

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

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TITLE I
GENERAL OFFICE PROCEDURES
CHAPTER 1
OFFICE ORGANIZATION

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—1.1(8B,17A) Creation and mission. The office of the chief information officer is established in Iowa Code chapter 8B. The office leads, directs, manages, coordinates, and provides accountability for the information technology resources of state government and coordinates statewide broadband availability and access.

The mission of the office is to provide high-quality, customer-focused information technology services and business solutions to government and to the citizens of the state of Iowa.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.2(8B,17A) Location. The office's primary headquarters is located in the Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The office's Web site, available at www.ocio.iowa.gov, provides information about the office's organization and services.

1.2(1) The information security office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(2) The infrastructure services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(3) The business services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(4) The enterprise applications division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(5) The application development division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(6) The project management office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(7) The agency services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.3(8B,17A) Office head. The head of the office is the state chief information officer, who is appointed by the governor with the approval of two-thirds of the members of the senate. The CIO serves at the pleasure of the governor.

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

Specific powers and duties of the office, the CIO, and the office's employees and agents are set forth in Iowa Code chapters 8B and 17A and these administrative rules.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.4(8B,17A) Administration of office. In order to carry out the functions of the office, the following enterprises and divisions have been established:

1.4(1) *CIO's office.* The CIO is the head of the office. The CIO's central administration area provides support to the CIO and to the governmental and business operations of the office and its enterprises. The following functions are included in this area: general counsel; strategic, performance and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development.

1.4(2) *Information security office.* The information security office is responsible for developing, implementing and maintaining information security policies, standards, and practices for state government that enhance the confidentiality, integrity and availability of computer systems and electronic data resources and for ensuring enterprisewide compliance with security requirements. This office includes the state chief information security officer.

1.4(3) *Infrastructure services.* The infrastructure services division is responsible for infrastructure technology management and operations support throughout state government, including the management and administration of information technology (IT) assets such as data centers, servers, mainframes, networks, storage, desktops, mobile devices, and related infrastructure components.

1.4(4) *Business services.* The business services division is responsible for procurement, contracting, vendor management, financial management, brokerage services, and related business support activities of the office.

1.4(5) *Enterprise applications.* The enterprise applications division is responsible for support, configuration, and customization of commercial off-the-shelf applications, software-as-a-service applications, geospatial services, enterprise content management services, and related vendor business applications used throughout state government.

1.4(6) *Application development.* The application development division is responsible for software application, development, maintenance, and training and for providing advice and assistance in developing and supporting business applications throughout state government.

1.4(7) *Project management.* The project management office is responsible for the oversight, coordination, and tracking of IT projects throughout state government.

1.4(8) *Agency services.* The agency services division is responsible for customer IT service management throughout state government, including IT financial planning and budget support, customer liaison services, agency IT strategic planning, advisory services related to IT expenditures, and related services.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.5(8B,17A) Definitions. As used in these rules, unless specified elsewhere:

“*Chief information officer*” or “*CIO*” means the state chief information officer.

“*Office*” or “*OCIO*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapter 8B and section 17A.3.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—2.1(8B,17A,22) Definitions. As used in this chapter:

“*Chief information officer*” or “*CIO*” means the state chief information officer.

“*Confidential record*” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the office 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 office, the CIO, or another person lawfully delegated authority by the office to act for the office in implementing Iowa Code chapter 22.

“*Office*” or “*OCIO*,” unless the context otherwise requires, means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*Personally identifiable information*” 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 office.

“*Record system*” means any group of records under the control of the office 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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.2(8B,17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound determinations by the office with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act. This office is committed to the policies set forth in Iowa Code chapter 22; office staff shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.3(8B,17A,22) Requests for access to records.

2.3(1) Location of record. A request for access to a record under the jurisdiction of the OCIO 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 Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The OCIO shall forward the request appropriately. If a request for access to a record is misdirected, office personnel will forward the request to the appropriate person within the office.

2.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

2.3(3) Request for access. Requests for access to open records may be made in writing, in person, by e-mail or other electronic means, or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the office’s response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

2.3(4) Response to requests. The custodian of records under the jurisdiction of the office is authorized to grant or deny access to a record according to the provisions of this chapter and directions from the office. The decision to grant or deny access may be delegated to one or more designated employees.

a. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

b. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 129—2.4(8B,17A,22) in this chapter and other applicable provisions of law.

2.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from office files. Examination and copying of office records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies of an open record may be made in the office of the OCIO. If photocopy equipment is not available in the offices of the OCIO where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) Fees.

a. When charged. The office may charge fees in connection with the examination or copying of records only if the fees are authorized by law. 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 published materials and for photocopies of records supplied by the OCIO shall be prominently posted in the offices of the OCIO. Copies of records may be made by or for members of the public on office photocopy machines or from electronic storage systems at cost as determined and posted in the offices of the OCIO by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual office expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in the offices of the OCIO 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 an office clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. 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 request from that requester.

2.3(8) Records held for others. Requests for records the office holds solely in storage for or as the agent of another public body are not within the jurisdiction of the office and shall be directed to the owner of the records.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.4(8B,17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the

examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 129—2.3(8B,17A,22).

2.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

2.4(2) *Requests.* The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

2.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

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

2.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.5(8B,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.

2.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

2.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the office 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.

2.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the office does not request that it be withheld from public inspection under Iowa

Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

2.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

2.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.6(8B,17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester and shall include the current address and telephone number of the requester or the requester's representative.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.7(8B,17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the office on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the office to disclose records about that person to the person's attorney.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.8(8B,17A,22) Disclosures without the consent of the subject.

2.8(1) Open records are routinely disclosed without the consent of the subject.

2.8(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 129—2.9(8B,17A,22) or in the notice for a particular record system.

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

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the office specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.9(8B,17A,22) Routine use.

2.9(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.9(2) To the extent allowed by law, the following uses are considered routine uses of all office records:

a. Disclosure to those officers, employees, and agents of the office 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 a 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 office.

d. Transfers of information within the office, 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 office is operating a program lawfully.

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

g. Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlements filed in contested case proceedings before the office.

h. Transmittal to the district court of the record in a contested case before the office, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.10(8B,17A,22) Consensual disclosure of confidential records.

2.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to the office’s disclosure of confidential records as provided in rule 129—2.7(8B,17A,22).

2.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the office 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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.11(8B,17A,22) Release to subject.

2.11(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 129—2.6(8B,17A,22). However, the office need not release the following records to the subject:

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

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

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. As otherwise authorized by law.

2.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the office may take reasonable steps to protect confidential information relating to another subject.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.12(8B,17A,22) Availability of records.

2.12(1) *General.* Office records are open for public inspection and copying unless otherwise provided by rule or law.

2.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. The office is a depository for the records of other public bodies. Records are maintained on paper, audiotape, and microform, and in electronic information storage and media systems. Although these records are in the physical possession of the office, 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 office 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 office. Requests for access to any such records must be directed to the lawful custodian. In the event the office receives a request for access to any such records, the office may, in its discretion, direct the person making such a request to the lawful custodian of the subject records, or forward such request to the lawful custodian of the subject records. Additionally, any records maintained by the office 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. Records which are exempt from disclosure under Iowa Code section 22.7.

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

d. 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 117.19(3), Iowa Administrative Code)

e. Tax records made available to the office. (Iowa Code sections 422.20 and 422.72)

f. Minutes or audio recordings 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 office staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by office 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 office. (Iowa Code sections 17A.2(11)“f” and 17A.3(1)“d”)
 - i. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.
 - j. Computer resource security files containing names, identifiers, and passwords of users of computer resources. Such files must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7. (Iowa Code section 22.7(50))
 - k. Data or information collected for the purpose of assessing, analyzing, measuring, preparing for, or responding to suspected, potential, or actual information security threats. (Iowa Code section 22.7(50))
 - l. Data or information collected for the purpose of assessing, analyzing, or classifying the severity of, nature of, ability to remediate, or ability to migrate data. (Iowa Code section 22.7(50))
 - m. Detailed security audit information. Such information includes but is not limited to security assessment reports; information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of the office. (Iowa Code section 22.7(50))
 - n. Information security data, information security proposals, or information security assessments compiled, prepared, or developed by a governmental body, or compiled, prepared, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.7(50))
 - o. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.3A(2)“a”)
 - p. 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.
 - q. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.
 - r. Any other records made confidential by law.

2.12(3) Authority to release confidential records. The office may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 129—2.4(8B,17A,22). If the office initially determines that it will release such records, the office may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.13(8B,17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the office by personal identifier in record systems as defined in rule 129—2.1(8B,17A,22). Unless otherwise stated, the authority to maintain the record is provided by Iowa Code chapter 8B.

2.13(1) Retrieval. Personal identifiers may be used to retrieve information from any of the systems of records that the office maintains that contain personally identifiable information.

2.13(2) Means of storage. Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

2.13(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.

