vehicle to conduct official state business other than a law enforcement officer employed by the department of public safety.

*"State vehicle"* means any vehicle registered to the state of Iowa, department of administrative services.

**11—103.3(8A) Applicability.**

**103.3(1)** *Agencies subject to vehicle assignment standards.* Pursuant to Iowa Code Supplement section 8A.362, the agencies listed below shall assign all vehicles within their possession, control, or use in accordance with the standards set forth in rule 103.4(8A). The following agencies are subject to the vehicle assignment standards in rule 103.4(8A):

*a.* State vehicle dispatcher;

*b.* State department of transportation;

*c.* Institutions under the control of the state board of regents;

*d.* The department for the blind; and

*e.* Any other state agency exempted from obtaining vehicles for use through the state vehicle dispatcher.

**103.3(2)** *Exceptions to vehicle assignment standards.* This rule shall not apply to special work vehicles, law enforcement vehicles and vehicles propelled by alternate fuels.

**103.3(3)** *Exceptions to driving guidelines for the vehicle self-insurance program.* The driving guidelines for the vehicle self-insurance program do not apply to the department of transportation or to institutions under the authority of the board of regents. Nor do they supersede any applicable federal law or regulation or state law. Persons who have been granted an ADA exception through the department of administrative services are also exempted from these guidelines.

**11—103.4(8A) Vehicle assignment guidelines.**

**103.4(1)** In order to maximize the average passenger miles per gallon of motor vehicle fuel consumed, vehicles shall be assigned on the following basis:

*a.* EPA-rated compact sedans shall carry one or two passengers and their personal effects.

*b.* EPA-rated compact wagons shall carry one or two passengers, their personal effects, and cargo for which a compact sedan cannot be used.

*c.* EPA-rated midsize sedans shall carry three or more passengers and their personal effects.

*d.* EPA-rated midsize wagons shall carry one or more passengers, their personal effects, and cargo that will not conform to the use of a midsize sedan.

*e.* EPA-rated full-size sedans shall carry four or more passengers and their personal effects.

*f.* Cargo vans shall be appropriate in size and GVWR for their primary use with regard to payload and cargo volume.

*g.* Mini passenger vans shall carry three or more passengers, their personal effects, and cargo that does not conform to the use of a midsize wagon or full-size sedan.

*h.* Eight-passenger vans shall carry five or more passengers and their personal effects.

*i.* Twelve-passenger vans shall carry seven or more passengers and their personal effects.

*j.* Fifteen-passenger vans shall carry nine or more passengers and their personal effects.

*k.* Pickups and sport utility vehicles shall be appropriate in size, GVWR, and drivetrain (two-wheel drive or four-wheel drive) for their primary use with regard to trailering, payload, cargo volume, and on/off road requirements.

**103.4(2)** Vehicles that are made available for temporary assignment, such as departmental pool vehicles, shall be assigned in accordance with this rule. If an appropriately classified vehicle is unavailable, a larger available classification may be substituted. Other substitutions may be authorized in consideration of passenger physical characteristics or disabilities or any other distinguishing circumstances and conditions as determined by the state vehicle dispatcher, the director of the department of transportation, or the executive director of the board of regents for the vehicles under their respective authorities.

**103.4(3)** Vehicles permanently issued to agencies or drivers shall be assigned in accordance with this rule based on the primary use of the vehicle.

**103.4(4)** The director may delegate authority to officials of the state, and agency heads, for the use of private vehicles on state business.

**103.4(5)** If a state vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the state motor vehicle assigned is not usable.

**11—103.5(8A) Type of accident.** The determination as to whether an accident is without fault, at fault, or preventable shall be made by the risk manager of the department of administrative services. In making this determination, the risk manager will consider all relevant information including information provided by the state driver and others involved in the accident, information provided by witnesses to the accident and information contained in any investigating officer's reports.

**11—103.6(8A) Valid driver's license required.** A state driver shall not drive a state or private vehicle on state business if the state driver does not currently possess a valid driver's license with the appropriate classifications, restrictions and endorsements.

**11—103.7(8A) Required reporting.** A state driver must report any potential liability, collision or comprehensive loss which occurs while conducting state business to the risk manager of the department of administrative services. The failure to report may result in payment of any loss from the funds of the state driver's employing agency rather than from the state self-insurance fund. All documentation, such as proof of required class completion and insurance coverage, must be provided to the department risk manager.

**11—103.8(8A) Mandatory training.** Each state driver who is assigned a state vehicle or who drives a state or private vehicle on state business at least 5,000 miles per year shall attend a defensive driving or driver improvement course every three years. Each state driver who drives a pool car shall also participate in vehicle safety classes as offered and required by the division of fleet and mail.

**11—103.9(8A) Required adherence to motor vehicle laws.** Each state driver is required to abide by all applicable motor vehicle laws of the state of Iowa or any other state in which the state driver may be traveling with the exception of drivers covered by Iowa Code section 321.231.

**11—103.10(8A) Responsibility for payment of traffic violations.** Each state driver is required to pay all fines arising from any violation of motor vehicle laws of the state of Iowa or any other state in which the state driver may be traveling.

**11—103.11(8A) Access to driving records.** The fleet and mail division has the authority to monitor the Iowa department of transportation driving record of employees who drive a state vehicle or a private vehicle to conduct state business.

**11—103.12(8A) Corrective actions.**

**103.12(1)** If a state driver is involved in any one of the following occurrences, the state driver will receive written counseling concerning the state driver's responsibilities and will be required to attend the next available defensive driving course. The defensive driving course must be attended after one of the following occurrences:

*a.* The state driver is involved in one at-fault or preventable accident while operating a state vehicle.

*b.* The state driver receives three moving traffic violations in a three-year period while operating a state vehicle or a private vehicle.

**103.12(2)** If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle for a period not to exceed one year and will be required to attend a driver improvement course. The driver shall attend the next available driver improvement course after one of the following occurrences. While the state driver is suspended from driving a state vehicle, the state driver will be allowed to receive mileage reimbursement from the state of Iowa for driving a private vehicle for state business. In addition, a state driver involved in one of the following occurrences shall provide proof of insurance which meets the minimum standards required by the state of Iowa, department of transportation, and proof of completion of the driver improvement course.

*a.* The state driver is involved in three at-fault or preventable accidents in a five-year period while operating a state vehicle.

*b.* The state driver is involved in five moving traffic violations within a three-year period while operating a state vehicle or a private vehicle.

*c.* The state driver is convicted of a first offense driving while intoxicated charge while operating a private vehicle on private business.

*d.* Transporting alcoholic beverages in the passenger compartment of a motor vehicle.

*e.* Habitual violation of traffic laws.

**103.12(3)** If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle for a period exceeding one year up to a permanent suspension or from driving a private vehicle on state business and will be required to attend and successfully complete, at the person's own expense, a driver improvement course. The driver shall attend the next

available driver improvement course after one of the following occurrences. In addition, a state driver involved in one of the following occurrences shall provide proof of insurance which meets the minimum standards required by the state of Iowa, department of transportation, and proof of completion of the driver improvement course.

*a.* The state driver is involved in four at-fault or preventable accidents during a five-year period while operating a state vehicle.

*b.* The state driver receives six or more moving traffic violations while operating a state or private vehicle within a three-year period.

*c.* A state driver is convicted of more than one operating while intoxicated offense within a five-year period while operating a private vehicle on private business.

*d.* The state driver fails to notify the fleet and mail division of an operating while intoxicated conviction received while operating a state vehicle or a private vehicle.

**103.12(4)** If a state driver fails to attend or does not successfully complete the driver improvement course, the state driver will be suspended from driving a state or private vehicle for state business until such time as a driver improvement course has been successfully completed.

**103.12(5)** If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle or a private vehicle on state business for a period up to one year.

*a.* Driving a state vehicle or a private vehicle on state business with a suspended driver's license.

*b.* Driving a private vehicle for state business without the minimum insurance required by law.

**103.12(6)** If convicted of a first offense driving while intoxicated while driving a private vehicle on private business, the state driver is required to provide proof of satisfactory completion of a course for drinking drivers as defined in Iowa Code section 321J.22 and completion of substance abuse evaluation and treatment services in addition to the corrective actions imposed by 103.12(2).

**103.12(7)** If a state driver is convicted of operating a state vehicle while intoxicated, or operating a private vehicle on state business while intoxicated, the state driver will be permanently suspended from driving a state vehicle or a private vehicle on state business. This suspension may not be reconsidered.

**11—103.13(8A) Reconsideration of suspension.** If a state driver is suspended from driving a state vehicle, the driver may request a reconsideration of the suspension. A written request for reconsideration must be submitted to the suspended driver's immediate supervisor. The immediate supervisor must provide a written report, supporting or denying the employee's request, to the director of the department of administrative services. The director shall act on this request and, within 60 days from receipt of the supervisor's request for reconsideration, notify the state driver's supervisor of the action taken.

**11—103.14(8A) Probationary drivers.** If driving privileges are reinstated following a request for reconsideration, the reinstated state driver will be placed in a probationary state vehicle driving status for a period of three months. If a state driver in probationary status has a preventable or at-fault accident while operating a state or private vehicle on state business or receives a moving traffic violation while operating a state or private vehicle on state business, the probationary status will be revoked and the state driver's original suspension period will be reinstated. Following revocation of probationary status, the state driver may not request further reconsideration of the suspension. A driver in probationary status is eligible to receive mileage reimbursement from the state.

**11—103.15(8A) Temporary restricted license.** State drivers may operate a state vehicle or a private vehicle on state business while holding a temporary restricted license issued pursuant to Iowa Code section 321.215 or 321J.20 that allows driving for work. In addition, a state driver operating under a temporary restricted license shall provide proof of financial responsibility which meets the minimum standards required by the state of Iowa, department of transportation, pursuant to Iowa Code section 321A.1.

**11—103.16(8A) Vehicle fueling.**

**103.16(1)** All fuel used in state-owned automobiles shall be purchased at cost from the various state installations or garages such as but not limited to those of the state department of transportation, state board of regents, department of human services, department of corrections, or state motor pools throughout the state, unless the state-owned sources for the purchase of fuel are not reasonably accessible.

**103.16(2)** All drivers of state vehicles shall fuel their assigned vehicles with self-service gasohol, a mixture of 10 percent ethanol and 90 percent gasoline (E10), unless under emergency circumstances. If the vehicle is capable of running on a blend of 85 percent ethanol and 15 percent gasoline, subrule 103.16(3) applies.

**103.16(3)** Agencies shall ensure that their flexible fuel vehicles that are capable of operating on 85 percent ethanol (E85) use E85 fuel whenever an E85 fueling facility is available to the driver when fuel is needed. E895 fuel may be procured at a retail establishment if a state fueling facility is not readily available. If an E85 facility is not readily available, the driver shall not completely fill the tank with fuel when a lesser quantity will be adequate to complete the trip to an E85 fueling site.

**103.16(4)** Agencies shall ensure that their diesel vehicles operate on biodiesel blends whenever the blends are available. It is also recommended that biodiesel blends be used within six months of purchase to ensure that the quality of the fuel is maintained.

These rules are intended to implement Iowa Code sections 8A.104, 8A.361 to 8A.366, 80.9 and 801.4.

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# CHAPTER 104
Reserved

# CHAPTER 105
# PROCUREMENT OF GOODS AND SERVICES OF GENERAL USE

[Prior to 10/29/03, see 401—Chs 7, 8, and 9]
[Prior to 8/18/04, see 471—Ch 13]

**11—105.1(8A) General provisions.**

**105.1(1)** *Applicability.*

*a. Goods and services of general use.* Under the provisions of Iowa Code Supplement chapter 8A, these rules apply to the purchase of goods and services of general use by any unit of the state executive branch including a commission, board, institution, bureau, office, agency or department, except items used by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies or instrumentalities of the state exempted by law.

*b. Services.* Procurement of services shall also meet the provisions of Iowa Administrative Code, 11—Chapters 106 and 107.

*c. Information technology.* Pursuant to Iowa Code Supplement chapter 8A, procurement of information technology devices and services by participating agencies shall also meet the requirements of rule 11—105.10(8A). Rule 11—105.10(8A) shall apply to:

(1) The process by which the department shall ensure effective and efficient compliance with standards prescribed by the department with respect to the procurement of information technology devices and services by participating agencies, and

(2) The acquisition of information technology devices and services by the department for the department, or by the department for a participating agency that has requested that the department procure information technology devices or services on the agency's behalf.

**105.1(2)** *Funding.* The department and agencies shall follow procurement policies regardless of the funding source supporting the procurement. However, when these rules prevent the state from obtaining and using a federal grant, these rules are suspended to the extent required to comply with the federal grant requirements.

**105.1(3)** *Electronic processing.* Notwithstanding other administrative rules, requirements for paper transactions in the procurement of goods and services shall be waived when an alternative electronic process is available. If the vendor is unable to use the electronic process, an alternative paper process may be available.

**11—105.2(8A) Definitions.**

*"Acquisition"* or *"acquire"* is defined in the same manner as "procurement," "procure," or "purchase."

*"Agency"* or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

*"All or none"* means an award based on the total for all items included in the solicitation.

*"American-based business"* means an entity that has its principal place of business in the United States of America.

*"American-made product"* means product(s) produced or grown in the United States of America.

*"American motor vehicles"* means those vehicles manufactured in this state and those vehicles in which at least 70 percent of the value of the motor vehicle was manufactured in the United States or Canada and at least 50 percent of the motor vehicle sales of the manufacturer are in the United States or Canada.

*"Award"* means the selection of a vendor to receive a master agreement or order of a good or service.

*"Bid specification"* means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

*"Board"* means the technology governance board established by Iowa Code section 8A.204.

*"Competent and qualified"* means an architect or engineer who, at the sole discretion of the department, has the capability in all respects to satisfactorily perform the scope of services required by the proposed contract in a timely manner.

*"Competitive bidding procedure"* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, evaluated, accepted, rejected or awarded. A "competitive bidding procedure" refers to all types of competitive solicitation processes referenced in this chapter and may include a transaction accomplished in an electronic format.

*"Competitive selection documents"* means documents prepared for a competitive selection by a department or agency to purchase goods and services. Competitive selection documents may include requests for proposal, invitations to bid, or any other type of document a department or agency is authorized to use that is designed to procure a good or service for state government. A competitive selection document may be an electronic document.

*"Department"* means the department of administrative services.

*"Director"* means the director of the department of administrative services or the director's designee.

*"Emergency"* includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the department or agency must act to preserve critical services or programs; or
4. In which the need is a result of events or circumstances not reasonably foreseeable.

*"Emergency procurement"* means an acquisition resulting from an emergency need.

*"Enterprise"* means most or all state agencies acting collectively, unless it is used in a manner such as "state accounting enterprise," in which case it means the specific unit of the department of administrative services.

*"Fair and reasonable price"* means a price that is commensurate with the extent and complexity of the services to be provided and is comparable to the price paid by the department or other entities for projects of similar scope and complexity.

*"Formal competition"* means a competitive selection process that employs a request for proposals or other means of competitive selection authorized by applicable law and results in procurement of a good or service.

*"Good"* or *"goods"* means products or personal property other than money that is tangible or movable at the time of purchase, including specially manufactured goods. A contract for goods is a contract in which the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods, a contract for goods exists.