2.13(4) Comparison with data from outside the office. Personally identifiable information in systems of records maintained by the office is retrievable through the use of personal identifiers and may be compared with information from outside the office when specified by law.

2.13(5) Nature and extent. All of the record systems listed in subrule 2.13(6) contain personally identifiable information concerning matters such as income and social security numbers.

2.13(6) Record systems with personally identifiable retrieval. The office maintains other public bodies' systems or records that contain personally identifiable and confidential information. The legal authority for the collection of the information is with the public body of record for that system. The following record systems contain personally identifiable information:

a. Personnel files. The office maintains files containing information about employees and applicants for positions with the office. The files include payroll records, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

b. Telephone directory of state employees. The office 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 electronically.

c. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with Iowa Code chapter 8B, and portions are confidential records 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 electronic records. Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

d. Vendor files. The office 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 electronically.

e. Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.14(8B,17A,22) Other groups of records. This rule describes groups of records maintained by the office other than record systems as defined in rule 129—2.1(8B,17A,22). These records are routinely available to the public. However, the office's files of these records may contain confidential information. In addition, the records listed in rule 129—2.13(8B,17A,22) may contain information about individuals. All records are stored on paper and in automated data processing systems unless otherwise noted.

2.14(1) Rule-making records. Rule-making records are official documents executed during the promulgation of office rules and public comments. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may be found on the office's Web site.

2.14(2) Rule-making initiatives. The office maintains both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9 signed September 14, 1999.

2.14(3) Board and commission records. Agendas, minutes, and materials presented to boards and commissions within the office are available from the office except those records which concern closed sessions and are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may contain information about individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records may also be stored on audiotapes. This information is not stored in an automated data processing system, although minutes and other information may be found on the office's Web site.

2.14(4) Publications. News releases, annual reports, project reports, office newsletters, and other publications are available from the office. Office news releases, project reports, and newsletters may contain information about individuals, including office staff or members of office councils or committees. This information is not stored in an automated data processing system, although some office publications may be found on the office's Web site.

2.14(5) 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 129—2.5(8B,17A,22) or subrule 2.12(2). These records, collected under the authority of Iowa Code chapter 8B, may contain confidential information about individuals.

2.14(6) Published materials or manuals. The office 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.

2.14(7) Mailing lists and contact lists. The office 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.

2.14(8) Authorized user lists. The office maintains a list of persons authorized to use the office's online services.

2.14(9) Bid/purchasing process. The office maintains records of specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, printing orders, supply orders, and correspondence.

2.14(10) Project files. The office maintains plans, specifications, contracts, studies, drawings, photos, requests for services, lease/rental files, 28E agreements, and facilities records.

2.14(11) Property/equipment files. The office maintains records of inventory, assignments, distribution, maintenance, requests, operations, shipping/receiving reports, and adjustments.

2.14(12) Data processing files. Data processing files include operations logs, database user requests, job number maintenance/updates, data entry format books, integrated data dictionaries, computer output form designations, system software, hardware/software configurations, problem determination/resolution records, and incident reports.

2.14(13) Administrative records. Administrative records include, but are not limited to, the following:

- a.* Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.
- b.* Correspondence: public, interagency, internal.
- c.* Policies and procedures.
- d.* Organizational charts or tables of authorized positions.
- e.* Memberships: professional/technical organizations.
- f.* Budget and financial records.
- g.* Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, office billings.
- h.* Requisitions of equipment and supplies.
- i.* Time sheets.
- j.* Purchasing documents and records.

2.14(14) Legislative files. Legislative files include pending bills, enrolled bills, legislative proposals, and copies of amendments.

2.14(15) Printing files. Printing files include print requisitions, plates, negatives, samples, typesetting, artwork, and production logs.

2.14(16) Waivers and variances. Requests for waivers and variances, office proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others.

2.14(17) General correspondence, reciprocity agreements with other states, and cooperative agreements and memorandums of understanding with other agencies.

2.14(18) All other records. Records are open if not exempted from disclosure by law.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.15(8B,17A,22) Data processing systems comparison. Some of the data processing systems used by the office permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.16(8B,17A,22) Applicability. This chapter does not:

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

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

5. Make available records compiled by the office in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the office.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.17(8B,17A,22) Notice to suppliers of information. When the office requests a person to supply information about that person, the office shall notify the person of the use that will be made of the information, which persons outside the office might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B, 17A, and 22.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 3
PETITIONS FOR RULE MAKING

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—3.1(17A) Petition for rule making.

3.1(1) Filing. Any person, other state agency, or board may file a petition for rule making with the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office an extra copy for this purpose.

3.1(2) Form. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).	}	PETITION FOR RULE MAKING
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3.1(3) Content. 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 office’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 the petitioner for a meeting provided for by rule 129—3.4(17A).

3.1(4) Additional requirements. The petition must:

- a. Be dated and signed by the petitioner or the petitioner’s representative;
- b. Include the name, mailing address, and telephone number of the petitioner and petitioner’s representative; and
- c. Include a statement indicating the person to whom communications concerning the petition should be directed.

3.1(5) Denial. The chief information officer (CIO) may deny a petition if it does not substantially conform to or comply with the above requirements relating to filing, form, content, or additional requirements.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—3.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The CIO, or the CIO’s designee, may request a brief from the petitioner or from any other person concerning the substance of the petition.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—3.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—3.4(17A) Office consideration.

3.4(1) Within 14 days after the filing of a petition, the office 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 office must schedule a brief and informal meeting between the petitioner and the office to discuss the petition. The office may request the petitioner to submit additional information or argument concerning the petition. The office may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may also be submitted to the office by any person.

3.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the office 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 granting of the petition on the date when the office mails or delivers the required notification to the petitioner.

3.4(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 office's rejection of the petition.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 4
DECLARATORY ORDERS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—4.1(8B,17A) Petition for declaratory order.

4.1(1) Filing. Any person may file a petition with the office for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office with an extra copy for this purpose.

4.1(2) Form. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER	
Petition by (Name of Petitioner) for a Declaratory Order on (cite the provisions of law involved).	}
	PETITION FOR DECLARATORY ORDER

- 4.1(3) Content.** The petition must provide the following information:
- a. A clear and concise statement of all relevant facts on which the order is requested.
 - b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
 - c. The questions the petitioner wants answered, stated clearly and concisely.
 - d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
 - e. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
 - f. 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 directed by, are pending determination by, or are under investigation by any governmental entity.
 - g. 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 in the petition.
 - h. Any request by petitioner for a meeting provided for by rule 129—4.7(8B,17A).

- 4.1(4) Additional requirements.** The petition must:
- a. Be dated and signed by the petitioner or the petitioner’s representative;
 - b. Include the name, mailing address, and telephone number of the petitioner and petitioner’s representative; and
 - c. Include a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.2(8B,17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the office shall give notice of the petition to all persons not served by the petitioner pursuant to rule 129—4.6(8B,17A) to whom notice is required by any provision of law. The office may also give notice to any other persons.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.3(8B,17A) Intervention.

4.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

4.3(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 office.

4.3(3) Filing. A petition for intervention shall be filed at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the office. The office will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

4.3(4) Form. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER		
Petition by (Name of Original Petitioner) for a Declaratory Order on (cite the provisions of law cited in the original petition).	}	PETITION FOR INTERVENTION

4.3(5) Content. The petition for intervention must provide the following information:

- a. Facts supporting the intervenor's standing and qualifications for intervention.
- b. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
- c. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
- d. 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.
- e. 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.
- f. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

4.3(6) Additional requirements. The petition must:

- a. Be dated and signed by the intervenor or the intervenor's representative;
- b. Include the name, mailing address, and telephone number of the intervenor and intervenor's representative; and
- c. Include a statement indicating the person to whom communications should be directed.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.4(8B,17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The office may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.5(8B,17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.6(8B,17A) Service and filing of petitions and other papers.

4.6(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 its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.6(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 Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All

petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the office.

4.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 129—6.14(8B,17A).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.7(8B,17A) Consideration. Upon request by petitioner, the office shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the office to discuss the questions raised. The office may solicit comments from any person on the questions raised. Additionally, any person may submit comments on the questions raised to the office.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.8(8B,17A) Action on petition.

4.8(1) The office shall take action on a petition for a declaratory order within 30 days after its receipt as required by Iowa Code section 17A.9.

4.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 129—6.2(8B,17A).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.9(8B,17A) Refusal to issue order.

4.9(1) The office 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 conform to or comply with the requirements set forth in rule 129—4.1(8B,17A) relating to filing, form, content, or additional requirements.

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

c. The office 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 office 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 office 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 or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests that the office determine whether a statute is unconstitutional on its face.

4.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final office action on the petition.

4.9(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 refusal to issue an order.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.10(8B,17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of the petitioner, the name of any intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.11(8B,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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.12(8B,17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the office, 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 office. The issuance of a declaratory order constitutes final office action on the petition.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 5
OFFICE PROCEDURE FOR RULE MAKING

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—5.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the office are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the office 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 office by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.3(17A) Public rule-making docket.

5.3(1) Docket maintained. The office shall maintain a current public rule-making docket.

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

5.3(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 office determination with respect thereto;
- h. Any known timetable for office 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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.4(17A) Notice of proposed rule making.

5.4(1) Contents. At least 35 days before the adoption of a rule, the office 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 office 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 office for the resolution of each of those issues.

5.4(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 5.12(2) of this chapter.

5.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the office 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 office 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 office 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 Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.5(17A) Public participation.

5.5(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.

5.5(2) Oral proceedings. The office may, at any time, schedule an oral proceeding on a proposed rule. The office 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 office 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.

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

(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.

5.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the office may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

5.5(5) Accessibility. The office 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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.6(17A) Regulatory analysis.

5.6(1) *Definition of small business.* A “small business” is defined in Iowa Code section 17A.4A(8).

5.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the office’s small business impact list by making a written application addressed to Small Business Registry, c/o Business Services Division, Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. The address of the small business or organization of small businesses;
- 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 office 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 office 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.

5.6(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 office 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 and that was adopted in reliance upon Iowa Code section 17A.4(3), the office 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.

5.6(4) *Qualified requesters for regulatory analysis—economic impact.* The office 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.

5.6(5) *Qualified requesters for regulatory analysis—business impact.* The office 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.

5.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the office shall adhere to the time lines described in Iowa Code section 17A.4A(4).

5.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the office. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

5.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) through 17A.4A(6).

5.6(9) *Publication of a concise summary.* The office shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(6).

5.6(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.

5.6(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.”

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.7(17A,25B) Fiscal impact statement.

5.7(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.5.

5.7(2) If the office determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the office shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.8(17A) Time and manner of rule adoption.

5.8(1) *Time of adoption.* The office 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 office 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.

5.8(2) *Consideration of public comment.* Before the adoption of a rule, the office 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.

5.8(3) *Reliance on office expertise.* Except as otherwise provided by law, the office may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

5.9(1) The office 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.

5.9(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 office 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;

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

5.9(3) The office 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 office 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.

5.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the office to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.10(17A) Exemptions from public rule-making procedures.

5.10(1) *Omission of notice and comment.* When the statute so provides, or with the approval of the administrative rules review committee, if the committee finds good cause that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the office 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 office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.10(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.

5.10(3) *Public proceedings on rules adopted without them.* The office 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 5.10(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 office shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 5.10(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 office may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 5.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.11(17A) Concise statement of reasons.

5.11(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 office shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

5.11(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 office's reasons for overruling the arguments made against the rule.

5.11(3) *Time of issuance.* After a proper request, the office 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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.12(17A) Contents, style, and form of rule.

5.12(1) *Contents.* Each rule adopted by the office shall contain the text of the rule and, in addition:

- a. The date the office 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(2) or the office 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(2) or the office in its discretion decides to include such reasons; and
- g. The effective date of the rule.

5.12(2) *Incorporation by reference.* The office 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 office finds that the incorporation of such matter in the office's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the office's 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 office may incorporate such matter by reference in a proposed or adopted rule only if the office makes copies of such matter readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the office, 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 office shall retain permanently a copy of any materials incorporated by reference in a rule of the office.

If the office adopts standards by reference to another publication, it shall deliver an electronic copy of the publication, or the relevant part of the publication, containing the standards to the administrative code editor who shall publish it on the general assembly's Internet site. If an electronic copy of the publication is not available, the office shall deliver a printed copy of the publication to the administrative code editor who shall deposit the copy in the state law library where it shall be made available for inspection and reference.

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

5.12(4) *Style and form.* In preparing its rules, the office shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.13(17A) Office rule-making record.

5.13(1) Requirement. The office 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.

5.13(2) Contents. The office 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 office'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 office, 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 office and considered by the CIO, 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 office 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 office 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(3) 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(6), and any office 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.

5.13(3) Effect of record. Except as otherwise required by a provision of law, the office rule-making record required by this rule need not constitute the exclusive basis for office action on that rule.

5.13(4) Maintenance of record. The office 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 paragraph 5.13(2) "g," "h," "i," or "j."

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.14(17A) Filing of rules. The office 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 were 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 office shall use the standard form prescribed by the administrative rules coordinator.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.15(17A) Effectiveness of rules prior to publication.

5.15(1) Grounds. The office 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 office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.15(2) *Special notice.* When the office makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b,” the office shall employ all reasonable efforts to make the rule’s 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 office 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 office 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” shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 5.15(2).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.16(17A) General statements of policy.

5.16(1) *Compilation, indexing, public inspection.* The office 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 and 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.

5.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the office to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 5.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.17(17A) Review by office of rules.

5.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the office to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the office 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 office 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.

5.17(2) In conducting the formal review, the office 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 office’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 office or granted by the office. 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 office’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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 6 CONTESTED CASES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—6.1(8B,17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the office or by the division of administrative hearings in the department of inspections and appeals on behalf of the office.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.2(8B,17A) Definitions. Except where otherwise specifically defined by law, for purposes of this chapter:

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

“*Chief information officer*” or “*CIO*” means the state chief information officer or the state chief information officer’s designee.

“*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.

“*Division*” means the division of administrative hearings of the department of inspections and appeals.

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

“*Office*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*Party*” means a party as defined in Iowa Code section 17A.2(8).

“*Presiding officer*” means the administrative law judge assigned to the contested case, or the chief information officer, whichever is appropriate.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the CIO did not preside.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.3(8B,17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as otherwise precluded 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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.4(8B,17A) Requests for contested case proceeding. 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 office action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specific office 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. If the office denies the request, the office shall issue a written order specifying the basis for the denial.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.5(8B,17A) Informal settlement. A party to a controversy that may culminate in contested case proceedings or a party to a contested case proceeding may attempt informal settlement of the controversy or contested case by complying with the procedures set forth in this rule. No party to such a controversy or contested case shall be required to settle the controversy or contested case by submitting to informal settlement procedures.

6.5(1) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

6.5(2) When signed by the parties to a controversy or contested case and by the CIO, a proposed settlement shall represent final disposition of the matter in place of any prospective or current contested case proceedings.

6.5(3) Where there are more than two parties to a controversy or contested case involving the office, a separate settlement between one party and the office is permissible.

6.5(4) A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations are likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.6(8B,17A) Notice of hearing and transmission of contested cases.

6.6(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery of the notice of hearing may be executed by:

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

6.6(2) Contents. Notices of hearing shall contain the information required by Iowa Code section 17A.12(2), any additional information required by statute or rule, and the following information:

- a. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the office 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;
- 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 CIO);
- e. Information on who to contact if auxiliary aids or services are needed to participate in the matter because of a disability; and
- f. The mailing address and e-mail address for filing with the division or office, whichever is applicable, and notice of the option of e-mail service as provided in paragraph 6.14(2) "b."

6.6(3) Transmission of contested cases. In every proceeding filed by the office with the division, the office shall complete a transmittal form. The transmittal form shall contain the information required by 481—subrule 10.4(1).

6.6(4) Issuance of the hearing notice. When a case is transmitted by the office to the division for hearing, the division shall issue the notice of hearing. The office shall provide the division with the information required by 481—subrule 10.4(2).

6.6(5) Attachments. The office shall attach the documents required by 481—subrule 10.4(3) to the completed transmittal form when it is sent to the division.

6.6(6) Receipt. When a properly transmitted case is received, it is marked with the date of receipt by the division. The division assigns an identifying number to each contested case upon receipt.

6.6(7) Scheduling. The division shall promptly schedule hearings for the office. The availability of an administrative law judge and any special circumstances shall be considered.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.7(8B,17A) Legal representation. Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Business entities, such as partnerships, corporations, or associations may be represented by a nonlawyer partner, member, officer, director, shareholder, other owner or manager, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. The attorney shall file an appearance in the contested case.

If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14. The cost of any such representation shall be borne by the represented party.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.8(8B,17A) Presiding officer.

6.8(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the CIO.

6.8(2) The CIO may deny the request only upon a finding that one or more of the following apply:

a. Neither the office nor any officer of the office under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule 6.8(3) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

6.8(3) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the office:

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

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

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

d. For a hearing in which the underlying dispute or subject matter is related to information technology, and to the extent an administrative law judge with a background in information technology is available, a background in information technology.

6.8(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the office. A party must seek any available intra-agency appeal in order to exhaust administrative remedies.