*"Governmental entity"* means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

*"Informal competition"* means a streamlined competitive selection process in which a department or agency makes an effort to contact at least three prospective vendors identified by the department or purchasing agency as qualified to perform the work described in the scope of work to request that they provide bids or proposals for the delivery of the goods or services the department or agency is seeking.

*"Information technology device"* means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. "Information technology device" includes but is

not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

*"Information technology services"* means services designed to provide functions, maintenance, and support of information technology devices, or services including but not limited to computer systems application development and maintenance; systems integration and interoperability; operating systems maintenance and design; computer systems programming; computer systems software support; planning and security relating to information technology devices; data management consultation; information technology education and consulting; information technology planning and standards; and establishment of local area network and workstation management standards.

*"Iowa-based business"* means an entity that has its principal place of business in Iowa.

*"Iowa product"* means a product(s) produced or grown in Iowa.

*"Life cycle cost"* means the expected total cost of ownership during the life of a product, including disposal costs.

*"Limited scope"* means only a few specific services are required for a project. An example is a project for which all existing conditions and parameters are clearly evident or defined in a request for proposal, such as a project calling for development of specifications and bidding documents for replacement of an existing boiler.

*"Lowest responsible bidder"* means the responsible bidder that is fully compliant with the requirements and terms of the competitive selection document and that submits the lowest price(s) or cost(s).

*"Master agreement"* means a contract arrived at competitively which establishes prices, terms, and conditions for the purchase of goods and services in common use. Agencies may purchase from a master agreement without further competition. These contracts may involve the needs of one or more state agencies. Master agreements for a particular item or class of items may be awarded to a single vendor or multiple vendors.

*"Material modification"* relating to an approved IT procurement means a change in the procurement of 10 percent or $50,000, whichever is less, or a change of sufficient importance or relevance so as to have possible significant influence on the outcome.

*"Negotiated contract"* means a master agreement for a procurement that meets the requirements of Iowa Code Supplement section 8A.207(4)*"b."*

*"Newspaper of general circulation"* means a newspaper meeting the definition set forth in Iowa Code section 618.3.

*"Operational standards"* means information technology standards established by the department according to Iowa Code Supplement sections 8A.202 to 8A.207 that include but are not limited to specifications, requirements, processes, or initiatives that foster compatibility, interoperability, connectivity, and use of information technology devices and services among agencies.

*"Order"* means a direct purchase or a purchase from a state contract or master agreement.

*"Participating agency,"* applicable only to information technology purchases, means any agency other than:

1. The state board of regents and institutions operated under its authority;
2. The public broadcasting division of the department of education;
3. The department of transportation's mobile radio network;
4. The department of public safety law enforcement communications systems and capitol complex security systems in use for the legislative branch;
5. The Iowa telecommunications and technology commission, with respect to information technology that is unique to the Iowa communications network;
6. The Iowa lottery authority; and
7. A judicial district department of correctional services established pursuant to Iowa Code section 905.2.

*"Printing"* means the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink, the reproduction of an impression by a photographic process, or the reproduction of an image by electronic means and shall include binding and may include material,

processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books, journals, pamphlets, magazines and literary articles by a library of the state or any of its offices, departments, boards, and commissions held as a part of their library collection.

*"Printing equipment"* means offset presses, gravure presses, silk-screen equipment, large format ink jet printers, digital printing/copying equipment, letterpress equipment, office copiers and bindery equipment.

*"Procurement," "procure,"* or *"purchase"* means the acquisition of goods and services through lease, lease/purchase, acceptance of, contracting for, obtaining title to, use of, or any other manner or method for acquiring an interest in a good or service.

*"Procurement authority"* means an agency authorized by statute to purchase goods and services.

*"Responsible bidder"* means a vendor that has the capability in all respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the department may consider various factors including, but not limited to, the vendor's competence and qualification for the type of services required, the vendor's integrity and reliability, the past performance of the vendor relative to the quality of the good or service, the past experience of the department in relation to the good or service, the relative quality of the good or service, the proposed terms of delivery, and the best interest of the state.

*"Sealed"* means the submission of responses to a solicitation in a form that prevents disclosure of the contents prior to a date and time established by the department for opening the responses. Sealed responses may be received electronically.

*"Service"* or *"services"* means work performed for an agency or its clients by a service provider. A contract for services is a procurement where the predominant factor, thrust, and purpose of the contract as reasonably stated is for services. When there is a mixed contract for goods and services, if the predominant factor, thrust, and purpose of the contract as reasonably stated is for service, with goods incidentally involved, a contract for services exists.

*"Services of general use"* means services that are not unique to an agency's program or that are needed by more than one agency. This chapter applies to the purchase of services of general use.

*"Software"* means an ordered set of instructions or statements that causes information technology devices to process data and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in these rules, "software" also includes, but is not limited to, an operating system; compiler; assembler; utility; library resource; maintenance routine; application; or a computer networking program's nonmechanized and nonphysical components; arrangements; algorithms; procedures; programs; services; sequences and routines utilized to support, guide, control, direct, or monitor information technology equipment or applications; and "data processing software" as defined in Iowa Code section 22.3A(1)*"e."*

*"Sole source procurement"* means a purchase of a good or service in which the department or agency selects a vendor without engaging in a competitive selection process.

*"Systems software"* means software designed to support, guide, control, direct, or monitor information technology equipment, other system software, mechanical and physical components, arrangements, procedures, programs, services or routines.

*"Targeted small business (TSB)"* means a targeted small business as defined in Iowa Code section 15.102 that is certified by the department of inspections and appeals pursuant to Iowa Code section 10A.104 and as authorized by Iowa Code chapter 73.

*"Upgrade"* means additional hardware or software enhancements, extensions, features, options, or devices to support, enhance, or extend the life or increase the usefulness of previously procured information technology devices.

*"Vendor"* means a person, firm, corporation, partnership, business or other commercial entity that provides services or offers goods for sale or lease.

*"Vendor on-line system"* means a state computer system that enables vendors to conduct business electronically with the state through an Internet location on the World Wide Web.

*"Web"* or *"Web site"* refers to an Internet location on the World Wide Web that provides information, communications, and the means to conduct business electronically.

**11—105.3(8A) Competitive procurement.** It is the policy of the state to obtain goods and services from the private sector for public purposes to achieve value for the taxpayer through a competitive selection process that is fair, open, and objective. Where feasible, common use items will be purchased cooperatively with state agencies having independent procurement authority to leverage economies of scale, add convenience, standardize common items, and increase efficiencies.

**105.3(1)** *Informal competition.* The department may use informal competition or formal competition for the purchase of any good or service or group of goods or services of general use costing less than $50,000.

**105.3(2)** *Formal competition.* The department shall use formal competition for the procurement of any good or service or group of goods or services of general use costing $50,000 or more.

**105.3(3)** *Construction procurement.* Formal competition shall be used for selection of a vendor for construction, erection, demolition, alteration, or repair of a public improvement when the cost of the work exceeds $100,000.

**105.3(4)** *Purchasing services.* Thresholds for the use of formal or informal competition for the procurement of services are governed by rule 11—106.5(8A).

**11—105.4(8A) Exemptions from competitive procurement.** The director or designee may exempt goods and services of general use from competitive procurement processes when the procurement meets one of the following conditions. All procurements that are exempt from competitive processes shall be recorded as such, and appropriate justification shall be maintained by the agency initiating the action. Each of the following exemptions from competitive procurement procedures require additional review and approvals.

**105.4(1)** *Emergency procurement.*

*a. Justification for emergency procurement.* An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the department or agency should consider price and availability of the good or service procured so that the department or agency obtains the best value for the funds spent under the circumstances. The department and agencies shall attempt to acquire goods and services of general use with as much competition as practicable under the circumstances.

*b. Special procedures required for emergency procurements.* Justification for the emergency purchase shall be documented and submitted to the director or designee for approval. The justification shall include the good or service that is to be or was purchased, the cost, and the reasons the purchase should be or was considered an emergency.

**105.4(2)** *Targeted small business (TSB) procurement.*

*a. Justification for TSB procurement.* Agencies may purchase from a TSB without competition for a purchase up to $10,000.

*b. Special procedures for TSB procurements.* Agencies must confirm that the vendor is certified as a TSB by the department of inspections and appeals. An agency may contact the TSB directly.

**105.4(3)** *Iowa Prison Industries (IPI) procurement.*

*a. Justification for IPI procurement.* Agencies shall purchase products from IPI or obtain a written waiver in accordance with Iowa Code section 904.808. See http://www.iaprisonind.com for IPI catalog. Purchase of standard office modular components and other furniture items shall be in accordance with 11—subrule 100.6(6).

*b. Special procedures for IPI purchases.* An agency may contact IPI directly.

**105.4(4)** *Procurement based on competition managed by other governmental entities.*

*a. Justification for procurement based on competition managed by other governmental entities.* The department may utilize a current contract, agreement, or purchase order issued by a governmental entity to establish an enterprise master agreement or make a purchase without further competition. The department may join a contract or agreement let by a purchasing consortium when the department reasonably believes it is in the best interest of the enterprise and reasonably believes the contract, agreement, or order was awarded in a fair and competitive manner.

*b. Special procedures for procurement based on competition managed by other governmental entities.* The department shall notify the other governmental entity and the requesting agency of its intent to use a contract, agreement, or purchase order prior to procuring the good or service in this manner. The department may purchase goods or services from contracts let by other governmental entities provided that the vendor is in agreement and the terms and conditions of the purchase do not adversely impact the governmental entity which was the original signatory to the contract.

**105.4(5)** *Sole source procurement.*

*a. Justification for sole source procurement.* A sole source procurement shall be avoided unless clearly necessary and justifiable. The director or designee may exempt the purchase of a good or service of general use from competitive selection processes when the purchase qualifies as a sole source procurement as a result of the following circumstances:

(1) One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good or service; or

(2) The procurement is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the good or service; or

(3) Applicable law requires, provides for, or permits use of a sole source procurement; or

(4) The federal government or other provider of funds for the goods and services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor; or

(5) The procurement is an information technology device or service that is systems software or an upgrade, or compatibility is the overriding consideration, or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation; or

(6) Other circumstances for services exist as outlined in rule 11—106.7(8A).

*b. Special procedures required for sole source procurement.* For exemption from competitive processes, the requesting agency shall submit to the director justification that the procurement meets the definition of sole source procurement. Use of a sole source procurement does not relieve the department or an agency from negotiating a fair and reasonable price, investigating the vendor's qualifications and any other data pertinent to the procurement, and thoroughly documenting the action. The agency initiating the procurement shall maintain in a file attached to the order the justification and response from the director. The justification, response, and order shall be available for public inspection.

**11—105.5(8A) Preferred products and vendors.**

**105.5(1)** *Preference to Iowa products and services.*

*a.* All requests for proposals for materials, products, supplies, provisions and other needed articles and services to be purchased at public expense shall not knowingly be written in such a way as to exclude an Iowa-based company capable of filling the needs of the purchasing entity from submitting a responsive proposal.

*b.* The department and state agencies shall make every effort to support Iowa products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa products. Tied bids between Iowa products shall be decided in accordance with 105.12(4).

**105.5(2)** *Preference to Iowa-based businesses.* The department and state agencies shall make every effort to support Iowa-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa-based business. Tied bids between Iowa-based businesses shall be decided in accordance with 105.12(4).

**105.5(3)** *American-made products.* The department and agencies shall make every effort to support American-made products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-made product. Tied bids between American-made products shall be decided in accordance with 105.12(4).

**105.5(4)** *American-based businesses.* The department and agencies shall make every effort to support American businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-based business. Tied bids between American businesses shall be decided in accordance with 105.12(4).

**105.5(5)** *Recycled product and content.* The department and agencies shall make every effort to protect Iowa's environment in the procurement of goods. Recycled goods and goods that include recycled content shall be acquired when those goods are available and comparable in quality, performance, and price and there are not other mitigating factors. As required by Executive Order Number 56, the department and agencies shall whenever possible procure durable items that are readily recyclable when discarded, have minimal packaging, and are less toxic.

**105.5(6)** *Products made by persons with disabilities.* The department and agencies shall make every effort to procure those products for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation, other developmental disabilities, or mental illness if the products meet the required specifications.

**105.5(7)** *Targeted small businesses.* The department and agencies may buy from a targeted small business if a targeted small business is able to provide the good or service, pursuant to Iowa Code section 73.20. When enterprise master agreements with targeted small businesses are available, purchases shall be made through these master agreements.

**11—105.6(8A) Centralized procurement authority and responsibilities.**

**105.6(1)** *Centralized procurement of goods and services of general use.* The department shall procure goods and services of general use for all state agencies with the exceptions of those purchases made by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law.

**105.6(2)** *Delegation of procurement authority.* The department shall establish guidelines for implementation of procurement authority delegated to agencies. The department shall assist agencies in developing purchasing procedures consistent with central purchasing policy and procedures and recommended governmental procurement standards.

**105.6(3)** *Planning, research, and development.* The director may establish advisory groups and customer councils of agency representatives appointed by the respective agency directors to assist the department in procurement planning and research and to advise on policies, procedures, and financing. This advice includes, but need not be limited to, market research, product specifications, terms and conditions; purchasing rules and guidelines; purchasing system development; and equitable financing of the enterprise purchasing system. The department will provide staff support for any advisory groups and councils that are created.

The department may periodically require forecasts from state agencies and institutions regarding future procurements. When requesting forecasts, the department shall assist agencies in securing and analyzing historical information related to previous purchasing activity.

**11—105.7(8A) Notice of solicitations.**

**105.7(1)** *General notification.*

*a.* *Bid posting.* The department and each state agency shall provide notice of solicitations. The department and each state agency shall post notice of every formal competitive bidding opportunity and proposal to the official Internet site, http://bidopportunities.iowa.gov, operated by the department of administrative services in accordance with Iowa Code sections 73.2, 8A.311, and 362.3. Instead of direct posting, the agency may add a link to http://bidopportunities.iowa.gov that connects to the Web site maintained by the agency on which requests for bids and proposals for that agency are posted. For the purposes of this subrule, a formal solicitation is as defined by the appropriate procurement authority. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state Internet site operated by the department of administrative services.

*b.* *Other forms of notice.* Notice of competitive bidding opportunities and proposals may be provided by telephone or fax, in print, or by other means that give reasonable notice to vendors, in

addition to the posting or linking of formal solicitations to the official Internet site operated by the department of administrative services.

*c. Posting of requests for architectural and engineering services.* A request for proposals for architectural or engineering services may be posted electronically by a department or state agency in addition to other methods of advertisement required by law.

*d. Bids voided.* A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be rebid. This requirement shall be effective for formal competitive bidding opportunities issued on or after September 1, 2005.

**105.7(2)** *Targeted small business notification.* Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa's 48-hour procurement notice Web site for posting.

**105.7(3)** *Direct vendor notification.* All procurement opportunities shall be directly communicated to vendors registered through the state's electronic procurement system, Vendor Self-Serve (VSS), if the vendors have indicated an interest in the type of good or service that is the subject of the solicitation. The notice shall be sent to the E-mail or fax or other address entered on VSS by the vendor.