6.8(5) Unless otherwise provided by law, the CIO, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.9(8B,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the office in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.10(8B,17A) Telephone and electronic proceedings. The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the parties or witnesses, as well as the nature of the case, shall be considered when the location is chosen. The presiding officer may permit any witness to testify by telephone or other electronic means. If there is a prehearing conference, the parties shall disclose at or before the prehearing conference whether any witness will be testifying by telephone or other electronic means. If there is not a prehearing conference, the parties shall disclose not less than three business days prior to the hearing date whether any witness will be testifying by telephone or other electronic means unless any law, rule, or order of the

presiding officer requires disclosure sooner. Objections, if any, shall be filed and served on all parties at least three business days in advance of hearing.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.11(8B,17A) Disqualification.

6.11(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.

6.11(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 office functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.11(3) and 6.25(9).

6.11(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.

6.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.11(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

6.11(5) If, during the course of the hearing, a party 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.

6.11(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines 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 129—6.27(8B,17A) and seek a stay under rule 129—6.31(8B,17A).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.12(8B,17A) Consolidation—severance.

6.12(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 involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.12(2) Severance. The presiding officer may, upon motion by any party or the presiding officer's own motion, for good cause shown, order any contested case proceedings or portions thereof severed.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.13(8B,17A) Pleadings.

6.13(1) When required. Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.13(2) Petition.

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

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

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

6.13(3) Answer.

a. An answer shall be filed within 20 days of service of the petition unless otherwise ordered.

b. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

c. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds.

d. An answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

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

f. 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.

6.13(4) Amendment. Any notice of hearing or petition 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. The presiding officer may impose terms as a condition of allowing such amendments or grant a continuance.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.14(8B,17A) Service and filing of pleadings and other papers.

6.14(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the office, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.14(2) Service—to whom and how made. Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service may be made in the following ways:

a. Service may be 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.

b. The presiding officer may by order or a party or a party's attorney may by consent permit service of particular documents by e-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order or consent, electronic transmission shall not satisfy service requirements, but may be used to supplement service when rapid notice is desirable. Consent to electronic service by a party or a party's attorney shall be in writing, may be accomplished through electronic transmission to the office and other parties, and shall specify the e-mail address for such service. Service by electronic transmission is complete upon transmission unless the office or party making service learns the attempted service did not reach the party to be served.

6.14(3) *Filing—when required.*

a. After a matter has been assigned to the division, and until a proposed decision is issued, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the division, rather than the office. All pleadings, motions, documents or other 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 division for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, 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 office.

6.14(4) *Filing—how and when made.*

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

(1) Delivered to the division pursuant to paragraph 6.14(3) "a" or to the office pursuant to paragraph 6.14(3) "b," and date-stamped received;

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

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

(4) Transmitted by electronic mail (e-mail) or by other electronic means to the proper entity as provided in paragraph 6.14(4) "b."

b. All documents filed with the division or the office pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code section 17A.12(9)), may be filed by e-mail or other electronic means as approved by the division or the office, whichever is appropriate. A document filed by e-mail or other approved electronic means is presumed to be an accurate reproduction of the original. If a document filed by e-mail or other approved electronic means 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 e-mail or other approved electronic means shall be the date the document is received by the division or the office. Neither the division nor the office will provide a mailed file-stamped copy of documents filed by e-mail or other approved electronic means.

6.14(5) *Proof of mailing.* Proof of mailing includes:

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(s):

(1) After a matter has been assigned to the division for hearing, the certification shall take 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 Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, 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)

(2) When a matter has not been assigned to the division for hearing, the certification shall take 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 Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, 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)

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.15(8B,17A) Discovery.

6.15(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases.

6.15(2) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

6.15(3) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. The time frames for discovery in the corresponding Iowa Rule of Civil Procedure govern those specific procedures, unless lengthened or shortened by the presiding officer.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

6.15(4) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the presiding officer may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship. As a practical matter the purpose of the disclosure requirements and discovery conference is served by the office's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 129—6.16(8B,17A).

6.15(5) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

6.15(6) Discovery shall be served on all parties to the contested case proceeding, but shall not be filed with the division or office.

6.15(7) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the division or office, whichever is applicable, relating to discovery

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

6.15(8) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.16(8B,17A) Subpoenas.

6.16(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Upon written request that complies with this rule, subpoenas shall be issued either by the division when a matter has been assigned to the division for hearing or by the office when a matter has not been assigned to the division for hearing. The request may be made in person or by mail or electronic mail. A request for a subpoena must be received by the division or the office, whichever is applicable, at least seven calendar days before the scheduled hearing, or the subpoena will not be issued.

6.16(2) A request for a subpoena shall include the following information, as applicable:

- a. The name, address, e-mail address, and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date and time and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested; and
- f. The date, time and location for production, or inspection and copying.

6.16(3) Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date and time and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other real evidence the person is commanded to produce;
- g. The date, time and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the presiding officer or designee;
- j. The date of issuance;
- k. A return of service.

6.16(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. The person who requested the subpoena is responsible for the costs associated with such service, and for the payment of any witness fees and mileage expenses in connection with execution of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

6.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the division or office, whichever is applicable, a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers,

records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then move the presiding officer to issue an order compelling production.

6.16(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the presiding officer may issue a decision. The presiding officer may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer may schedule oral argument or hearing by telephone or in person.

6.16(7) A person who is aggrieved by a ruling of a presiding officer and desires to challenge the ruling must appeal the ruling to the office in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 129—6.27(8B,17A) and 129—6.29(8B,17A), provided that all of the time frames are reduced by one-half.

6.16(8) If the person contesting the subpoena is not a party to the contested case proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.17(8B,17A) Motions.

6.17(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.17(2) Any party may file a written response to a motion within 15 days after the motion is served, unless the time period is extended or shortened by rules of the office or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.17(3) The presiding officer may schedule oral argument on any motion upon request by any party or the presiding officer's own motion.

6.17(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the office or an order of the presiding officer.

6.17(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 129—6.30(8B,17A) and appeal pursuant to rule 129—6.29(8B,17A).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.18(8B,17A) Prehearing conference.

6.18(1) Any party may request a prehearing conference. Additionally, the presiding officer may order a prehearing conference on the presiding officer's own motion. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than 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 written notice of the prehearing conference to all parties. For good cause, the presiding officer may permit variances from this rule.

6.18(2) Each party shall disclose at or prior to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

6.18(3) In addition to the requirements of subrule 6.18(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations concerning the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A, as permitted by Iowa Code section 17A.10(2), or waiver of office rules; and
- e.* Consider any additional matters which will expedite the hearing.

6.18(4) Prehearing conferences shall be conducted by telephone or other electronic means unless otherwise ordered.

6.18(5) The parties shall exchange and receive witness and exhibit lists in advance of a prehearing conference.

6.18(6) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 6.23(4) no later than three business days in advance of hearing, unless otherwise ordered by the presiding officer at the prehearing conference.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.19(8B,17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.19(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the requesting party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The office may waive notice of such requests for a particular case or an entire class of cases.

6.19(2) In determining whether to grant a continuance, the presiding officer may consider:

- a.* Any prior continuances;
- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection to the continuance;
- f.* Any applicable time requirements;
- g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h.* The timeliness of the request;
- i.* Any applicable state or federal statutes or regulations; and
- j.* Other relevant factors.

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

6.19(2) The presiding officer may enter an order granting or denying an uncontested or contested application for a continuance.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.20(8B,17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with office 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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.21(8B,17A) Intervention.

6.21(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.21(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing, whichever is earlier. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will be denied.

6.21(3) *Grounds for intervention.* In order to be entitled to intervene, the movant must 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 in the proceeding; and
- c. The interests of the movant are not adequately represented by existing parties.

6.21(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.22(8B,17A) Hearing procedures.

6.22(1) *Role of presiding officer.* The presiding officer shall preside at and be in control of the proceedings and shall have the authority to:

- a. Issue such orders and rulings as will ensure the orderly conduct of the proceedings;
- b. Rule on motions and objections;
- c. Administer oaths to witnesses;
- d. Admit or exclude testimony or other evidence;
- e. Require that the parties submit briefs; and
- f. Issue a proposed decision.

6.22(2) *Public hearing.* The hearing shall be open to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

6.22(3) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disruptive or disorderly.

6.22(4) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the office for at least five years from the date of decision.

6.22(5) *Right to participation.* Subject to terms and conditions prescribed by the presiding officer, parties in a contested case proceeding have the right to introduce evidence on issues of material fact, cross-examine witnesses who testify at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.22(6) Examination of witnesses. All witnesses 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 and other applicable law.

6.22(7) Sequestering witnesses. The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses during the hearing.

6.22(8) Witness fees. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

6.22(9) Depositions. Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

6.22(10) Objections. All objections to procedures, admissions of evidence, or any other matter shall be timely made and stated on the record.

6.22(11) Witness right to legal representation. Witnesses are entitled to be represented by an attorney at their own expense. An attorney to a witness may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

6.22(12) Order of proceedings. The presiding officer shall generally conduct hearings in the following order:

a. The presiding officer shall give an opening statement, which shall be on the record, in which the presiding officer briefly identifies himself or herself, identifies the primary parties and their representatives, notes the fact that all testimony is being recorded, and describes the nature of the proceedings;

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

c. The parties shall present their cases in the sequence determined by the presiding officer;

d. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.23(8B,17A) Evidence.

6.23(1) The presiding officer shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may, where appropriate, take official notice of facts in accordance with Iowa Code section 17A.14(4).

6.23(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.23(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party that did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend its pleadings and to prepare on the additional issue.

6.23(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 shall be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The way in which the parties shall mark exhibits shall be determined at the prehearing conference, if any. If there is no prehearing conference, the way in which the parties shall mark exhibits shall be determined by mutual agreement between the parties prior to hearing.

6.23(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such objection shall be timely, and 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.

6.23(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

6.23(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.24(8B,17A) Default.

6.24(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.24(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.

6.24(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become the final action of the office unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 129—6.29(8B,17A). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.24(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.

6.24(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.

6.24(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.

6.24(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 129—6.27(8B,17A).

6.24(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.

6.24(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

6.24(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 129—6.31(8B,17A).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.25(8B,17A) Ex parte communication.

6.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact

or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the office or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.25(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

6.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 129—6.14(8B,17A) and may be supplemented by telephone, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call, or other similar electronic means, that include all parties or their representatives.

6.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.25(6) Other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for the parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.25(1).

6.25(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 129—6.19(8B,17A).

6.25(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.25(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.25(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the office. Violation of ex parte communication prohibitions by office personnel shall be reported to the CIO for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.26(8B,17A) Recording costs. Upon request, the office shall provide a copy of the tape-recorded hearing or a printed transcript of the whole or any portion of the hearing at cost. The cost of preparing the tape or transcript of the hearing shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.27(8B,17A) Interlocutory appeals. Upon written request of a party or on the CIO's own motion, the CIO may review an interlocutory order of the presiding officer. In determining whether to do so, the CIO shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which such review of that interlocutory order by the office 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 earlier.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.28(8B,17A) Final decision.

6.28(1) Final decision of office. When the CIO presides over the reception of evidence at the hearing, the CIO's decision is a final decision.

6.28(2) Proposed decision. When the CIO does not preside at the reception of evidence, the presiding officer shall make a proposed decision.

6.28(3) Contents of decision. The proposed or final decision or order shall:

- a. Be in writing or stated on the record.
- b. Include findings of fact. Findings of fact, if set forth within statutory language, shall be accompanied by a concise, explicit statement of underlying facts supporting the findings.
- c. Include conclusions of law stated separately from the 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 section 17A.12(6). This record shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

6.28(4) Proposed decision becomes final. The proposed decision of the presiding officer becomes the final decision of the office without further proceedings unless there is an appeal to, or review on motion of, the office within the time provided in rule 129—6.31(8B,17A).

6.28(5) Reports. The office shall send the division a copy of any request for review of a proposed decision issued by a presiding officer from the division. The office shall notify the division of the results of the review, the office's final decision, and any judicial decision issued.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.29(8B,17A) Appeals and review.

6.29(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the CIO within 14 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

6.29(2) Review. The CIO may initiate review of a proposed decision on the CIO's own motion at any time within 21 days following the issuance of such a decision.

6.29(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office. 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.

6.29(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 CIO may remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

6.29(5) *Scheduling.* The office shall issue a schedule for consideration of the appeal.

6.29(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 CIO may resolve the appeal on the briefs or provide an opportunity for oral argument. The CIO may shorten or extend the briefing period as appropriate.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.30(8B,17A) Applications for rehearing.

6.30(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

6.30(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 office decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.29(4), the applicant requests an opportunity to submit additional evidence.

6.30(3) *Time of filing.* The application shall be filed with the office within 20 days after issuance of the final decision.

6.30(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 office shall serve copies on all parties.

6.30(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the CIO grants the application within 20 days after its filing.

6.30(6) *Proceedings.* If the CIO grants an application for rehearing, the CIO may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will be received, the CIO may remand the case to the presiding officer for further hearing or may preside at the taking of additional evidence. If additional evidence will not be received, the CIO may issue a ruling without oral argument or hearing. The CIO may, on the request of a party or on the CIO's own motion, order or permit the parties to provide written argument on one or more designated issues. The CIO may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.31(8B,17A) Stays of office actions.

6.31(1) *When available.*

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

b. Any party to a contested case proceeding may petition the office 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. Seeking a stay from the office is required to exhaust administrative remedies prior to seeking a stay from the district court.

6.31(2) *When granted.* In determining whether to grant a stay, the CIO or the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

6.31(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the office or any other party.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.32(8B,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.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.33(8B,17A) Emergency adjudicative proceedings.

6.33(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 office may issue a written order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the office by emergency adjudicative order. Before issuing an emergency adjudicative order, the office shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the office 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 office is necessary to avoid the immediate danger.

6.33(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 office'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 office;
- (3) Certified mail to the last address on file with the office;
- (4) First-class mail to the last address on file with the office; or
- (5) Electronic service. E-mail notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that office orders be sent by e-mail and has provided an e-mail address for that purpose.

c. To the extent practicable, the office shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.33(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the office shall make reasonable immediate efforts to contact by telephone, or other similar electronic means, the persons who are required to comply with the order.

6.33(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the office 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 office proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further office proceedings to a later date will be granted only in compelling circumstances upon application in writing.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.34(8B,17A) Judicial review. Judicial review of the office's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

6.34(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the office's final decision. The office's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

6.34(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 6.30(5).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 7 WAIVERS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—7.1(8B,17A) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall also apply:

“*Chief information officer*” or “*CIO*” means the state chief information officer or the CIO’s designee.

“*Competitive selection documents*” means the same as defined in rule 129—10.2(8B).

“*Information technology waiver*” means the same as defined in rule 129—8.1(8B).

“*Office*” or “*OCIO*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*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, as applied to an identified person on the basis of the particular circumstances of that person, any action by the office that suspends in whole or in part the requirements or provisions of a rule of the office. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.2(8B,17A) Scope of chapter and applicability. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the office in situations where no other more specifically applicable law provides for waivers. Generally, the office may grant a waiver from a rule only if the office has jurisdiction over the rule from which a 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. Except to the extent authorized and not otherwise prohibited by applicable law, the office may not waive requirements created or duties imposed by statute. Any waiver must be consistent with statute.

Notwithstanding the foregoing, 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. For example:

7.2(1) Iowa Code section 8B.21(5) and 129—Chapter 8 govern information technology waivers requested by a participating agency from the requirements of Iowa Code chapter 8B, rules adopted by the office, and information technology standards and policies prescribed by the office concerning the acquisition, utilization, or provision of information technology.

7.2(2) Additionally, this chapter does not govern the waiver of the stated terms, conditions, or requirements in a procurement of information technology. The standards and processes for the granting of waivers from the stated terms, conditions, or requirements in a procurement of information technology shall be as stated in the competitive selection documents or other applicable solicitation documents initiating the procurement.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.3(8B,17A) Granting a waiver. In response to a petition completed pursuant to rule 129—7.5(8B,17A), the CIO may, in the CIO’s sole discretion, issue an order waiving, in whole or in part, the requirements of a rule pursuant to subrule 7.3(1).

7.3(1) Criteria for waiver:

a. The CIO may grant a waiver if the CIO finds, based on clear and convincing evidence, each of the following:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested.

(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.

(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.

(4) Equal protection of public health, safety, and welfare and information security will be substantially afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

b. In determining whether a waiver should be granted, the CIO 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 is sought establishes administrative deadlines, the CIO shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

7.3(2) *Special waivers not precluded.* These rules shall not preclude the CIO from granting waivers in other contexts or on the basis of other statutes, rules, standards, policies, or procedures if:

a. The CIO deems it appropriate to do so; and

b. The CIO 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.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.4(8B,17A) Filing of petition. Any person may file with the office a petition requesting a waiver, in whole or in part, of a rule of the office on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

7.4(1) *General.* A petition for a waiver must be submitted in writing to the office of the chief information officer at the office's primary headquarters at the address identified in rule 129—1.2(8B,17A). Requests for waiver may be delivered, mailed, or sent by electronic means reasonably calculated to reach the intended recipient.

7.4(2) *Special requirement for contested cases or appeals.* If the petition relates to a pending appeal or contested case, the petition shall use the caption of the appeal or contested case, and in addition to being submitted to the office as required by subrule 7.4(1), a copy shall also be filed in the appeal or contested case proceeding.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.5(8B,17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is requested and the case number of any related pending appeal or contested case.

2. A description of and citation to the specific rule 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 applicable rule.

4. The relevant facts the petitioner believes would justify a waiver under each of the four criteria described in subrule 7.3(1). 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 the relevant facts will justify a waiver.

5. A history of any prior contacts between the office 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 office'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 person or entity that would be adversely affected by the granting of a petition.