**105.7(4)** *Construction procurement exceeding $100,000.* Construction solicitations shall be advertised twice in a newspaper of general circulation published in the county within which the work is to be done. Additional means of advertisement used shall be consistent with practices in the construction industry. The department may publish an advertisement in an electronic format as an additional method of soliciting bids.

**105.7(5)** *Vendor intent to participate.* In the event the department elects to conduct any procurement electronically or otherwise, it may require that vendors prequalify or otherwise indicate their intention to participate in the procurement process.

**11—105.8(8A) Types of solicitations.** The department may use the following solicitation methods when procuring goods and services of general use for the enterprise.

**105.8(1)** *Informal competition.*

*a. Description of solicitation.* The informal request for bids or proposals may be completed electronically, by telephone or fax, or by other means determined by the department.

*b. Response and evaluation.* Informal bids shall be tabulated, evaluated, documented and attached to the purchase order.

**105.8(2)** *Formal competition.*

*a. Description of solicitation.* A formal request for bids or proposals shall include:

(1) Bid due date.

(2) Time of public bid opening.

(3) Complete description of commodity needed.

(4) Buyer's name or code.

*b. Response and evaluation.* Bids submitted shall be sealed until the date and time of opening. All bids received prior to the date and time set forth on the solicitation will be publicly opened and announced at the designated time and place. All responses shall be documented, evaluated, tabulated and available for public inspection.

**105.8(3)** *Request for bids.* A request for bids shall be used to select the lowest responsible bidder from which to purchase goods and services of general use on the basis of price. Vendors may offer goods and services that equal or exceed the state's specifications. Bids that do not meet specifications shall be rejected. The state will not give weight to goods and services offered which exceed specifications. When it is feasible to do so and objective data exists to support the state's decision, the award may be made on a life cycle cost basis.

**105.8(4)** *Requests for proposals.*

*a. Description of solicitation.* The department shall issue a request for proposals whenever a requirement exists for a procurement and cost is not the sole evaluation criterion for selection. The request for proposals shall provide information about a requirement for technical equipment or

professional services that is sufficient for the vendor to propose a solution to the requirement. Elements of a request for proposals shall include, but need not be limited to:

(1) Purpose, intent and background of the requirement.
(2) Key dates in the solicitation process.
(3) Administrative requirements for submitting a proposal and format for the proposal.
(4) Scope of work and performance requirements.
(5) Evaluation criteria and method of proposal evaluation.
(6) Contractual terms and conditions.
(7) Need for a vendor conference.

*b. Response and evaluation.* Proposals submitted shall be sealed until the date and time of opening. All proposals received prior to the date and time of opening will be opened, and the name of the submitting vendor will be announced. The issuing purchasing officer will review proposals for compliance with requirements before the proposals are submitted for evaluation. A request for proposals shall be evaluated according to criteria that are developed prior to the issuance of the request for proposal document and that consist of factors relating to technical capability and the approach for meeting performance requirements; competitiveness and reasonableness of price or cost; and managerial, financial and staffing capability.

**105.8(5)** *Best and final offer option.*

*a. Description of solicitation.* The department reserves the right at its sole discretion to conduct a best and final offer process prior to making an award. The best and final offer process shall be conducted after the receipt of responses to a solicitation and prior to publicly releasing the responses. Any best and final offer process shall not allow material modification of the original solicitation requirements or of the evaluation criteria.

The department shall provide to affected vendors instructions that describe in specific terms how the department intends to arrive at the final order or master agreement. The instructions may include modifying the initial offer, updating pricing based on any changes the agency has made, and any added inducements that will improve the overall score in accordance with the evaluation. Other types of solicitations described in this rule may be modified to allow for a best and final offer process.

The department may enter into negotiations with the highest ranked vendor or conduct simultaneous negotiations with a number of the most highly ranked vendors whose total scores are relatively close.

*b. Response and evaluation.* A best and final offer shall arrive by the due date and time determined by the department and shall be sealed. Evaluation of best and final offers shall be conducted in the same manner as original cost proposals. Scores on the best and final offer shall replace the score achieved on the original proposal.

When negotiating with the highest ranked vendor, the department may accept the vendor's best and final offer or reject the offer and open negotiations with the next highest ranked vendor. The department shall proceed in the same manner in rank order. If the state is unable to negotiate an agreement with the highest ranked vendor, the state may negotiate a best and final offer agreement with another vendor. A best and final offer agreement accepted from a subsequent vendor must be more favorable to the state than the rejected offer or offers.

When negotiating with the highest ranked group of vendors, the department shall request the best and final offer from each. The department shall issue a notice of intent to award that is in the best interest of the enterprise.

**105.8(6)** *Reverse auction.*

*a. Description of solicitation.* The department may purchase goods and services through a reverse auction, a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid. Notice to vendors shall be given as described in this chapter. The notice shall include the start and ending time for the reverse auction and the method in which it will be conducted.

*b. Response and evaluation.* Vendors intending to participate shall provide to the department a notice of their intent to participate and of their agreement to provide goods or services equal to or

exceeding specifications. The department may require vendors to prequalify to participate in a reverse auction. Prequalification may include a requirement to commit to a baseline price.

**105.8(7)** *Invitation to qualify (ITQ).* The department may prequalify vendors and make available to an agency a list of vendors that are capable of providing the requested service.

*a. Description of solicitation.* The department may prequalify vendors for certain classes of solicitations, including but not limited to:

(1) Information technology consulting,

(2) Architectural services, and

(3) Engineering services.

*b. Notification of ITQ solicitation.* Following institution of a prequalification process, the department may select, in a competitive manner, a prequalified vendor without public notice and without further negotiation of general terms and conditions. A solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required by 105.7(2).

*c. Not an award.* Vendor prequalification is not an award and does not create an obligation on the part of the department.

*d. Purpose.* The department shall use an invitation to qualify process for the purpose of facilitating a subsequent solicitation that uses one of the other methods described in these rules. The purposes of using an invitation to qualify process include but are not limited to the following:

(1) Standardize state terms and conditions relating to the type of procurement, thereby avoiding repetition and duplication.

(2) Ensure that prequalified vendors are capable of performing work in a manner consistent with operational standards developed and adopted by the department.

(3) Implement a pay-for-performance model directly linking vendor payments to defined results as required by Iowa Code section 8.47.

(4) Consolidate records of vendor qualifications and performance in one location for reference and review.

(5) Reduce time required for solicitation of proposals from vendors for individual procurements.

*e. Evaluation criteria.* The department shall develop criteria for vendor qualification based upon its own expertise, the recommendations of its advisors, information and research, and the needs of agencies. The department shall develop and specify evaluation criteria for each invitation to qualify. Examples of evaluation criteria may include but are not limited to the following:

(1) Affirmative responses to a mandatory agreement questionnaire.

(2) Ratings of at least average on a professional/technical personnel questionnaire.

(3) Scores in a specified range for each client reference survey.

(4) Competitive cost data by type of service.

(5) Acceptable vendor financial information.

*f. Issuance of open invitation.*

(1) The department shall issue invitations to qualify on an as-needed basis.

(2) The department shall specify the period of time that the invitation to qualify will remain open and the time period for applicability.

(3) Vendors may apply for eligibility on a continuous basis during the time period that the invitation to qualify remains open.

*g. Response and evaluation.*

(1) Vendors seeking to qualify shall be required to meet all the criteria established by the department for a particular category or type of solicitation.

(2) The department shall continuously evaluate vendor applications for placement on a prequalified-vendor list during the period that the invitation to qualify remains open.

*h. Acceptable performance levels.*

(1) The department shall establish and notify prequalified vendors of minimum acceptable performance levels and institute a performance tracking mechanism on each prequalified vendor.

(2) An approved vendor remains qualified for the period specified by the department unless the vendor does not meet minimum acceptable performance levels.

(3) If a vendor's performance falls below the minimum acceptable level, the vendor shall be removed from the prequalified list.

(4) A vendor that does not prequalify or that is removed from the prequalified list due to the vendor's performance has the right to appeal in accordance with 11—105.20(8A).

*i.* *Information technology purchases from a prequalified vendor.* Before a participating agency may acquire an information technology device or service from a prequalified vendor, the agency must obtain all of the required approvals from the department pursuant to rule 11—105.10(8A).

**105.8(8)** *Other types of solicitations.* The department may use other types of competitive solicitations not outlined in these rules if the following conditions are met:

*a.* The solicitation method has been clearly described in public notice.

*b.* The solicitation method includes fair and objective criteria for determining the award.

**11—105.9(8A) Procurement of architectural and engineering services.**

**105.9(1)** *Qualifications.* As part of the competitive selection process, the department shall determine whether an architect or engineer is competent and qualified. In making this determination, the department may consider the following factors:

1. Professional licensing or registration credentials,
2. Integrity and reliability,
3. Past performance relative to the quality and timeliness of service on similar projects,
4. Past experience with the state in relation to services provided,
5. Quality and timeliness of the services provided,
6. The proposed terms of delivery, and
7. The best interests of the state.

**105.9(2)** *Fair and reasonable price.* As part of the competitive selection process, the department may request, in addition to the architect's or engineer's qualifications, pricing information that may include a total fee for the specified services, hourly rates, or other pricing measures that will help the department establish a fair and reasonable price.

*a.* The department shall request a fee proposal(s) as part of the competitive selection process only when the services required are of limited scope, limited duration or otherwise clearly defined. An award shall not be made solely on the basis of the lowest price.

*b.* When a fee is not requested as part of the competitive selection process, other pricing factors shall be requested, and the firm deemed most qualified will be asked to negotiate a fee using the pricing factors included in the firm's proposal. If a fair and reasonable price for the work cannot be negotiated, the department shall reject the firm's proposal and begin negotiations for a fair and reasonable price with the next most qualified firm.

Examples of fair and reasonable pricing factors include:

(1) Hourly rates and anticipated hours,

(2) A lump sum fee,

(3) Any other costs the department determines to be fair and reasonable.

*c.* If reimbursable expenses are included in the price proposal, rates shall not exceed those in procedure 210.245, "Travel-in-state—board, commission, advisory council, and task force member expenses," of the department of administrative services state accounting enterprise's Accounting Policy and Procedures Manual.

*d.* The fee proposal or other pricing information shall serve as a basis for contract negotiations.

**11—105.10(8A) Procurement of information technology devices and services.** This rule applies to the procurement of information technology devices and services by participating agencies.

**105.10(1)** *Approval of participating agency information technology procurements.*

*a.* All procurement of information technology devices and services must meet operational standards prescribed by the department.

*b.* With the exception of requests for proposals (RFPs) which are approved by the technology governance board, procurement of all information technology devices and services, projects and

outsourcing of $50,000 or more or a total involvement of 750 participating agency staff hours or more must receive prior approval from the department of administrative services, information technology enterprise (DAS/ITE), before a participating agency issues a competitive selection document or any other procurement document or otherwise seeks to procure information technology devices or services or both through the department or on its own purchasing authority. The participating agency's approval request shall be in a form prescribed by the department.

*c.* Participating agencies shall notify the technology governance board in writing on a quarterly basis that technology purchases made during the previous quarter were in compliance with the technology governance board's procurement rules and information technology operational standards.

*d.* Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements of this subrule.

**105.10(2)** *Review process for proposed procurements.*

*a.* With the exception of requests for proposals (RFPs) which are approved by the technology governance board, the department shall review a proposed information technology procurement of a participating agency regardless of funding source, method of procurement, or agency procurement authority.

*b.* The department shall review a proposed procurement for compliance with operational standards established by the department.

*c.* Once procurement is approved, ongoing approval by the department is not required provided that the procurement or scope of work remains consistent with the previously approved procurement or scope of work.

*d.* Participating agencies shall obtain the department's approval anytime a material modification of the procurement or the scope of work is completed. Review and approval by the department is required prior to implementation of a material modification to a previously approved proposed procurement by a participating agency or by the department on behalf of a participating agency.

*e.* After approval of the procurement is forwarded to the agency contact person and appropriate procurement authority contacts, the procurement may proceed.

*f.* When a procurement is not approved, the agency contact will be notified of available options, which include modification and resubmission of the request, cancellation of the request, or requesting a waiver from the director on the recommendation of the technology governance board pursuant to subrule 105.10(3).

*g.* The department may periodically audit procurements made by a participating agency for compliance with this rule and operational standards of the department. When the audit determines that inconsistencies with established operational standards or with this rule exist, the participating agency shall comply with technology governance board directives to remedy the noncompliance.

*h.* Information technology devices and services not complying with applicable operational standards shall not be procured by any participating agency unless a waiver is granted by the director on the recommendation of the technology governance board.

*i.* Upon request by a participating agency, the department may procure, as provided by these rules, any information technology devices or information technology services requested by or on behalf of an agency and accordingly bill the agency through the department's regular process for the information technology devices or information technology services or for the use of such devices or services.

*j.* The department may provide pertinent advice to a procurement authority or participating agency regarding the procurement of information technology devices or services, including opportunities for aggregation with other procurements.

*k.* The department shall establish and maintain a Web page (http://das.ite.iowa.gov/standards/enterprise_it/index.html) of current operational standards for information technology devices and services. The Web page shall be updated from time to time with additions, deletions and modifications.

**105.10(3)** *Waiver requests for operational standards.*

*a.* Waiver requests. In the event a participating agency is advised that its proposed procurement is disapproved and the participating agency seeks a waiver of operational standards, it must file its written

waiver request with the department within five calendar days of the date of the disapproval. The waiver request shall be filed pursuant to rule 11—25.6(8A).

*b.* Hearing. The department may conduct a hearing with the participating agency regarding the waiver request. Additional evidence may be offered at the time of the hearing. Oral proceedings shall be recorded either by mechanized means or by a certified shorthand reporter. Parties requesting that the hearing be recorded by a certified shorthand reporter shall bear the costs. Copies of tapes of oral proceedings or transcripts recorded by certified shorthand reporters shall be paid for by the requester.

*c.* Burden of proof. The burden of proof is on the participating agency to show that good cause exists to grant a waiver to the participating agency to complete the proposed procurement.

*d.* The director shall notify the participating agency in writing of the decision to grant or deny the waiver. In the event a waiver is denied, the participating agency may appeal pursuant to Iowa Code section 679A.19.

**11—105.11(8A) Specifications in solicitations.** All specifications used in solicitations shall be written in a manner that encourages competition.

**105.11(1)** *Limitations on brands and models.* Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly identified as intending to illustrate the general characteristics of the item and not to limit competition. A specific brand or model may be procured only when necessary to maintain a standard required or authorized by law or rule or for connectivity or compatibility with existing commodities or equipment.

**105.11(2)** *Recycled content and products.* When appropriate, specifications shall include requirements for the use of recovered materials and products. The specifications shall require, at a minimum, that all responses to a solicitation include a product content statement that describes the percentage of the content of the item that is reclaimed material.

The department shall revise specifications developed by agencies if the specifications restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will impede the intended use of the product.

Specifications shall support the following procurements:

*a.* Products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires.

*b.* Bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with Iowa Code Supplement section 8A.316.

**105.11(3)** *Life cycle cost and energy efficiency.* The department and agencies shall utilize life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

**105.11(4)** *All or none solicitations.* A solicitation may specify whether or not responses will be accepted on an all or none basis. Only when this statement appears on the solicitation may it be included in the response. The department may award either by item or by lot, whichever is to the advantage of the enterprise.

**105.11(5)** *Financial security.* The department may require bid, litigation, fidelity, and performance security as designated in the solicitation documents. When required, a security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the department.

When required, a security shall not be waived. The security provided by vendors shall be retained until all provisions of the solicitation have been met. The security will then be returned to the vendor.

**105.11(6)** *Vehicle procurement.*

*a.* Specifications for procurement of all non-law enforcement, light-duty vehicles, excluding those purchased and used for off-road maintenance work or to pull loaded trailers, shall be for flexible fuel vehicles (as defined by Iowa Code section 8A.362(5)) when an equivalent flexible fuel model is available.

*b.* Use of specifications for hybrid-electric or other alternative fuel vehicles (as defined by Iowa Code section 8A.362(5)) is encouraged. Procurement of hybrid-electric or other alternative fuel vehicles

may be dependent upon whether the costs of the vehicle's life cycle are equivalent to a non-alternative fuel vehicle or non-flexible fuel vehicle (a vehicle with a gasoline E10 engine) prior to the year 2010.

*c.* The life cycle costs of American motor vehicles shall be reduced by 5 percent in order to determine if the motor vehicle is comparable to foreign-made motor vehicles. The life cycle costs of a motor vehicle shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or 75,000 miles, whichever occurs first.

*d.* The average fuel efficiency for new passenger vehicles and light trucks, as defined in paragraph 105.11(6)*"a,"* that are purchased in a year shall equal or exceed the average fuel economy standard for the vehicles' model years as published by the United States Secretary of Transportation.

**105.11(7)** *Bulk diesel fuel procurement.* Specifications for procurement of all bulk diesel fuel shall ensure that all bulk diesel procured has at least 5 percent renewable content by 2007, 10 percent renewable content by 2008, and 20 percent renewable content by 2010, provided that fuel that meets the American Society for Testing and Materials (ASTM) D-6751 specification is available. Bulk diesel fuel that is used exclusively for emergency generation is exempt from the renewable content requirement.

**11—105.12(8A) Awards.** The department shall select a vendor on the basis of criteria contained in the competitive selection document.

**105.12(1)** *Intent to award.* After evaluating responses to a solicitation using formal competition, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). Documentation of awards for solicitations using informal competition will be made available to interested parties upon request. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s). If a vendor is not registered on the vendor on-line system and does not provide an E-mail address or fax number, the notice will be mailed.

**105.12(2)** *Rejection of bids.* The department reserves the right to reject any or all responses to solicitations at any time for any reason. New bids may be requested at a time deemed convenient to the department and agency involved.

**105.12(3)** *Minor deficiencies and informalities.* The department reserves the right to waive minor deficiencies and informalities if, in the judgment of the department, the best interest of the state of Iowa will be served.

**105.12(4)** *Tied bids.*

*a.* Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, the Iowa vendor will receive preference. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing will be held among the Iowa vendors only. Tied bids involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product.

*b.* In the event of a tied bid between Iowa vendors, the department shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the vendors have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa vendors complying with ESGR standards.

*c.* An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.

**105.12(5)** *Consideration of life cycle costs.* When appropriate to the procurement, life cycle costs shall be considered during the award process.

**105.12(6)** *Trade-ins.* When applicable and in the best interest of the state, the department may trade in devices or services to offset the cost of devices or services in a manner consistent with procurement practices to ensure accountability with the state's fixed asset inventory system.

**11—105.13(8A) Master agreements available to governmental subdivisions.**

**105.13(1)** Contracts entered into by the department may be extended to, and made available for the use of, other governmental entities as defined in Iowa Code Supplement section 8A.101.

**105.13(2)** The department shall provide a list of current master agreements to a governmental subdivision upon request. The list may be provided in an electronic format. A governmental subdivision may request a copy of a specific master agreement. The department may provide the master agreement in an electronic format and assess a copying charge when a printed copy is requested.

**11—105.14(8A) Agency purchasing authority and responsibilities.**

**105.14(1)** *Purchase of goods.* An agency may acquire goods not otherwise available from a master agreement in accordance with the procurement threshold guidelines in 11—105.15(8A).

**105.14(2)** *Purchase of services.* An agency may procure services unique to the agency's program or used primarily by that agency and not by other agencies. The department will assist agencies with these procurements upon request. Procurement of services by an agency shall comply with the provisions of 11—Chapters 106 and 107.

**105.14(3)** *Procurement of printing.*

*a.* As the first step in the printing procurement process, an agency may provide its request to state printing. State printing may produce the printing internally or procure the printing for the agency.

*b.* An agency may procure printing. Procurement of printing by an agency shall utilize formal or informal competitive selection, pursuant to 11—105.3(8A). The agency's internal procedures and controls for competitive selection of a printing vendor shall be consistent with the requirements of the department and the state auditor.

**105.14(4)** *Procurements requiring additional authorization.* Except where exempted by statute, the following purchases require additional approval.

*a.* Information technology devices, software and services, as required in Iowa Code Supplement sections 8A.202 and 8A.206 and rule 11—105.10(8A).

*b.* Vehicles, as prescribed in Iowa Code Supplement sections 8A.361 and 8A.362.

*c.* Architectural and engineering services, except for agencies with independent authority, as prescribed in Iowa Code Supplement sections 8A.302, 8A.311, 8A.321, 218.58, and 904.315.

*d.* Legal counsel, as prescribed in Iowa Code section 13.7.

*e.* Telecommunications equipment and services, as required by Iowa Code chapter 8D and the rules of the telecommunications and technology commission.

**105.14(5)** *Establishment of agency internal procedures and controls.* Agencies shall establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases, and receive goods. The procedures shall address adequate public recordings of the purchases under the agency's authority consistent with law and rule. Internal controls and security procedures that are consistent with the requirements of the department and state auditor, including staff authority to initiate, execute, approve, and receive purchases, shall be in place for all phases of the procurement.

**105.14(6)** *Agency receipt of goods.* Agencies receiving goods shall:

*a.* Inspect or otherwise determine that the goods received meet the specifications, terms and conditions within the order or master agreement,

*b.* Initiate timely payment for goods meeting specifications, and

*c.* Document the receipt of goods electronically in a manner prescribed by the department.

All provisions of 11—105.19(8A) shall apply to agency receipt of goods.

**105.14(7)** *Partial orders.* Agencies may accept partial orders and await additional final receipt or may accept a partial order as a final order. The agency shall notify the vendor of its decision. An agency may pay a vendor a prorated amount for the partial order.

**105.14(8)** *Items not meeting specifications.* An agency shall not approve final receipt when goods appear not to meet specifications. An agency shall approve final receipt only when satisfied that the goods meet or exceed the specifications and terms and conditions of the order or master agreement. When an agency and vendor are unable to agree as to whether the specifications, terms and conditions are met, the department shall make the decision.

Agencies shall notify the department and the vendor when apparent defects are first noticed. The department will assist the agency with negotiating a satisfactory settlement with the vendor.

**105.14(9)** *Payment to vendors following final receipt.* An agency shall not unreasonably delay payment on orders for which final receipt is accepted. Except in the case of latent defects in goods, payment to the vendor by the agency signifies agreement by the agency that the goods received are satisfactory. Payment to vendors may be made by any commercially acceptable method, including a state procurement card, in accordance with state financial requirements.

**11—105.15(8A) Thresholds for delegating procurement authority.**

**105.15(1)** *Agency direct purchasing—basic level.* An agency may procure non-master agreement goods up to $5,000 per transaction in a competitive manner. Three or more informal quotes shall be obtained, unless quotes are not reasonably available or unless the item is purchased from a targeted small business. The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format.

**105.15(2)** *Agency direct purchasing—advanced level.* An agency certified by the director or designee as a "procurement center of excellence" may procure non-master agreement goods up to $50,000 per transaction in a competitive manner. To be certified, agency personnel engaged in the purchase of goods must complete enhanced procurement training established by the director or designee. Agency personnel must complete training within a two-year period in order for the agency to be certified.

**105.15(3)** *Preference to targeted small businesses.* Agencies shall search the TSB directory on the Web and purchase directly from the TSB source if it is reasonable and cost-effective to do so. Agencies shall comply with the TSB notification requirements in subrule 105.7(2).

**105.15(4)** *Alternative to master agreement.* An agency may purchase a comparable good or service of general use available on a master agreement from a different vendor if the quantity required or an emergency or immediate need makes it cost-effective to purchase from a non-master agreement vendor. In instances where an agency or agencies routinely or on a recurring basis purchase a specific good or service not on contract, the department shall establish a master agreement for that good or service in cooperation with the affected agencies.

**105.15(5)** *Misuse of agency authority.*

*a.* Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. Because it is cost-effective to purchase a good or service of general use from a master agreement, the agency shall do so. The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in subrules 105.15(1) and 105.15(2).

*b.* As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement.

*c.* This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule 105.15(4).

*d.* The department may rescind delegated authority of an agency that misuses its authority.

*e.* The director or designee may revoke an agency's delegated authority if the agency fails to maintain "procurement center of excellence" certification or uses the authority to procure goods or services already available on a master agreement.

**11—105.16(8A) Printing.** This rule provides guidelines for the letting of contracts for public printing by the department and by state agencies, including the enforcement by the department of contracts for printing, except as otherwise provided by law.

**105.16(1)** *Competitive selection for printing.* The department and state agencies shall procure printing by competitive selection according to the rules of this chapter except when the printing is produced by state printing, pursuant to 11—102.4(8A) or the procurement is otherwise exempt from competitive selection pursuant to 11—105.4(8A). When an agency elects to purchase printing by competitive selection rather than using the services of state printing or a TSB, state printing and TSBs shall be part of the bidding process.

**105.16(2)** *Specifications for printing.*

*a. Preparation of written specifications.* The department or a state agency shall procure printing by preparing a competitive selection document with written specifications and issue the same to bidders. The bid specifications shall become a part of the printing contract.

*b. Inspection of specifications.* All specifications shall be held on file in the department's printing division office or the office of the state agency conducting the solicitation and shall be available for inspection by prospective bidders.

**105.16(3)** *Notification of solicitation for printing.* The department or a state agency conducting the solicitation shall provide notification of the solicitation for printing to vendors.

**105.16(4)** *Bid bonds for printing.*

*a. When applicable.* Security in the form of a bid bond or a certified or cashier's check may be required from printing vendors.

*b. Amount of bonds.* If a bid bond is required, each formal bid for printing must be accompanied by a certified or cashier's check for the amount stated in the specifications. An annual bid bond in an amount set by the department may be deposited with the department by the bidder to be used in lieu of a certified or cashier's check. The amount of the bond is fixed annually and bonds are dated from July 1 to June 30 of the following year.

*c. Return of bid bonds.* Checks of unsuccessful bidders will be returned when the printed item is contracted. The check of the successful bidder will be returned when the performance bond is received and accepted by the department or by the state agency conducting the solicitation.

*d. Performance bonds.* When required by the specifications, the successful bidder must deposit with the department or with the state agency conducting the solicitation a performance bond equal to 10 percent of the contract price unless otherwise stated in the specifications. The performance bond must be deposited within 21 days of the date the contract or bond paperwork is issued to the vendor by the department or agency.

*e. Forfeiture of bid bond.* Failure to enter into a contract by the successful bidder within ten days of the award may result in forfeiture of 10 percent of the bid bond or the certified or cashier's check, if a check is on deposit in lieu of a bond.

**11—105.17(8A) Vendor registration and approval.** Every vendor wishing to do business with the state shall register as a vendor. Every vendor shall register prior to submitting a response to a solicitation except in the case of an emergency procurement when the vendor shall register prior to filling an order or as soon as practicable. Only properly registered vendors are entitled to payment.

**105.17(1)** *Vendor on-line registration.* Vendors are encouraged to register electronically using the vendor on-line system when it becomes available. Vendors that are registered on the vendor on-line system are eligible for all services at the site, including receiving electronic notices of solicitations and submitting an electronic response to a solicitation.

Information from vendors completing registration through the vendor on-line system shall be protected through the use of uniquely identifying information known only to the department and the vendor to confirm the identity of the vendor for all subsequent actions, including responses to solicitations.

The department may take action to restrict or deny use of the vendor on-line system in response to inappropriate use of the site. The department may edit or delete a vendor's posting on the vendor bulletin board if the posting is not appropriate to the business of state purchasing.

**105.17(2)** *Alternate vendor registration.* A vendor may register by directly contacting the department or an agency initiating a procurement.

**105.17(3)** *Vendor registration information maintenance.* Vendors are responsible for maintaining current and accurate registration information. If registered on the vendor on-line system, the vendor shall update the vendor's account whenever information changes. If registered in an alternate manner, the vendor is responsible for notifying the department or agency of any change in information. This information includes, but is not limited to, company name or type, payment address, procurement address and other contact information.

**11—105.18(8A) Vendor performance.**

**105.18(1)** *Review of vendor performance.* The department, in cooperation with agencies, shall periodically, but at least directly prior to renewal of a master agreement, review the performance of vendors. Agencies are encouraged to document vendor performance throughout the duration of the contract and report any problems to the department as they are identified. Performance reviews shall be based on the specifications of the master agreement or order, and shall include, but need not be limited to:

1. Compliance with the specifications,
2. On-time delivery, and
3. Accuracy of billing.

This review will help determine whether the vendor is a responsible bidder for future projects.

**105.18(2)** *Vendor suspension or debarment.* Prior performance on a state contract may cause a vendor to be disqualified or prevent the vendor from being considered a qualified bidder. In addition, a vendor may be suspended or debarred for any of the following reasons:

*a.* Failure to deliver within specified delivery dates without agreement of the department or the agency.

*b.* Failure to deliver in accordance with specifications.

*c.* Attempts to influence the decision of any state employee involved in the procurement process.

*d.* Evidence of agreements by vendors to restrain trade or impede competitive bidding. Such activities shall in addition be reported to the attorney general for appropriate action.

*e.* Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation and executive order.

*f.* Evidence that a vendor has willfully filed a false certificate with the department.

*g.* Debarment by the federal government.

**105.18(3)** *Correcting performance.* The department shall notify in writing any vendor considered for suspension or debarment and provide the vendor an opportunity to cure the alleged situation. If the vendor fails to remedy the situation after proper notice, the department director may suspend the vendor from eligibility for up to one year or debar the vendor from future business depending on the severity of the violation. The appeal provisions of this chapter shall apply to the decision of the director.

**105.18(4)** *Remedies for failure to deliver or for delivery of nonconforming goods or services.* If a vendor fails to remedy the situation after the opportunity to cure is provided, the department or agency may procure substitute goods or services from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The attorney general shall be requested to make collection from the defaulting vendor.

**11—105.19(8A) General instructions, terms and conditions for vendors.** The following instructions, terms and conditions shall apply to all solicitations unless otherwise stated in the solicitation.

**105.19(1)** *Instructions for vendors.* The vendor must follow all instructions in the manner prescribed and furnish all information and samples as stated in the solicitation. Minor deficiencies and informalities may be waived if, in the judgment of the department, the best interests of the state will be served.