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

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

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.6(8B,17A) Additional information. Prior to issuing an order granting or denying a waiver, the office may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in conjunction with a pending contested case or appeal, the office may, on its own motion or at the petitioner's request, schedule a meeting between the petitioner and the CIO, which may be conducted either in person or by telephonic or other similar electronic means.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.7(8B,17A) Notice. The office shall acknowledge the receipt of a petition by means reasonably calculated to reach the petitioner or designee. The office shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the office may give notice to other persons. To accomplish this notice provision, the office may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the office attesting that notice has been provided. Notice may be provided by email or similar electronic means.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.8(8B,17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings and the office's corresponding implementing rules at 129—Chapter 6 shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to office proceedings for a waiver only when the office so provides by rule or order or is required to do so by statute.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.9(8B,17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and, if a waiver is issued, a description of the precise scope of the waiver including its duration and any conditions associated therewith.

7.9(1) CIO discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the CIO, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the CIO based on the unique, individual circumstances set out in the petition.

7.9(2) Burden of proof and persuasion. The burden of proof and persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the CIO should exercise discretion to grant a waiver.

7.9(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

7.9(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the office shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

7.9(5) Conditions. The CIO may place any condition on a waiver that the CIO finds desirable to protect the public health, safety, and welfare and information security.

7.9(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 CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.

7.9(7) Time for ruling. The CIO shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date 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 a contested case, the CIO shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

7.9(8) When deemed denied. Failure of the CIO to grant or deny a petition within the required time period shall be deemed a denial of that petition by the CIO. However, the CIO shall remain responsible for issuing an order denying a waiver.

7.9(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. Such service may be effectuated by email or similar electronic means.
[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.10(8B,17A,22) 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 office is authorized or required to keep confidential. The office may accordingly redact confidential information from petitions or orders prior to public inspection.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.11(8B,17A) Summary reports. Semiannually, the office 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 such rules, and a general summary of the reasons justifying the office's actions on waiver requests under this chapter. If practicable, the report shall detail the extent to which the granting of a waiver under this chapter 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.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.12(8B,17A) Cancellation of a waiver. A waiver issued by the CIO pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the CIO issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare and information security 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.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.13(8B,17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.14(8B,17A) Defense. After the CIO 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.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

129—7.15(8B,17A) Judicial review. Judicial review of an office decision granting or denying a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code sections 8B.4(5) and 17A.9A.

[Filed ARC 4823C (Notice ARC 4710C, IAB 10/23/19), IAB 12/18/19, effective 1/22/20]

CHAPTER 8
INFORMATION TECHNOLOGY GOVERNANCE

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—8.1(8B) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also 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 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.

“Chief information officer” or “CIO” means the state chief information officer or the CIO’s designee.

“Information technology governance document(s)” or “information technology governance requirement(s)” means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies’ acquisition, utilization, or provision of information technology.

“Information technology waiver” or “waiver” means, as applied to a participating agency on the basis of the particular circumstances of that agency, any action by the office that suspends, in whole or in part, the requirements of any information technology governance requirement.

“Participating agency” shall have the meaning ascribed to it under Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

129—8.2(8B) Purpose and applicability.

8.2(1) Purpose. The office is created for the purpose of leading, directing, managing, coordinating, and providing accountability for the information technology resources of state government. In furtherance of this role, the office is, among other things, required or authorized to:

- a. Develop and implement an information strategic plan for the enterprise.
- b. Establish an enterprise strategic and project management function for oversight of all information technology-related projects and resources of participating agencies. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.
- c. Develop information technology governance requirements that apply to participating agencies, including but not limited to:
 - (1) Standards of or related to cybersecurity, geospatial systems, application development, and information technology and procurement, including but not limited to system design and systems integration, and interoperability.
 - (2) Policies of or related to security to ensure the integrity of the state’s information resources and to prevent the disclosure of confidential records, while still fostering transparency and data sharing.
 - (3) Statewide standards for information technology security to maximize the functionality, security, and interoperability of the state’s distributed information technology assets, including but not limited to communications and encryption technologies.
 - (4) Standards for the implementation of electronic commerce, including standards for electronic signatures, electronic currency, and other items associated with electronic commerce.
 - (5) Guidelines for the appearance and functioning of applications.
 - (6) Standards for the integration of electronic data across state agencies.
 - (7) Standards, policies, and procedures of or applicable to the procurement of information technology.

d. Require all information technology security services, solutions, hardware, and software purchased or used by a participating agency to be subject to approval by the office in accordance with security standards. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.

e. Develop and implement effective and efficient strategies for the use and provision of information technology and information technology staff for participating agencies and other governmental entities.

f. Manage and oversee the LowAccess program.

This chapter outlines the office's process for achieving such objectives with appropriate stakeholder input, including the process by which the office establishes information technology governance requirements; related assessment and enforcement processes and procedures; and a uniform process for the granting of information technology waivers requested by a participating agency from such information technology governance requirements.

8.2(2) *Applicability.*

a. Information technology governance requirements established by the office, unless waived in accordance with the waiver process set forth herein, shall apply to all participating agencies.

b. The office of the governor and the offices of elective constitutional or statutory officers are not required to comply with information technology governance requirements established by the office. However, as required by Iowa Code section 8B.23, they must:

(1) Consider the information technology governance requirements adopted by the office; and

(2) In the case of any acquisition of information technology, consult with the office prior to making any such acquisition and provide a written report to the office relating to any decision regarding such acquisitions.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

129—8.3(8B) Advisory groups. The office may establish advisory groups and related policies and procedures to organize and effectively and efficiently utilize such advisory groups. Advisory groups may be comprised of information technology leaders from agencies across state government to advise and assist the CIO and office in accomplishing the objectives, duties, and responsibilities outlined herein and in Iowa Code chapter 8B. Advisory groups established by the office shall be solely advisory to the CIO and office, and the CIO and office retain all final decision-making authority as conferred by Iowa Code chapter 8B.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

129—8.4(8B) Information technology governance requirements.

8.4(1) *Proposing information technology governance requirements.* Anyone may recommend the development or adoption of an information technology governance requirement to the CIO or office or advisory committee created and designated by the CIO for such purpose.

8.4(2) *Development of information technology governance requirements.* Where the CIO, office, or advisory committee created and designated by the CIO for such purpose is of the opinion that a proposed information technology governance requirement has merit, the CIO, office, or advisory committee created and designated by the CIO for such purpose may work with the individual proposing the information technology governance requirement to develop the requirement. In developing information technology standards, the CIO, office, or advisory committee created and designated by the CIO for such purpose may consider, by way of example only:

a. Whether and how such requirement furthers the objectives of the enterprise;

b. Current industry standards or best practices;

c. Whether and how the requirement would help avoid the duplication of services, resources, or support;

d. Whether and how the requirement would further the state's information technology strategic plan, enterprise architecture, security plans, or any other information technology governance requirements;

e. Whether and how the requirement would affect expenditures across the enterprise;

f. Existing technology deployments;

g. The impact on state resources;

h. Acquisition, development and deployment time frames associated with implementing the requirement.

8.4(3) *Types of information technology governance requirements.* Information technology governance requirements may include any of the following:

a. “Policy(ies)” means a high-level statement of intent applicable to the acquisition, utilization, or provision of information technology designed to facilitate an enterprisewide goal or objective.

b. “Standard(s)” means a specific, minimum requirement(s) applicable to the acquisition, utilization, or provision of information technology, typically designed to facilitate the uniform application or implementation of one or more policies. Standards may set forth required or prohibited 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. Standards are intended to establish uniformity in common technology infrastructures, applications, processes or data, and may define or limit the tools, proprietary product offerings or technical solutions which may be used, developed or deployed by participating agencies.

c. “Process(es)” means a high-level overview of required tasks, approvals, procedures, or other processes, typically designed to operationalize one or more policies or standards in a manner that leads to consistent results.

d. “Procedure(s)” means an in-depth set of instructions for the completion of a specific process, task, or action, typically designed to operationalize one or more processes or standards in a manner that leads to consistent results.

e. “Guideline(s)” or “best practices” means a recommended policy, process, task, or action related to the acquisition, utilization, or provision of information technology, typically designed to support related policies or standards. Guidelines or best practices are not required but are intended to aid participating agencies in assessing risks associated with technology decisions, facilitate knowledge transfer, and communicate lessons learned from past experience.