**105.19(2)** *Deadline for submission of bid or proposal.* It is the responsibility of the vendor to submit a response to a solicitation according to time, date, and place stated in the solicitation documents. Late responses will be rejected. Unfamiliarity with a geographical location, weather events, labor stoppages, failure of a carrier to meet promised delivery schedules, mechanical failures, and similar reasons are not sufficient justifications for the department to accept a late bid or proposal. At its sole discretion, the department may accept a late response if the delay is due to a catastrophic event and acceptance by the department does not result in an advantage to a competitor.

**105.19(3)** *Confidential information in a solicitation response.* Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor in accordance with Iowa Code section 22.7, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public prior to issuance of the notice of intent to award. If a vendor's claim of confidentiality is challenged by a

competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. The department will not release the subject material while the matter is being adjudicated.

**105.19(4)** *Recycled products.* A vendor shall be required to include for all applicable procurements a product content statement providing the percentage of the content of the item that is reclaimed material.

**105.19(5)** *Modifications or withdrawal of a solicitation response.* A solicitation response may be withdrawn or modified prior to the time and date set for opening. Withdrawal or modification requests shall be in writing. With the approval of the director or designee, a bid or proposal may be withdrawn after opening only if the vendor provides prompt notification and adequately documents the commission of an honest error that might cause undue financial loss. The department may contact a vendor to determine if an error occurred in the vendor's proposal.

**105.19(6)** *Security.* The department may require bid or proposal security in accordance with subrule 105.11(5). When required, security shall not be waived.

**105.19(7)** *Assignments.* A vendor may not assign an order or a master agreement to another party without written permission from the department.

**105.19(8)** *Strikes, lockouts or natural disasters.* A vendor shall notify the department promptly whenever a strike, lockout or catastrophic event prevents the vendor from fulfilling the terms of an order or contract. The department and affected agency may elect to cancel an order or master agreement at their discretion.

**105.19(9)** *Subcontractors or secondary suppliers.* Vendors shall be responsible for the actions of and performance of their subcontractors or secondary suppliers. Vendors shall be responsible for payment to all subcontractors or secondary suppliers. Vendors awarded a state construction contract shall disclose the names of all subcontractors within 48 hours after the award of the contract and advise the department of changes in the names of subcontractors throughout the duration of the project.

**105.19(10)** *Material and nonmaterial compliance.* At its sole discretion, the department reserves the right to waive technical noncompliance with instructions when such noncompliance, as viewed by a reasonable and prudent person, did not result in an advantage to the vendor submitting the apparent lowest bid or best proposal or would not result in a disadvantage to other vendors submitting competing bids or proposals.

**105.19(11)** *Item and pricing.* Price information shall be submitted in response to a solicitation as stated in the instructions. In the case of an error, unit price shall prevail. Unless otherwise stated, all prices shall be submitted with free-on-board (FOB) destination including freight and handling costs.

Prices for one-time purchases must be firm, and preference will be given to firm prices in multiple award contracts. If the department believes it is in the best interest of the state, an economic price adjustment clause based on an acceptable economic indicator may be included in multiple delivery contracts.

*a.* Price during testing. Items may require testing either before or after the final award is made. In these cases, the vendor must guarantee the price through the completion of testing.

*b.* Unless otherwise contained in the specifications, all items for which a vendor submits a quotation shall be new, of the latest model, crop year or manufacture and shall be at least equal in quality to those specified.

*c.* Escalator clauses. Unless specifically provided for in the solicitation document, a response containing an escalator clause that provides for an increase in price will not be considered.

*d.* Discounts. Only cash discounts that apply to payment terms of 30 days or more will be considered in determining awards. Other payment terms will not be considered. The state will attempt to earn any discounts offered and will compute the period from the latest of the following:

(1) From date of invoice.

(2) From the date the complete order is received.

(3) From the date the vendor's certified invoice is received.

When additional testing of a product is required after delivery, the discount period shall not begin until testing is completed and final approval made.

**105.19(12)** *Notice of intent to award.* After evaluating responses to a solicitation, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). This notice does not constitute the formation of a contract(s) between the state and the vendor(s) to which the notice of intent to award has been issued.

If a vendor is not registered on the vendor on-line system and does not provide an E-mail address or fax number, the notice will be sent by ordinary mail.

**105.19(13)** *Time of acceptance of award.* If a time is not stated in the competitive selection document, the vendor may state the length of time that the state has to accept the vendor's offer. This period shall not be less than 10 days for informal quotations or less than 30 days for formal bids. If the vendor states no minimum time period, the offer shall be irrevocable for 90 days. The department may require a longer evaluation period for technical equipment.

**105.19(14)** *Delivery.*

*a.* *Delivery date.* A vendor shall show in a response to a solicitation the earliest date on which delivery can be made. The department may include in a solicitation the acceptable delivery date for a commodity. The department may consider delivery dates as a factor in determining to which vendor the notice of intent to award shall be issued. Goods in transit remain the responsibility of the vendor.

*b.* *Notice of rejection.* The reason for any rejection of a shipment, based on apparent deficiencies that can be disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item with a copy of this notice provided to the purchasing section. Notice of latent deficiencies that would make items unsatisfactory for the intended purpose may be given at any time after acceptance.

*c.* *Disposition of rejected item.* The vendor must remove at the vendor's expense any rejected item. If the vendor fails to remove the rejected item within 30 days of notification, the department or an agency may dispose of the item by offering it for sale, deduct any accrued expense and remit the balance to the vendor.

*d.* *Testing after delivery.* Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test will be made and that payment will be withheld until completion of the testing process.

*e.* *Risk of loss or damage.* Risk of loss or damage remains with the vendor until delivery and acceptance by the agency at the destination shown on the order.

*f.* *Vendor responsibility for removal of trade-ins.* Whenever the purchase of an item of equipment has been made with the trade-in of equipment, it shall be the vendor's responsibility to remove the traded equipment within 30 days of the final acceptance of the purchased equipment by the agency, if not otherwise specified in the competitive selection document. The department or agency will not assume responsibility for equipment that is not removed within this time period and may cause the equipment to be removed by and shipped to the vendor and may bill the vendor for all packing, crating and transportation charges.

**105.19(15)** *Master agreement and purchase order modifications.* When consistent with the purpose and intent of the original master agreement or order, amendments or modifications may be issued. All modifications shall be documented and approved by the department or agency and the vendor before modifications take effect. Modifications shall not be used unreasonably to avoid further competition.

**105.19(16)** *Federal and state taxes.* The state of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity or service. A vendor shall be furnished a revenue department exemption letter upon request.

**11—105.20(8A) Vendor appeals.**

**105.20(1)** *Filing an appeal.* Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal before the Director, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319, within five calendar days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays. The department must actually receive the notice of appeal within the specified time frame for

it to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the department's award.

**105.20(2)** *Procedures for vendor appeal.* The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the department's administrative rules governing contested case proceedings, unless the provisions of this rule provide otherwise.

*a.* Notice of hearing. Upon receipt of a notice of vendor appeal, the department shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors.

The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the department.

*b.* Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

*c.* Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

*d.* Amendments to notice of appeal. The aggrieved vendor may amend the grounds upon which the vendor challenges the department's award no later than 15 days prior to the date set for the hearing.

*e.* If the hearing is conducted by telephone or on the Iowa communications network, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted.

*f.* The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to all parties by first-class mail.

*g.* The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6).

(1) Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that certified shorthand reporters record the hearing shall bear the costs.

(2) Transcription. A party may request that oral proceedings in connection with a hearing in a case or any portion of the oral proceedings be transcribed. A party requesting transcription shall bear the expense of the transcription.

(3) Tapes. Parties may obtain copies of tapes of oral proceedings from the presiding officer at the requester's expense.

(4) Retention time. The department shall file and retain the recording or stenographic notes of oral proceedings or the transcription for at least five years from the date of the decision.

**105.20(3)** *Stay of agency action for vendor appeal.*

*a.* *When available.*

(1) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

(2) Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order, and shall state the reasons justifying a stay.

*b.* *When granted.* In determining whether to grant a stay, the director shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

*c.* *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

**105.20(4)** *Review of proposed decision.*

*a.* The proposed decision shall become the final decision of the department 15 days after mailing the proposed decision, unless prior to that time a party submits an appeal of the proposed decision in accordance with the provisions of this subrule.

*b.* A party appealing the proposed decision shall mail or deliver the notices of appeal to the Director, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. Failure to request review will preclude judicial review unless the department reviews the proposed decision on its own motion. If the department reviews the proposed decision on its own motion, it will send notice of the review to all parties participating in the appeal.

*c.* A party appealing the proposed decision shall mail a copy of the notice of appeal to all other parties. Any party may submit to the department exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a notice of appeal or of a request for review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The director shall notify the parties if the department deems oral arguments by the parties to be appropriate. The director will issue a final decision not less than 30 days after the notice of appeal is filed.

*d.* The department shall review the proposed decision based on the record and issues raised in the hearing. The department shall not take any further evidence and shall not consider issues that were not raised at the hearing. The issues for review shall be specified in the party's notice of appeal. The party appealing the proposed decision shall be responsible for transcribing any tape of the proceeding before the presiding officer and filing the transcript as part of the record for review. The party appealing the proposed decision shall bear the cost of the transcription regardless of the method used to transcribe the tape.

*e.* Each party shall have the opportunity to file exceptions to the proposed decision and present briefs in support of or in opposition to the proposed decision. The department may set a deadline for submission of briefs. When the department consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The department in its sole discretion may schedule oral arguments regarding the appeal. The department shall notify all parties in advance of the scheduled time and place for oral arguments.

*f.* The director shall issue a final decision by the department. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 8A.201 to 8A.203, 8A.206, 8A.207, 8A.301, 8A.302, 8A.311 as amended by 2005 Iowa Acts, House File 814, 8A.341 to 8A.344, 73.1 and 73.2.

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# CHAPTER 106
# PURCHASING STANDARDS FOR SERVICE CONTRACTS

[Prior to 9/17/03, see 401—Chapter 12]

**11—106.1(8A) Authority and scope.** This chapter is adopted for the purpose of establishing a system of uniform standards for purchasing services in state government. The department of administrative services has adopted these uniform standards in cooperation with other state agencies.

The rules address when state agencies must use competitive selection to purchase services and when it is acceptable to use a sole source or emergency procurement instead of a competitive selection process. The rules provide a mechanism that allows state agencies to use an informal competitive process for purchases of services when the estimated annual value of the contract is less than $50,000 and when the estimated value of the multiyear contract in the aggregate, including renewals, is less than $150,000. The rules also include guidance to state agencies about additional requirements and procedures they should follow when purchasing services.

**11—106.2(8A) Applicability.** This chapter shall apply to all state agencies purchasing services unless otherwise provided by law.

**106.2(1)** When a state agency that is also a "participating agency" as defined by rule 11—105.2(8A) intends to procure "information technology services" as defined by rule 11—105.2(8A), the provisions of rule 11—105.10(8A) shall also apply to procurement of the services.

**106.2(2)** When a state agency that is subject to the applicability requirements of rule 11—105.1(8A) intends to procure "services of general use" as defined by rule 11—105.2(8A), the provisions of 11—Chapter 105 shall apply to the procurement.

**11—106.3(8A) Definitions.** For the purposes of this chapter, the following definitions shall apply:

*"Agency"* or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code Supplement section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

*"Competitive selection"* means a formal or informal process engaged in by a state agency to compare provider qualifications, terms, conditions, and prices of equal or similar services in order to meet the objective of purchasing services based on quality, performance, price, or any combination thereof. During a competitive selection process, a state agency may weigh the relevant selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal. The lowest priced proposal is not necessarily the best proposal.

*"Duration"* means the specific length of a service contract.

*"Emergency"* includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the state agency must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

*"Emergency procurement"* means an acquisition of a service or services resulting from an emergency need.

*"Formal competition"* means a competitive selection process that employs a request for proposal or other competitive selection process authorized by applicable law resulting in a service contract.

*"Informal competition"* means a streamlined competitive selection process in which a state agency makes an effort to contact at least three prospective service providers identified by the purchasing state agency as qualified to perform the work described in the scope of work to provide bids or proposals to provide the services the state agency is seeking.

*"Intergovernmental agreement"* means an agreement for services between a state agency and any other governmental entity whether federal, state, or local and any department, division, unit or subdivision thereof.

*"Private agency"* or *"private agencies"* means an individual or any form of business organization authorized under the laws of this or any other state or under the laws of any foreign jurisdiction.

*"Selection documents"* means documents prepared for a competitive selection by a state agency to purchase services. Selection documents may include requests for proposal, invitations to bid, invitations to bid with best value considerations, invitations to qualify, requests for strategy, auctions, reverse auctions, negotiated selection, or any other type of document a state agency is authorized to use that is designed to advise service providers that a state agency is interested in procuring services for state government.

*"Service"* or *"services"* means work performed for a state agency or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying services; construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; architectural services; information technology consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, pharmacists, engineers, and architects; or

2. Services provided by a vendor to accomplish routine functions. These services contribute to the day-to-day operations of state government. By way of example and not by limitation, these services may include the following: ambulance service; charter service; boiler testing; bookkeeping service; building alarm systems service and repair; commercial laundry service; communications systems installation, servicing and repair; court reporting and transcription services; engraving service; equipment or machine installation, preventive maintenance, inspection, calibration and repair; heating, ventilation and air conditioning (HVAC) system maintenance service; janitorial service; painting; pest and weed control service; grounds maintenance, mowing, parking lot sweeping and snow removal service; towing service; translation services; and travel service.

*"Service contract"* means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists and these rules apply. "Service contract" includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision or rendering of services.

*"Service provider"* means a vendor that enters into a service contract with a state agency.

*"Sole source procurement"* means a purchase of services in which the state agency selects a service provider without engaging in a competitive selection process.

**11—106.4(8A) Intergovernmental agreements.** In the event another governmental entity has resources available to supply a service sought by a state agency, the state agency may enter into an intergovernmental agreement with the other governmental entity and is not required to use competitive selection.

**11—106.5(8A) Use of competitive selection.** State agencies shall use competitive selection to acquire services from private entities when the estimated annual value of the service contract is equal to or greater than $5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than $15,000 unless there is adequate justification for a sole source or emergency procurement pursuant to rule 106.7(8A) or 106.8(8A) or another provision of law.

**106.5(1)** When the estimated annual value of the service contract is equal to or greater than $50,000 or the estimated value of the multiyear service contract in the aggregate, including any renewals, exceeds $150,000, a state agency shall use a formal competitive selection process to procure the service.

**106.5(2)** When the estimated annual value of the service contract is equal to or greater than $5,000 but less than $50,000 and the estimated value of the multiyear service contract in the aggregate, including any renewals, does not exceed $150,000, a state agency, in its sole discretion, shall use either a formal or informal competitive selection process to engage a service provider.

**106.5(3)** The requirement to use competitive selection to select a service provider when the estimated annual value of the service contract is equal to or greater than $5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than $15,000 applies even when the state agency purchases services from a private entity and designates the contract it enters into with the private entity as a 28E agreement.

**11—106.6** Reserved.

**11—106.7(8A) Sole source procurements.**

**106.7(1)** *When justified.* A sole source procurement shall be avoided unless clearly necessary and justifiable. A state agency may purchase services using a sole source procurement under the following circumstances:

*a.* A state agency determines that one service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to perform the service; or

*b.* The services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or

*c.* A state agency is hiring a service provider to provide peer review services for a professional licensing board pursuant to Iowa Code chapter 272C; or

*d.* A state agency is hiring the services of experts, advisors, counsel or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

*e.* The federal government or other provider of funds for the services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the state agency's use of the funds in a way that restricts the state agency to only one service provider; or

*f.* Applicable law requires, provides for, or permits use of a sole source procurement.

**106.7(2)** *Special procedures required for sole source procurements.*

*a.* When the annual value of the service contract exceeds $5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than $15,000, the head of a state agency or designee shall sign the sole source contract or the amendment. Use of sole source procurement does not relieve a state agency from negotiating a fair and reasonable price and thoroughly documenting the procurement action.

*b.* When the annual value of the service contract exceeds $5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than $15,000, a state agency shall be required to complete a sole source justification form. The director of the state agency shall sign the sole source justification form. The claim for the first payment on a contract requires a copy of the signed original contract, a copy of the precontract questionnaire, a copy of the sole source justification form, and an original invoice or original claimant signature.

*c.* The contract for the sole source procurement shall comply with 11 IAC 107.4(8,8A), uniform terms and conditions for service contracts, or 11 IAC 107.5(8,8A), special terms and conditions.

**11—106.8(8A) Emergency procurements.**

**106.8(1)** *When justified.* An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the state agency may consider price and availability of the service procured so that the state agency obtains the best value for the funds spent under the circumstances. State agencies should attempt to acquire services with as much competition as practicable under the circumstances.

**106.8(2)** *Special procedures required for emergency procurements.*

*a.* The head of a state agency shall sign all emergency contracts and amendments regardless of value or length of term. If the head of a state agency is not available, a designee may sign an emergency contract or amendment. Use of an emergency procurement does not relieve a state agency from negotiating a fair and reasonable price and documenting the procurement action.

*b.* When the value of the service contract exceeds $5,000, a state agency shall be required to complete an emergency justification form. The director of the state agency or the director's designee shall sign the emergency justification form.

*c.* If an emergency procurement results in the extension of an existing contract that contains performance criteria, the contract extension shall comply with 11 IAC 107.4(8,8A), uniform terms and conditions for service contracts, or 11 IAC 107.5(8,8A), special terms and conditions.

**11—106.9(8A) Informal competitive procedures.**

**106.9(1)** When utilizing an informal competition as defined in rule 106.3(8A), the state agency may contact the prospective service providers in person, by telephone, fax, E-mail or letter. When the state agency is not able to locate three prospective service providers, the state agency must justify contacting fewer than three service providers. The justification shall be included in the contract file.

**106.9(2)** A state agency may send copies of the scope of work to service providers that it has identified as qualified to perform the work described in the scope of work.

**11—106.10** Reserved.

**11—106.11(8A) Duration of service contracts.**

**106.11(1)** Each service contract signed by a state agency shall have a specific starting and ending date.

**106.11(2)** State agencies shall not sign self-renewing service contracts that do not have a specific ending date.

**106.11(3)** A service contract should be competitively selected on a regular basis so that a state agency obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology. A service contract, including all optional renewals, shall not exceed a term of six years unless the state agency obtains a waiver of this provision pursuant to rule 106.16(8A).

**11—106.12(8A) Additional procedures or requirements.**

**106.12(1)** State agencies, whether utilizing informal or formal competition, shall provide a notice of each procurement for services to the targeted small business Web page located at the Iowa department of economic development's Web site in conformance with Iowa Code section 73.16(2).

**106.12(2)** Except in an emergency procurement, services shall not be performed pursuant to a service contract for a state agency until all parties to the contract have signed the contract.

**106.12(3)** At the conclusion of the competitive selection process, all service providers shall be required to sign a service contract.

**106.12(4)** Each state agency shall maintain a contracting file for each service contract signed by the state agency.

**11—106.13** and **106.14** Reserved.

**11—106.15(8A) Exclusions and limitations.**

**106.15(1)** These rules do not apply to contracts for both goods and services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the purchase of goods with service incidentally involved. However, in no event shall state agencies designate contracts as contracts for goods to avoid the application of these rules.

**106.15(2)** Nothing in this chapter is intended to supplant or supersede the requirements adopted by the department of administrative services relating to the processing of claims. State agencies entering into personal services contracts should refer to procedure 240.102, Miscellaneous—Services Contracting, of the department of administrative services, state accounting enterprise policy and procedure manual.

**11—106.16(8A) Waiver procedure.**

**106.16(1)** For the purpose of this chapter, a "waiver or variance" means an action by the director of the department of administrative services that suspends, in whole or in part, the requirements or provisions of a rule in this chapter as applied to a state agency when the state agency establishes good cause for a waiver or variance of the rule. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

**106.16(2)** Requests for waivers. A state agency seeking a waiver shall submit a written request for a waiver to the director. The written request shall identify the rule for which the state agency seeks a waiver, the contract or class of contracts for which the state agency seeks a waiver, and the reasons that the state agency believes justify granting the waiver.

**106.16(3)** Criteria for waiver. In response to a request for a waiver submitted by a state agency, the director may issue an order waiving in whole or in part the requirements of a rule in this chapter if the director finds that the state agency has established good cause for waiving the requirements of the rule. "Good cause" includes, but is not limited to, a showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome. An example of good cause for a waiver is when a contract duration period of longer than six years is more economically feasible than a six-year contract in light of the service being purchased by the state agency.

**11—106.17(8A) Effective date.** This chapter shall apply to service contracts with a starting date on or after October 1, 2002.

These rules are intended to implement Iowa Code Supplement sections 8A.101, 8A.104, 8A.301, 8A.302, and 8A.311.

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# CHAPTER 107
# UNIFORM TERMS AND CONDITIONS FOR SERVICE CONTRACTS

[Prior to 9/17/03, see 401—Chapter 13]

**11—107.1(8,8A) Authority and scope.** In accordance with Iowa Code section 8.47, this chapter is adopted to provide uniform terms and conditions for departments and establishments to use in service contracts and to provide a mechanism for departments and establishments to seek approval to use in their service contracts special terms and conditions that are not included in this chapter. The terms and conditions generally require departments and establishments to include performance criteria when executing service contracts. Iowa Code section 8.47, which is part of the accountable government Act relating to service contracts, and these rules utilize the definition of "department and establishment" that is found in Iowa Code chapter 8.

**11—107.2(8,8A) Applicability.** This chapter shall apply to all departments and establishments purchasing services unless otherwise provided by law.

**11—107.3(8,8A) Definitions.** For the purposes of this chapter, the following definitions shall apply:

*"Department and establishment"* and *"department"* or *"establishment"* means any executive department, commission, board, institution, bureau, office, or other agency of the state government, including the state department of transportation, except for funds which are required to match federal aid allotted to the state by the federal government for highway special purposes, and except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

*"Efficiency measures"* means unit cost or level of productivity associated with a given service, product or activity.

*"Input measures"* means the amount of resources invested, used or spent for services, products or activities.

*"Outcome measures"* means the mathematical expression of the effect on customers, clients, the environment, or infrastructure that reflects the purpose of the service, product or activity produced or provided.

*"Output measures"* means the number of services, products or activities produced or provided.

*"Performance measures"* means measures that assess a service, product or activity. Performance measures include quality, input, output, efficiency, and outcome measures.

*"Quality measures"* means the mathematical expression of how well the service, product or activity was delivered, based on characteristics determined to be important to the customers.

*"Service"* or *"services"* means work performed for a department or establishment or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying services; construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; architectural services; information technology consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, pharmacists, engineers, and architects; or

2. Services provided by a vendor to accomplish routine functions. These services contribute to the day-to-day operations of state government. By way of example and not by limitation, these services may include the following: ambulance service; charter service; boiler testing; bookkeeping service; building alarm systems service and repair; commercial laundry service; communications systems installation, servicing and repair; court reporting and transcription services; engraving service;

equipment or machine installation, preventive maintenance, inspection, calibration and repair; heating, ventilation and air conditioning (HVAC) system maintenance service; janitorial service; painting; pest and weed control service; grounds maintenance, mowing, parking lot sweeping and snow removal service; towing service; translation services; and travel service.

*"Service contract"* means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists and these rules apply. "Service contract" includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision or rendering of services.

*"Service provider"* means a vendor that enters into a service contract with a department or establishment.

**11—107.4(8,8A) Uniform terms and conditions for service contracts.** All service contracts entered into by a department or establishment shall include, at a minimum, the following terms:

**107.4(1)** *Payment clause.* The contract shall include a clause or clauses describing the amount or basis for paying consideration to the party based on the party's performance under the service contract. The payment clause(s) should be designed to work in harmony with any monitoring clauses and any postcontract review procedures. All payment clauses shall be consistent with 2003 Iowa Code Supplement section 8A.514. The payment clause(s) should also be designed to work in harmony with the outputs, outcomes or any combination thereof desired by a department or establishment. The payment clause should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable kinds of payment clauses include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

*a.* A payment clause in which the department or establishment describes the limit of the total fee to be paid, and the fee is divided between a base fee and an at-risk fee. The base fee is the amount of fee the service provider will earn for minimal performance in the completion of the contract. The at-risk portion of the fee is the incremental fee the service provider will earn as the service provider meets the performance criteria identified in the contract. The amount of the fee in both instances may be stated in terms of a percentage, an amount, or some other term. Incentives and disincentives may be used to affect the payment of the base fee and the at-risk portion of the fee. The amount of the incentive or disincentive may be stated in terms of a percentage, an amount, or some other term. The payment of the fee shall be based upon the outcomes or outputs achieved or the performance criteria satisfied.

*b.* A payment clause based on meeting minimum requirements for performance criteria, outcomes, or outputs with incentives and disincentives to achieve other desired outcomes, outputs or performance criteria. The incentives may be stated in terms of a percentage, a fixed amount, or some other term. Up to 100 percent of the incentive may be placed at risk in order to meet or exceed performance criteria or achieve desired outcomes or outputs. Disincentives may be employed to achieve performance criteria or outcomes. Disincentives may be stated in terms of a percentage, a fixed amount, or some other term. Disincentives may include payments to the department or establishment for performance failures up to 100 percent of the fee the service provider expects to earn from performance of the contract.

*c.* A payment clause based on a straight contingency fee with the entire fee at risk depending on outcomes achieved or outputs obtained or performance criteria satisfied.

*d.* A payment clause based on a base fee and an amount retained by a department or establishment to ensure performance criteria described in the contract are satisfied or outcomes are achieved or outputs are obtained. If the vendor meets the performance criteria or outcomes or outputs, then a department or establishment may pay some or all of the portions of the fee retained as an incentive or disincentive and as provided for in the contract.

*e.* A payment clause based on a base fee and a contingency fee depending on the outcomes achieved, outputs obtained, or performance criteria satisfied. The base fee may be stated in terms of an hourly fee, a fixed-price fee, or a not-to-exceed fee. The contingency fee may be stated in terms of a percentage of a recovery.

*f.* Any other payment clause determined by the department or establishment to be suitable and appropriate for the service contract that bases the amount or basis for paying consideration to the service provider based on the service provider's performance under the service contract.

**107.4(2)** *Monitoring clause.* The contract shall include a clause or clauses describing the methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. Monitoring should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable methods of monitoring may include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

*a.* One hundred percent inspection.

*b.* Random sampling.

*c.* Periodic inspection.

*d.* Customer input.

*e.* Invoices itemizing work performed.

*f.* A monitoring plan determined by the department or establishment to be appropriate for purposes of the service contract and that includes methods to effectively oversee the service provider's compliance with the service contract by the department or establishment.

**107.4(3)** *Review clause.* The contract shall include a clause or clauses describing the methods to effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to Iowa Code chapter 8E. Performance measurement should be appropriate to the nature of the contract as determined by the department or establishment. The measures below are not intended as an exhaustive or prescriptive list; they are provided as examples. The review clause for performance may include:

*a.* Outcome measures.

*b.* Output measures.

*c.* Efficiency measures.

*d.* Quality measures.

*e.* A review plan determined by the department or establishment to be appropriate for the purposes of the service contract and that includes methods to effectively review performance of a service contract.

**107.4(4)** *Other terms.* The contract shall include:

*a.* Where appropriate, a nonappropriation clause;

*b.* A clause describing the duration of the contract;

*c.* Clauses requiring the service provider to comply with all applicable laws;

*d.* Where appropriate, an insurance clause;

*e.* A clause, exhibit, or other document that describes the scope of services to be performed;

*f.* A termination clause;

*g.* A default clause, where appropriate;

*h.* An independent contractor clause;

*i.* Where appropriate, a clause prohibiting inappropriate conflicts of interest on behalf of the service provider;

*j.* Other clauses as deemed appropriate by the department or establishment entering into a service contract.

**11—107.5(8,8A) Special terms and conditions.** Rule 107.4(8,8A) does not apply to service contracts containing special terms and conditions adopted by a department or establishment for use in its service contracts with the approval of the department of management, in cooperation with the office of the attorney general and the department of administrative services as provided for in 2003 Iowa Code Supplement section 8.47(2).

**11—107.6(8,8A) Exclusions and limitations.**

**107.6(1)** These rules do not apply to contracts for both goods and services when the predominant factor, thrust and purpose of the contract as reasonably stated is for the purchase of goods with service incidentally involved. However, in no event shall departments and establishments designate contracts as contracts for goods to avoid the application of these rules.

**107.6(2)** These rules do not apply to service contracts utilizing funds that are required to match federal aid allotted to the state by the federal government for highway special purposes.

**107.6(3)** These rules do not apply to service contracts entered into as the result of an emergency procurement in accordance with 11—106.8(8A), unless the emergency procurement results in the extension of an existing contract that contains performance criteria.

**11—107.7(8,8A) Effective date.** This chapter shall apply to service contracts with a starting date on or after October 1, 2002.

These rules are intended to implement 2003 Iowa Code Supplement sections 8.47 and 8A.104.

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# CHAPTER 108
# CONTRACTUAL LIMITATION OF VENDOR LIABILITY PROVISIONS

## PREAMBLE

These rules define the process for the department to follow when contracting for information technology goods and services. The rules allow the department to enter into contractual agreements that, in certain instances, will limit the liability of the vendor.

**11—108.1(8A) Authority and scope.** Pursuant to Iowa Code section 8A.311(21), these rules provide for authorizing information technology procurements containing a contractual limitation of vendor liability as provided for and set forth in the documents initiating the procurement. The department of administrative services adopted these rules in cooperation with the department of management.

**11—108.2(8A) Definitions.**

*"Agency"* or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not include any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

*"Agency head"* means the director, commissioner, or other official in charge of a state agency.

*"Competitive selection"* means a formal or informal process engaged in by a state agency to compare provider qualifications, terms, conditions, and prices of equal or similar goods or services in order to meet the objective of purchasing goods or services based on quality, performance, price, or any combination thereof.