8.4(4) *Goals for information technology governance requirements.* The underlying purpose of information technology governance requirements is, by way of example only:

a. To promote collaboration and consistency in the automation of systems;

b. To eliminate duplicative development efforts and promote efficiencies for improved services to citizens and businesses;

c. To ensure continuity of ongoing state operations;

d. To ensure system security and the confidentiality, integrity, and availability of confidential or sensitive information stored or processed by state information systems;

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

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

8.4(5) *Adopting of information technology governance requirements and taking effect.*

a. Following the development of a proposed information technology governance requirement, the CIO may adopt the information technology governance requirement. The CIO shall solicit stakeholder input and feedback, including feedback from participating agencies to which the information technology governance requirement would apply, prior to adopting an information technology governance requirement.

b. The effective date of an information technology governance requirement shall be as stated in the applicable information technology governance document.

c. Upon taking effect, an information technology governance requirement shall apply to all participating agencies.

d. Participating agencies may request additional time to comply with information technology governance requirements. Such requests shall be considered a request for temporary waiver and must be submitted in accordance with rule 129—8.6(8B).

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

129—8.5(8B) Assessment and enforcement of information technology governance requirements.

8.5(1) *Compliance assessments and requests for information.* The office may periodically assess participating agencies’ compliance with information technology governance requirements. In so doing, the

office will coordinate and collaborate with participating agencies. Participating agencies shall provide appropriate information, access, and assistance to complete such assessments, or as is otherwise necessary for the office to carry out its duties and responsibilities under Iowa Code chapter 8B. As part of such assessments, participating agencies may be required to, by way of example only:

a. Provide the office with information as required by Iowa Code section 8B.21(1) “*k*” and “*l*,” or as otherwise required pursuant to Iowa Code chapter 8B or 22. Such information may include, but not be limited to:

- (1) An inventory of information technology used by the participating agency.
- (2) Budget or spending information of or related to information technology.
- (3) Competitive selection documents, acquisition documents, internal procurement policies adopted by the participating agency, and other documents relied on, issued by, or executed by the participating agency related to the acquisition of information technology.
- (4) Information about any security incidents.
- (5) Security logs and reports, such as latency statistics, user access summaries, user access Internet protocol (IP) address summaries, user access history and security logs for information technology systems of the participating agency or its vendors.

(6) Security processes and technical limitations of the participating agency or its vendors, such as those related to virus checking and port sniffing.

b. Permit the office or its third-party designee to conduct security testing and compliance audits on a participating agency’s or its vendor’s information systems. Such testing and compliance audits may include but not be limited to unannounced penetration and security tests as they relate to the receipt, maintenance, use or retention of the state of Iowa’s sensitive or confidential information.

Failure of a participating agency to provide the office with information or submit to compliance audits as requested by the office may be considered a violation of these rules and Iowa Code chapter 8B.

8.5(2) *Alternative assessment methods.* Participating agencies may request the acceptance of results of like assessments conducted by third parties in lieu of an assessment by the office. Whether to accept such alternative assessment methods shall be determined in the discretion of the CIO in coordination with the applicable participating agency.

8.5(3) *Determination of noncompliance.*

a. If the office determines that a participating agency is noncompliant with an information technology governance requirement, the office shall send a report to the head of the noncompliant participating agency, which report shall outline:

- (1) The specific information technology governance requirement(s) forming the basis of a violation or ground for noncompliance;
- (2) The relevant facts and corresponding reasoning supporting the office’s findings and conclusions;
- (3) The office’s recommendations for remedying the violations or noncompliance.

b. Within 30 calendar days of receipt of the noncompliance notification, the participating agency shall submit to the office a written plan describing the actions the agency will take to achieve compliance or submit a written request for waiver in accordance with rule 129—8.6(8B). The office may, on its own motion or at the request of the participating agency, schedule a meeting between the participating agency and the office. Based on the participating agency’s response and outcome of any meeting between the participating agency and the office, or office’s decision with respect to any request for waiver submitted by the participating agency, the office may modify, alter, or amend its original report and recommendations.

8.5(4) *Emergency remediation.* When noncompliance with information technology governance requirements is determined by the CIO to be a threat to critical state information resources or information resources outside state government, the CIO may order the immediate shutdown or disconnection of the agency technology services that are contributing to the threat. If the agency does not immediately comply, the office, Iowa communications network, or other body may disconnect the agency from all shared services. The agency will be reconnected to shared services when the CIO determines there is no longer a critical threat.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

129—8.6(8B) Waivers from information technology governance requirements.

8.6(1) *Requests for waiver.* A participating agency may file a request for waiver from an information technology governance requirement, in whole or in part, in accordance with the following form, manner, and content requirements.

a. Form and manner. A request for waiver shall be made on forms provided by the office and may be submitted by email to cio@iowa.gov. A request for waiver must be signed by the head of the participating agency seeking the waiver.

b. Content. The request shall:

(1) Include the name and address of the participating agency and a telephone number and email address for the point of contact at the participating agency to whom inquiries and notices regarding the request for waiver may be directed;

(2) Include a reference to the specific information technology governance requirement for which the waiver is submitted;

(3) Include a statement of facts, including a description of the problem or issue prompting the request;

(4) Describe the participating agency's preferred solution;

(5) Outline an alternative approach to be implemented by the participating agency intended to satisfy the waived information technology governance requirement;

(6) Describe the business case for the alternative approach;

(7) Include a copy of a third-party audit or report that compares the participating agency's preferred solution to the information technology solution that can be provided by the office;

(8) Outline the economic justification for the waiver or a statement as to why the waiver is in the best interests of the state;

(9) Specify the time period for which the waiver is requested and, to the extent a permanent waiver is requested, explain why a temporary waiver would be impracticable; and

(10) Include or be accompanied by any other information, including supporting evidence or documentation, deemed relevant by the participating agency, including information that would aid the office in applying the factors outlined in Iowa Code section 8B.21(5) "b" or determining whether granting the request, in whole or in part, is in the best interests of the state of Iowa.

c. The office and participating agency shall collaborate on both determining the need for a waiver and, if a waiver is determined to be necessary, the development of request for waiver.

8.6(2) *Notice, additional information, and opportunity for meeting.*

a. Notice. The office may notify other participating agencies that may be interested in or affected by the office's decision regarding a request for waiver and may allow other participating agencies to review the request for waiver and related materials submitted in connection therewith.

b. Additional information.

(1) The office may request, or require in accordance with Iowa Code section 8B.21(1) "k" and "l," additional information, evidence, or documentation from the participating agency submitting the request that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5) "b" and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

(2) The office may permit, or require in accordance with Iowa Code section 8B.21(1) "k" and "l," other participating agencies that may be interested in or affected by the office's decision to submit supporting or competing viewpoints, evidence, or documentation that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5) "b" and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

c. The office shall coordinate and schedule a meeting with the participating agency submitting the request or any other participating agency that may be interested in or affected by the office's decision.

8.6(3) *Granting a waiver.* In response to the office's receipt of a request for waiver under and in accordance with this chapter, the CIO may issue an order waiving, in whole or in part, an information technology governance requirement. The CIO may only grant a waiver if the participating agency shows that the waiver would be in the best interests of the state. In determining whether to grant a waiver, in whole or in part, the CIO shall consider the factors outlined in Iowa Code section 8B.21(5) "b." The final

decision on whether the circumstances justify the grant of a requested waiver, in whole or in part, shall be in the sole discretion of the CIO.

- a. An order granting or denying a waiver, in whole or in part, shall be in writing and shall:
 - (1) Identify the participating agency(ies) to which the order applies;
 - (2) Identify the specific information technology governance requirements involved;
 - (3) Include a statement of the relevant facts and reasons for the decision, including an application of the factors outlined in Iowa Code section 8B.21(5) “b” and an explanation as to how the waiver is or is not in the best interests of the state; and
 - (4) To the extent a waiver is granted, describe the precise scope of the waiver including its duration and any conditions associated therewith.
- b. A waiver, if granted, shall provide the narrowest exception possible to the information technology governance requirements involved.
- c. The CIO may place any condition on a waiver that the CIO finds desirable to protect the best interests of the state.
- d. A waiver shall not be permanent unless the requestor 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 CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.
- e. The CIO shall grant or deny a request for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the CIO, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days.
- f. Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the participating agency by email to the contact at the participating agency identified in the request for waiver. The office may also transmit a copy of the order to other participating agencies that may be interested in or affected by the office’s decision.
- g. Consolidation. In the event the CIO receives similar requests for waivers from multiple participating agencies concerning the same information technology governance requirements, the CIO may consolidate the requests and issue a single ruling granting or denying the requests, in whole or in part.

8.6(4) Cancellation of a waiver. A waiver issued by the CIO pursuant to this chapter may be withdrawn, canceled, or modified after appropriate notice and fact-finding. Failure of a participating agency to cooperate in any fact-finding process initiated by the CIO to determine whether a waiver previously issued pursuant to this chapter should be withdrawn, canceled, or modified is grounds to cancel or modify a previously granted waiver.

8.6(5) Violation of a waiver. Violation of a condition in a waiver order shall be treated as a violation of the information technology governance requirement for which the waiver was granted.