*"Competitive selection documents"* means documents prepared for a competitive selection by the department or an agency to purchase goods and services. Competitive selection documents may include requests for proposal, invitations to bid, or any other type of document the department or an agency is authorized to use that is designed to procure a good or service for state government. A competitive selection document may be an electronic document.

*"Department"* means the department of administrative services.

*"Director"* means the director of the department of administrative services.

*"Information technology device"* means equipment or associated software, including programs, languages, procedures, or associated documentation designed for the utilization or processing of information stored in an electronic format. "Information technology device" includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

*"Information technology procurement"* means a procurement for goods or services in which the predominant factor, thrust, and purpose of the procurement as reasonably stated is for the purchase of information technology devices or information technology services. Information technology procurements do not include procurements for goods or services in which the purchase of information technology devices or information technology services is an incidental, minor or limited part of the contract.

*"Information technology services"* means services designed to do any of the following:

1. Provide functions, maintenance, and support of information technology devices.
2. Provide services for any of the following:

- Computer systems application development and maintenance.
- Systems integration and interoperability.
- Operating systems maintenance and design.

- Computer systems programming.
- Computer systems software support.
- Planning and security related to information technology devices.
- Data management consultation.
- Information technology education and consulting.
- Information technology planning and standards.
- Establishment of local area network and workstation management standards.

**11—108.3(8A) Applicability.** This chapter applies to information technology procurements conducted by the department, including information technology procurements the department conducts on behalf of another state agency. When the department is conducting an information technology procurement on behalf of another state agency and the procurement exposes the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate, the agency head of the other state agency shall make the decisions regarding contractual limitation of vendor liability outlined in subrule 108.4(2). This chapter does not apply to procurements conducted by another state agency on its own behalf.

**11—108.4(8A) Authorization of limitation of vendor liability and criteria.**

**108.4(1)** *General approach.* The director, in consultation with the department of management, may authorize the procurement of information technology devices and services in which a contractual limitation of vendor liability is provided for. Criteria for determining whether to permit a contractual limitation of vendor liability include all of the following:

*a.* Whether authorizing a contractual limitation of vendor liability is necessary to prevent harm to the state from a failure to obtain the goods or services sought, from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability, or when the result could be a lower quality good or service.

*b.* Whether the contractual limitation of vendor liability is commercially reasonable when taking into account any risk to the state created by the goods or services to be procured and the purpose for which they will be used.

**108.4(2)** *Special circumstances.* Certain information technology procurements of information technology devices and services expose the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate. The department or applicable agency for which the department is conducting the procurement shall review the risks presented by the particular information technology procurement before initiating the procurement. When either the department or the applicable agency believes a particular information technology procurement may expose the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate, the department or applicable agency shall identify the risks and identify the steps the department or applicable agency believes may help to mitigate the risks. The director or the applicable agency head shall consult with the department of management to determine whether a higher limit of the vendor's contractual liability is appropriate. This determination shall occur before the department issues the competitive selection documents, and the competitive selection documents issued in the procurement shall include the higher limitation on the vendor's contractual liability that the director or the applicable agency head and the department of management have determined to be appropriate for the procurement under consideration.

**108.4(3)** *Applicability.* These rules do not apply to procurements for devices or services procured under a federal tariff or using federal funds, if the federal agency providing the funds imposes any requirements regarding limitation of liability provisions in the resulting contract.

**11—108.5(8A) Prohibited limitation of vendor liability provisions.**

**108.5(1)** For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that

limits the vendor's liability to one times the contract value, as defined in subrule 108.5(3), provided that the foregoing limitation shall not apply to:

*a.* Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence.

*b.* Claims related to death, bodily injury, or damage to real or personal property.

*c.* Any contractual obligations of the vendor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information.

*d.* Claims arising under provisions of the contract calling for indemnification of the state for third-party claims against the state for bodily injury to persons or for damage to real or tangible personal property caused by the vendor's negligence or willful conduct.

**108.5(2)** For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor's liability for consequential, incidental, indirect, special, or punitive damages to the extent the vendor's liability for such damages arises out of the items identified in paragraphs 108.5(1)*"a"* to *"d."*

**108.5(3)** For the purpose of this rule, "contract value" means the aggregate total compensation pertaining to a specific project paid by the state to the vendor under the entire term of the contract including all renewals and extensions.

**11—108.6(8A) Negotiation of limitation of vendor liability provisions.**

**108.6(1)** *After completion of competitive selection process.* In a competitive selection process, the department or the state agency upon whose behalf the department conducts the information technology procurement may either award the contract to the apparent successful vendor without further negotiation or negotiate contract terms, including limitation of vendor liability provisions, if the department or state agency, in its sole discretion, determines that the best interest of the state would be served by entering into negotiations. Any negotiations of vendor limitation of liability contractual provisions shall be done in accordance with the provisions of rules 108.4(8A) and 108.5(8A).

**108.6(2)** *Sole source or emergency procurement.* In a justifiable sole source or emergency procurement, the department or state agency may negotiate a contractual limitation of vendor liability provision in accordance with the provisions of rules 108.4(8A) and 108.5(8A).

**11—108.7(8A) Additional requirement.** Any contract containing a provision limiting the vendor's liability shall also contain provisions limiting the state's liability and preserving the state's sovereign immunity.

These rules are intended to implement Iowa Code section 8A.311(21).

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# CHAPTER 109
Reserved

# CHAPTER 110
# INVENTORY GUIDELINES FOR STATE OF IOWA PERSONAL AND REAL PROPERTY

[Prior to 9/17/03, see 401—Chapter 10]

**11—110.1(7A) Purpose.** The department of administrative services is responsible for establishing inventory guidelines for personal and real property owned by state departments. Beginning July 1, 1998, the accompanying rules are the minimum universal guidelines for personal property. Each state department may implement more restrictive guidelines to enhance accountability for physical assets.

**11—110.2(7A) Definitions.**

**110.2(1)** *Personal property.* For purposes of this chapter, personal property is any item or equipment that has an acquisition value of $5000 or more and has an anticipated useful life of one year or more. Computer software is to be excluded from this definition. If the minimum level for capitalization set by the federal Office of Management and Budget Circular A87 is changed, there will be a coordinated effort between the department of administrative services and the department of revenue to determine if the amount should be adjusted for the state of Iowa.

**110.2(2)** *Accounting in aggregate.* Accounting in aggregate is the process of accounting for certain types of items in a lump sum rather than individually. Items accounted for in aggregate are added for the combined value with one entry to the fixed asset listing. Items that may be accounted for in aggregate are defined as: one item that is made up of two or more component parts and the individual values are less than $5000, but the combined value can be $5000 or more.

**110.2(3)** *Acquisition value—cost or estimated cost.* Cost or estimated cost may include freight, installation expense and administrative expense, if readily known and available. If cost is unknown and cannot be estimated, acquisition value is the fair market value. For donated items, acquisition value is the fair market value at date of donation.

**110.2(4)** *Department.* A department is any state agency or institution as identified in Iowa Code section 7A.30.

**11—110.3(7A) Accounting for items in aggregate.** Personal property may be accounted for in aggregate. If accounting in aggregate as defined in 110.2(2), one item or component of the item shall be tagged with a prenumbered tag and all other items or components marked with an unnumbered tag or other identifiable markings.

Any item that is accounted for in the aggregate whose individual values are less than $5000 will not be included in the Comprehensive Annual Financial Report (CAFR) for the state, even if the amount in the aggregate exceeds the minimum level for capitalization. If a department chooses to account for items in aggregate, or report items at a level that is more restrictive than $5000, then the department must recognize that these items will be reconciling items when reporting for the CAFR.

To ensure proper accountability for these items, each department will prepare written policies and procedures for tracking and recording items accounted for in aggregate.

**11—110.4(7A) Physical inventory.** A physical inventory of personal property must be taken and the results reconciled with property records at least once every two years.

**11—110.5(7A) Inventory identification.** If feasible, all inventoried personal property should be identified as state of Iowa property with a prenumbered decal or the appropriate bar code tag or other identifiable mark.

**11—110.6(7A) Inventory listing.** Personal property should be accounted for on an inventory listing. As applicable, the following minimum information must be presented on the inventory listing for each record of personal property:

1. Department.
2. Tag number.

3. Description.
4. Acquisition value.
5. Location(s).
6. Acquisition date.
7. Disposition date (not applicable until disposal of property).
8. The only depreciation method allowed shall be the straight-line method.
9. If the department depreciates personal property, the information must include the useful life of the asset.

Departments shall develop adequate internal control procedures that (1) identify individual(s) authorized to update and change the inventory records and (2) provide for an adequate segregation of duties between the recording and custody of property.

**11—110.7(7A) Capital leases.** Property acquired under capital lease provisions shall be accounted for on the inventory listing at the inception of the lease.

These rules are intended to implement Iowa Code section 7A.30.

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# CHAPTER 111
# DISPOSAL OF STATE PERSONAL PROPERTY

**11—111.1(8A) Definitions.**

*"Agency"* or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

*"Auction"* means a sale of property to the highest bidder. Auctions may be conducted electronically.

*"Bid"* means to offer a price to purchase an item.

*"Bidder"* means an individual who offers a price to purchase an item.

*"Department"* means the Iowa department of administrative services.

*"Director"* means the director of the Iowa department of administrative services or the director's designee.

*"Hazardous materials"* or *"hazardous waste"* means personal property that requires special handling and a special disposal fee based on state or federal regulations.

*"Highest bidder"* means an individual who offers the highest price to purchase an item.

*"Personal property"* means anything of value belonging to the state, other than real property, under the control of the director. Tangible personal property that becomes part of realty is not personal property.

*"Scrap"* means personal property, such as equipment and supplies, that is to be disposed of because it does not have sufficient value to justify preparing it for reuse or reprocessing. Scrap may be recycled or sold.

*"State surplus"* or *"state property"* means items of personal property, such as equipment and supplies, for which state agencies no longer have a business use, but that have some reuse value. "State surplus" does not mean personal property that an agency uses as a trade-in or that is transferred from one agency to another agency when the receiving agency has a business use for the property.

*"State surplus property program"* means the program authorized under Iowa Code chapter 8A for the director to dispose of state surplus property.

*"State vehicle"* means any vehicle registered to the state of Iowa, department of administrative services.

*"Successful bidder"* means an individual who was awarded the sale of an item as the highest bidder.

*"Surplus property program agent"* means a not-for-profit organization or governmental agency that has entered into an agreement with the department to dispose of state surplus.

*"Surplus property staging area"* means an area within each building on the capitol complex where surplus property, other than vehicles, is accumulated for pickup.

**11—111.2(8A) Disposal of state surplus property.** The director shall dispose of all personal property of the state under the director's control when the personal property becomes unnecessary or unfit for further use by the state. This rule establishes the procedures for inspecting, selecting and removing surplus property from state agencies or from state storage.

**111.2(1)** *Means of disposal.* The director may dispose of unfit or unnecessary personal property by auction or other method of sale, trade-in, salvage, recycling, donation or transfer, or may properly and safely dispose of it by other means.

**111.2(2)** *Proceeds from disposal.* Except for proceeds from the sale of vehicles and printing equipment or except as otherwise provided by law or rule, proceeds from the sale of personal property by the director shall be deposited in the general fund of the state.

**111.2(3)** *Transfer.* Personal property may be transferred between state agencies in lieu of other means of disposal when the receiving agency has a business use for the personal property.

**111.2(4)** *Disposal agreement.* The director may enter into agreements with not-for-profit organizations or governmental agencies to dispose of state surplus. Notwithstanding subrule 111.2(3), when the director disposes of surplus property by donation, the disposal of such property shall be in accordance with an agreement established pursuant to this subrule between the department and a surplus property program agent. A surplus property disposal agreement shall contain, at a minimum, the following components:

*a.* *Identity of parties.* The agreement shall be between the department and the surplus property program agent.

*b.* *Purpose.* The purpose of the agreement shall be for the disposal of state surplus.

*c.* *Definitions.* Terms having special meaning to the agreement shall be defined.

*d.* *Project description.* The process utilized for disposal of state surplus and the rights and responsibilities of the parties under this agreement shall be described.

*e.* *Compensation and fees.* The agreement shall specify any fees charged by the surplus property program agent for removal and transportation of the state surplus. When the surplus property program agent adds value to the property transferred to it and sells the property, the proceeds from the sale shall be retained by the surplus property program agent and shall not be deposited in the general fund of the state.

*f.* *Geographical or commodity conditions.* The agreement shall specify any geographical conditions that may apply and any restrictions on the types of commodities accepted by the surplus property program agent.

*g.* *Title to state surplus property.* The agreement shall specify the declaration form required to transfer the surplus property and shall specify that title to the surplus property shall transfer to the surplus property program agent when the surplus property and the declaration form for the surplus property are in the possession of the surplus property program agent.

*h.* *Duration of agreement.* The duration of the agreement shall be specified as not to exceed six years, with annual reviews conducted by the parties.

*i.* *Liability and indemnification.* The agreement shall specify the liability and indemnification terms, such as parties' responsibilities for damage to state buildings and leased spaces as a result of performance of the agreement.

*j.* *Default and termination.* Default and termination conditions shall be specified.

*k.* *Contract administration.* The method or procedures for contract administration shall be specified, including provisions for monitoring compliance.

*l.* *Execution.* The agreement shall be signed by the director and the surplus property program agent.

**111.2(5)** *Use of additional disposal agreements.* Where more than one agreement is in place in a particular county or region of the state, state agencies shall utilize the surplus property program agents on a fair and equitable basis.

**111.2(6)** *Identifying items for disposal.* State agency staff designated by the head of a state agency or designated department staff may identify unused property within state office areas and determine whether the unused property is scrap or salvageable surplus property.

**111.2(7)** *Removal of surplus property.*

*a.* Requests from agencies to remove surplus property may be processed through the department on the capitol complex.

*b.* Requests from agencies to remove surplus property may be sent directly to the surplus property program agent.

*c.* State agencies or designated department staff may remove surplus property from a building's office area or state storage to the building's surplus property staging area.

**111.2(8)** *Disposal of hazardous waste.* When the director or director's designee concludes that personal property provided for disposal is contaminated, contains hazardous waste, or is hazardous

waste, the state agency providing such property for disposal is responsible for the hazardous waste disposal fees.

**111.2(9)** *Surplus property sale by state agencies.* The director may authorize one or more individuals within a state agency to sell surplus property located outside Polk County by public auction when the director determines this is the most cost-effective method of disposal. The net proceeds from the sale shall be deposited in the general fund of the state.

**111.2(10)** *Disposal of printing equipment.* The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation pursuant to Iowa Code section 8A.341. The receipts from the sale of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation shall be deposited in the printing revolving fund established in Iowa Code section 8A.345.

**111.2(11)** *Disposal of surplus office modular components, furniture and equipment.* Disposal of surplus office modular components, furniture and equipment shall be carried out pursuant to 11—subrule 100.6(7).

**11—111.3(8A) State vehicle auctions.** Public auctions of state vehicles under the control of the director shall be held in accordance with the standards set forth in this rule. Auctions may be conducted electronically.

**111.3(1)** *Eligibility to bid.* All bidders must register before making a bid. Bid numbers shall be available prior to and during the sale. All bidders must be 18 years of age or older to bid or purchase items at the auction.

**111.3(2)** *Settlement of purchases.* All sales are final. Final settlement may be made on the date of the sale, but must be completed by the date specified at the time of the sale. Removal of purchased items is at the expense of the successful bidder.

**111.3(3)** *Guarantees and warranties.* All items are sold to the highest bidder as is, with no guarantees or warranties.

**111.3(4)** *Sales tax.* Iowa sales tax and any applicable local option tax shall be collected at the auction, unless the item sold is a vehicle subject to registration.

**111.3(5)** *Public property.* Individuals tampering with or pilfering public property shall be subject to prosecution.

**111.3(6)** *Office hours.* Office hours for completing final settlement in person and taking possession of the purchased item are as specified in the terms and conditions of the sale.

**111.3(7)** *Announcements.* Any announcements, corrections or revisions of sale item descriptions or bid reservation policy announced by auction officials during the course of the sale shall take precedence over sale item descriptions and bid reservation policy in printed materials.

**111.3(8)** *Liability.* The state does not accept any responsibility or liability for damages done to person or property once the successful bidder takes possession of the purchased item. If the item is damaged while still in the possession of the state, upon the request of the successful bidder the state shall return the bidder's payment and void the transaction. The state of Iowa, department of administrative services, the auctioneers and their employees are not responsible for any accidents.

**111.3(9)** *State vehicle auctions—exceptions.* All used motor vehicles turned in to the director shall be disposed of by public auction, with the following exceptions:

*a.* In the case of a used motor vehicle of special design, the director may, instead of selling the vehicle at public auction, authorize the trade of the vehicle for another vehicle of similar design.

*b.* If a motor vehicle sustains damage and the cost of repair exceeds the wholesale value of the vehicle, the director may dispose of the vehicle by obtaining two or more written salvage bids and selling the vehicle to the highest responsible bidder.

**111.3(10)** *Advertisement of sales.* A public auction of state vehicles under the control of the director shall be advertised in a newspaper of general circulation as defined in Iowa Code section 618.3, subsection 1, in the area of the sale one week in advance of the sale. Public auctions will also be advertised on the department's Web site.

**111.3(11)** *Dates and times to examine vehicles.* Prospective buyers may examine a vehicle, start the engine and operate accessories on an auction vehicle during times and dates specified in the terms and conditions of the sale, but are prohibited from over-revving the engine. Only those individuals aged 18 or older in possession of a valid operator's, chauffeur's, or commercial driver's license will be permitted to start engines and operate accessories of the auction vehicles. Under no condition will an individual other than personnel authorized by the department move a vehicle from its sale position.

**111.3(12)** *Bid deposit.* A successful bidder must make a $200 deposit to hold an item for final payment. The deposit must be in the form of cash, traveler's check, postal money order, cashier's check, or a certified check from a savings and loan, credit union, or bank for each vehicle or other item purchased, made payable or endorsable to the State of Iowa. Political subdivisions are the exception to this rule and may use either a requisition or purchase order in lieu of the deposit.

**111.3(13)** *Personal checks.* No personal or company checks will be accepted for any $200 deposit or final settlement for the purchase of a vehicle, unless accompanied by a letter from the issuing financial institution guaranteeing the amount of the check.

**111.3(14)** *Bid default.* Bidders are cautioned to bid only on those items the bidder is prepared to pay for and remove in accordance with the terms and conditions of the sale. All items awarded the highest bidder contractually belong to the highest bidder and must be paid for and removed within the time period allowed by the terms and conditions of the sale. The successful bidder agrees that, in the event the property is not paid for or removed within the prescribed period of time, the state of Iowa, at its election and upon notice of default, shall be entitled to retain or collect as liquidated damages a sum equal to the greater of either 20 percent of the total purchase price of the item on which the default has occurred or $200 if the successful purchase price is less than $1,000.

**111.3(15)** *Settlement of vehicle purchases.* Deposits may be forfeited if the balance due is not paid by the date specified at the time of the sale. A penalty of $25 per workday per item will be assessed beginning at the close of business on the date specified at the time of the sale for any final settlement still owed to the state of Iowa. Payments must be received timely and in the terms specified in subrule 111.3(2). In the event that a final settlement is not concluded by the date specified at the time of the sale, deposits held against items sold will be forfeited to the state of Iowa.

**111.3(16)** *Vehicle storage.* Vehicles purchased at state auction may be stored on state of Iowa premises at no charge until the close of business on the date specified in the terms and conditions of the sale. Vehicles remaining after that time and date will be assessed a $25 per calendar day storage fee, which must be paid in full prior to release of vehicles and title documents.

**111.3(17)** *Title transfer.* Title transfer is made at the time of final settlement. Use tax for vehicles subject to registration will be paid by the successful bidder to the county treasurer at the time of application for a vehicle license. The director or designee shall furnish an in-transit paper license plate to the successful bidder. Requests for duplicate titles will be processed for a fee of $25 per title.

**111.3(18)** *Window notations.* Any mechanical defects or disrepair conditions that are determined by the director, or of which the director is made aware, are noted on the windshield of each vehicle. Obvious damage such as, but not limited to, body dents or rust perforation, tire wear, cracked windshields, or exhaust system deterioration may or may not be noted. Accident damage will be noted on the windshield if any single accident caused repairs in excess of $1,500 while the vehicle was owned and operated by the state of Iowa.

**111.3(19)** *Vehicle proceeds.* Proceeds from the sale of state vehicles sold by the director shall be deposited in the depreciation fund to the credit of the state agency that purchased the vehicle.

These rules are intended to implement Iowa Code sections 8A.321(5), 8A.324, 8A.362(6) and 8A.365.

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CHAPTERS 112 and 113
Reserved

# CHAPTER 114
# ORGANIZATION AND OPERATION OF TERRACE HILL

[Prior to 5/31/89, see Historical Division[223] Ch 25]
[Prior to 2/16/94, see Historical Division[223] Ch 55]
[Prior to 1/21/04, see 401—Ch 14]

**11—114.1(8A) Definitions.** The definitions listed in Iowa Code section 17A.2 shall apply for terms as used throughout this chapter. In addition, the following definitions shall apply:

*"Administrator"* means the administrator of Terrace Hill.

*"Commission"* means the Terrace Hill commission as established by 2003 Iowa Acts, chapter 145, section 41.

*"Facility"* means the Terrace Hill mansion, carriage house, grounds, and all related property.

*"Foundation"* means the Terrace Hill Foundation, a nonprofit corporation which solicits contributions and raises funds for the renovation and improvement of the facility.

*"Society"* means the Terrace Hill Society, an unofficial organization which raises funds and provides volunteers for restoration and landscape projects of Terrace Hill.

**11—114.2(8A) Mission statement.** The Terrace Hill commission exists in accordance with 2003 Iowa Code Supplement section 8A.326 to preserve, maintain, renovate, landscape, and administer the Terrace Hill facility. The commission has authority to approve the ongoing expenditures for preservation, renovation, and landscaping of Terrace Hill and seeks necessary funds for these activities. Terrace Hill is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

**11—114.3(8A) Terrace Hill commission.**

**114.3(1)** *Function.* The Terrace Hill commission exists to establish policy and procedures for the renovation, interpretation, operation and fiscal management of the facility.

**114.3(2)** *Composition.* The commission consists of nine members appointed by the governor in accordance with 2003 Iowa Code Supplement section 8A.326.

**114.3(3)** *Meetings.* The commission shall meet at the call of the chair. Six members present and voting constitutes a quorum and an affirmative vote of five members is required for approval of an item.

All meetings are open to the public under Iowa Code chapter 21, and in accordance with Robert's Rules of Order, Revised Edition. Public notice of all meetings shall be distributed to the news media. The tentative agenda for meetings shall be posted in the governor's office at the State Capitol at least 24 hours prior to the commencement of any meeting in accordance with Iowa Code chapter 21.

**114.3(4)** *Committees—appointment.* Committees of the commission may be appointed on an ad hoc basis by the chairperson of the board. Nonboard members may be appointed to committees as nonvoting members.

**11—114.4(8A) Gifts, bequests, endowments.** The commission, acting on behalf of the society and the foundation, may accept private gifts, bequests, and endowments with such gifts credited to the account of the society. Accepted gifts, bequests, and endowments shall be used in accordance with the desire of the donor as expressed at the time of the donation. Undesignated funds shall be credited to the general fund of the society and used for projects and activities of the commission or society.

**11—114.5(8A) Public and private grants and donations.** The commission, society, or foundation may apply for and receive funds from public or private sources. Receipts from these grants shall be credited to the appropriate account and shall be used in accordance with all stipulations of the grant contract.

**11—114.6(8A) Sale of mementos.** The commission may sell mementos or other items relating to Iowa and its culture at its facilities.

**114.6(1)** *Operator of gift shop.* The commission may enter into an agreement with the society for operation of the gift shop including facilities, merchandise, and promotion. The commission shall require an accounting of all receipts and expenditures of the gift shop.

**114.6(2)** *Income.* All receipts shall be deposited in the account of the society. The society shall provide a quarterly financial statement to the commission.

**11—114.7(8A) Facilities management.**

**114.7(1)** Address. Terrace Hill is located at 2300 Grand Avenue, Des Moines, Iowa 50312. Telephone number (515)281-7205.

**114.7(2)** Hours of operation. Terrace Hill is open to the public a minimum of 20 hours per week and is closed the months of January and February. Specific hours and days shall be posted at the facility. The hours shall be approved by the commission. Changes in the hours shall be effective upon 30 days' notice as posted.

**114.7(3)** Fees. Fees may be charged and collected by the commission and shall be administered according to 2003 Iowa Code Supplement section 8A.326. Fees may be charged for, but are not limited to, admission, special events, use of images, and technical services. All fees charged shall be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

**114.7(4)** Smoking. Smoking shall be prohibited in all designated areas of the facility. Smoking areas shall be approved by the commission.

**114.7(5)** Food and drink. Consumption of food and beverages shall be prohibited in the facility except in specific areas as designated by the commission.

**114.7(6)** Use of alcoholic beverages. Alcoholic beverages may be served at functions at the facility only with the use of an approved caterer. Interested caterers shall contact the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

**114.7(7)** All individuals and groups renting the facility for any use shall agree in writing to abide by the "hold harmless" clause specified in the letter of agreement.

All individuals or groups renting the facility shall be liable for any or all damages to the facility. The renter shall be billed for the cost of the repairs, extraordinary cleaning and, if necessary, the collection costs.

**114.7(8)** Public functions may be held at the facility when the governor has an immediate interest or the function meets the special events criteria established by the commission. The criteria require that the event be in accordance with the mission of the facility. Weddings and wedding receptions are strictly prohibited, except in the case of the immediate family of the current governor. Inquiries shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

**11—114.8(8A) Tours.**

**114.8(1)** *Group tours.* Reservations shall be required for tour groups of ten or more. Requests for reservations shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

**114.8(2)** *Fees.* An admission fee is charged at Terrace Hill. There shall be no charge for school groups. The fee schedule shall be permanently posted at the site. Inquiries concerning fees shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

**114.8(3)** *Parking.* Designated parking has been established by the commission. Vehicles are not permitted in the east driveway.

**114.8(4)** *Pets.* Pets are not permitted at the facility with exception of those belonging to the governor, or those assisting the hearing or visually impaired.

These rules are intended to implement 2003 Iowa Code Supplement section 8A.326.

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# CHAPTER 115
Reserved

# CHAPTER 116
# TERRACE HILL ENDOWMENT FOR THE MUSICAL ARTS

[Prior to 5/31/89, see Historical Division[223] Ch 27]
[Prior to 2/16/94, see Historical Division[223] Ch 57]
[Prior to 1/21/04, see 401—Ch 16]

**11—116.1(8A) Structure.** The Terrace Hill endowment for musical arts functions under the Terrace Hill commission with all final authority resting with the commission. A board of seven members called the board of trustees will direct the endowment. The board will be appointed by the commission. The majority of the members of the board of trustees shall be members of the Terrace Hill commission and the Terrace Hill Society. Staggered terms of three years will be set by the commission. All policies, fund-raising activities and decisions concerning the scholarship, its growth, and presentation are under the jurisdiction of the trustees.

**11—116.2(8A) Scholarship established.** The Terrace Hill commission maintains an endowment fund to be used for the sole purpose of providing a biennial grant, and a one-time second- and third-place grant, to an Iowa high school senior or resident who will be an entering freshman piano major or minor at one of Iowa's public or private colleges or universities. The scholarship is called "The First Lady of Iowa Award from the Terrace Hill Endowment for the Musical Arts." The successful applicant shall receive a one-time grant of not less than $2,000. One thousand dollars of this grant will be presented each year for a two-year period. In the event the successful applicant is disqualified or otherwise unable to utilize the grant, the judges may choose to award the grant to the second- or third-place applicant. Such a decision must be accompanied by a written statement in which the judges set out their opinion that the second- or third-place contestant has sufficient talent to merit the increased award. The cash award may be supplemented by other benefits, publicity or opportunities as may be arranged by the commission.

In addition to the first-place grant, a one-time $750 grant will be made to the second-place applicant and a one-time $500 grant will be made to the third-place applicant. The grants will be paid directly to the college or university attended by the applicants.

The successful applicant is not eligible to compete again for the grant.

**11—116.3(8A) Application.** Application forms are available from the Terrace Hill Commission, 2300 Grand Avenue, Des Moines, Iowa 50312. Telephone requests may be made by calling the commission at (515)281-7205. The form contains the date it must be submitted to the commission in order to be eligible for the grant awarded for that particular school year. Applications are not held over from one contest to another. Applicants must submit new applications each time they wish to be eligible for the grant.

**11—116.4(8A) Funding.** All funds to support and maintain the scholarship have been raised by public and private donations and shall not be used for any other purpose. They are held in trust under the Terrace Hill foundation, a nonprofit, charitable foundation. All proceeds generated from investment interest by the scholarship moneys are themselves deposited into the scholarship trust. The treasurer for the scholarship is the treasurer for the commission and the foundation.

**11—116.5(8A) Selection criteria and judging.** The sole criterion for the grant will be the talent of the applicant, as determined by a competition conducted by a panel of judges.

**116.5(1)** *Selection of judges.* The board of trustees of the endowment shall establish a selection committee to choose judges for the competition. All members of the committee shall have a background in piano and piano education. To ensure the competence of the judges, each must be approved by the committee as being competent to judge piano talent. The committee will assist and advise in the actual ceremonies for the scholarship judging and presentation and in the additional appearances by the scholarship recipient.

**116.5(2)** *The competition.* All applicants shall be given not less than two weeks' notice of the date, time, and location of the competition and the amount of time available for each applicant's recital. The recitals shall be performed on a piano furnished by the commission. The judges may impose additional

requirements as needed to preserve the order and decorum of the competition and to ensure that each applicant has a fair opportunity to perform.

The successful competitor will be asked during the two-year course of the scholarship to perform at several functions at the pleasure of the governor or the governor's spouse.

**116.5(3)** *Selection.* At the conclusion of the competition the judges shall meet in closed session to review the performances and select the successful applicant. The decision of the judges is final, with no review available by the Terrace Hill commission.

These rules are intended to implement 2003 Iowa Code Supplement section 8A.326.

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