8.6(6) Defense. After the CIO issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the participating agency to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

129—8.7(8B,22) Public availability. Reports issued by the office, or orders granting or denying waivers, under this chapter shall be indexed, filed, and made available for public inspection as provided in Iowa Code section 17A.3. Such reports, orders, and related materials may be considered public records under Iowa Code chapter 22; provided, however, that such reports, orders, and related materials may contain information the office is authorized or required to keep confidential. The office may accordingly redact confidential information from petitions or orders prior to public release or inspection.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

129—8.8(8B) Appeals. A participating agency may appeal a final decision of the CIO regarding the participating agency’s noncompliance with information technology governance requirements under rule 129—8.5(8B), or a denial, in whole or in part, of a request for waiver under rule 129—8.6(8B), to the director of the department of management within seven calendar days following the service of the decision. The director of the department of management shall respond within 14 days following the receipt of the appeal.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code chapter 8B.

[Filed ARC 4824C (Notice ARC 4712C, IAB 10/23/19), IAB 12/18/19, effective 1/22/20]

CHAPTER 9
Reserved

CHAPTER 10
PROCUREMENT OF INFORMATION TECHNOLOGY

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—10.1(8B) General provisions.

10.1(1) *Applicability.* This chapter governs:

- a. The process for participating agencies and other governmental entities to obtain approval from or consult with, as applicable, the office in connection with the acquisition of information technology; and
- b. The procurement of information technology by and for the office; by the office for the benefit or use of participating agencies or other governmental entities; and by a participating agency directly, to the extent the participating agency possesses the procurement authority to make such purchases.

10.1(2) *Funding.* The office and participating agencies shall follow these procurement policies and information technology governance requirements promulgated by the office regardless of the funding source supporting the procurement. However, when these rules or information technology governance requirements promulgated by the office prevent the state from obtaining and using a federal grant, these rules and information technology governance requirements may be suspended pursuant to and in accordance with Iowa Code section 8B.21(5) and 129—Chapter 8 to the extent required to comply with the federal grant requirements.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.2(8B) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

“Acquisition” or *“acquire”* means the same as “procurement,” “procure,” or “purchase.”

“Acquisition document” or *“procurement document”* means any document or instrument that effectuates an acquisition of information technology, including but not limited to a contract, agreement, purchase order, statement of work, bill of sale, invoice, or other similar document.

“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.

“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.

“Award” means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process.

“Chief information officer” or *“CIO”* means the state chief information officer or the state chief information officer’s designee.

“Competitive bidding procedure” or *“competitive selection process”* 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” or “competitive selection process” includes but is not limited to a reverse auction as permitted by subrule 10.3(4), any competitive selection process outlined in 11—Chapter 118, or any prequalification process or subsequent solicitation outlined in subrule 10.5(6). When used to refer to a competitive selection process administered by another governmental entity, a “competitive bidding procedure” or “competitive selection process” includes any competitive bidding procedure or competitive selection process the other governmental entity is authorized to use pursuant to its laws, rules, and regulations.

“Competitive selection documents” means documents prepared and issued that solicit information technology to be purchased through a competitive selection process. A competitive selection document may be an electronic document.

“Contract let by another governmental entity” means either:

1. A contract entered into by another governmental entity under which the office may order information technology on its own behalf or on the behalf of a participating agency or other governmental entity, or approve a participating agency’s or other governmental entity’s request to procure information technology in the same manner; or

2. A contract entered into by another governmental entity as the outcome of a competitive selection process conducted by that other governmental entity which contract the office, or a participating agency or other governmental entity as authorized by the office, may leverage by entering into a separate contract for the purchase of information technology based thereon (also referred to as a “leveraged contract”), other than a contract entered into by the state board of regents or an institution under the control of the state board of regents. When the leveraged contract is the result of a competitive process administered by another governmental entity, such process may serve as a substitute for or in lieu of the office, or a participating agency or other governmental entity as authorized by the office, administering its own competitive selection process.

“Emergency” includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety;
2. In which immediate action must be taken to preserve critical services or programs;
3. That compromises the security of information systems or lifeline critical infrastructure, or otherwise poses a substantial risk or threat to the security, confidentiality, or integrity of sensitive or confidential information; 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.

“Fair and reasonable price” means a price that is commensurate with the extent and complexity of the information technology to be provided and is comparable to the price paid by other entities for projects of similar scope and complexity.

“Formal competition” means a competitive selection process other than informal competition, including without limitation a request for proposals or request for bids, and which results in the procurement of information technology.

“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 the purchasing entity makes an effort to contact at least three prospective vendors identified by the purchasing entity as qualified to perform the necessary work to request that vendors provide bids or proposals for the information technology the purchasing entity needs.

“Information technology governance documents” or *“information technology governance requirements”* means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies’ acquisition, utilization, or provision of information technology.

“Information technology services” shall mean the same as defined in Iowa Code chapter 8B. In addition, the term “information technology services” shall include:

1. Cloud services, including software, platform, or infrastructure services delivered or accessed from a remote location through an Internet- or web-based interface. Such delivery or access models are commonly referred to as “software-as-a-service,” “platform-as-a-service,” “infrastructure-as-a-service,” or other variations of “as-a-service.”
2. Service provided in connection with the provisioning of broadband.
3. Value-added services.

“Intergovernmental agreement” means an agreement for information technology between a state agency and any other governmental entity, whether federal, state, or local, or any department, division, unit or subdivision thereof.

“Iowa-based business” means an entity that has its principal place of business in Iowa.

“Iowa product” means a product(s) produced in Iowa.

“Life cycle cost” means the expected total cost of ownership during the life of a product, including disposal costs.

“Master information technology agreement” means a contract entered into by the office which establishes prices, terms, and conditions for the purchase of information technology. These contracts may involve the needs of one or more state agencies or other governmental entities.

“Material modification,” as it relates to a previously approved information technology procurement, means a change in the procurement of 10 percent or \$25,000, whichever is less, or a change of sufficient importance or relevance so as to have possible significant influence on the outcome. Participating agencies shall not break purchasing into smaller increments in order to avoid the thresholds in this rule.

“Negotiated contract” means an agreement that meets the requirements of Iowa Code section 8B.24(5) “b.”

“Order” means a direct purchase or a purchase from a state contract, master information technology agreement, or contract let by another governmental entity.

“Participating agency” shall mean the same as defined in Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

“Procurement,” “procure,” or *“purchase”* means the acquisition of information technology through lease, lease/purchase, acceptance of, contracting for, obtaining title or license to, use of, or any other manner or method for acquiring information technology or an interest therein.

“Procurement authority” means a state agency authorized by statute to purchase information technology directly; or a state agency that has been delegated the authority to or has otherwise been authorized to procure information technology directly by the office, including but not limited to as such procurement authority is delegated to a participating agency or such procurement is otherwise authorized by the office by and pursuant to this chapter.

“Responsible bidder” or *“responsible respondent”* means a vendor that has the capability in all material respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the purchasing entity may consider various factors, including but not limited to the vendor’s competence and qualification for the type of information technology required, the vendor’s integrity and reliability, the past performance of the vendor relative to the information technology to be provided, the past experience of the purchasing entity or other governmental entities in relation to the vendor’s performance, the relative quality of the information technology as compared with similar information technology available from other sources, the proposed terms of delivery, and the best interests of the state.

“Reverse auction process” or *“reverse auction”* means 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.

“Sole source” includes, but is not limited to, a circumstance in which a purchasing entity determines that:

1. One service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the information technology;
2. The information technology being purchased involves 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 information technology;
3. The federal government or other provider of funds for the information technology being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the purchasing entity’s use of the funds in a way that restricts the state agency to only one information technology provider;
4. Applicable law requires, provides for, or permits use of a sole source procurement;

5. The procurement is for an upgrade, or compatibility is the overriding consideration, or the procurement would prevent avoidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation;

6. Any other circumstance as the office may identify from time to time.

“*Sole source procurement*” means an acquisition occurring when one of the circumstances set forth in the definition of “sole source” in this chapter is satisfied.

“*Targeted small business*” or “*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.

“*Vendor*” means a person, firm, corporation, partnership, business or other commercial entity that offers or provides information technology for sale, lease, or license.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.3(8B) Methods of procurement.

10.3(1) *Methods.* The office may procure information technology on its own behalf or on behalf of participating agencies or other governmental entities using any of the methods set forth in Iowa Code section 8B.24(5) or authorize participating agencies to procure information technology in a similar manner (including but not limited to subject to applicable approval processes and requirements, as such procurement authority is delegated to a participating agency by the office elsewhere in this chapter). Such methods include but are not limited to:

- a. A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5) “a.”
- b. A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5) “b”(1) to 8B.24(5) “b”(3).
- c. A contract let by another governmental entity pursuant to Iowa Code section 8B.24(5) “c” if:
 - (1) The contract authorizes other governmental entities to procure information technology therefrom or leverage the contract by entering into a separate contract based on the contract, as applicable;
 - (2) The purchasing entity notifies the other governmental entity of the purchasing entity’s intent to use or leverage the other governmental entity’s contract;
 - (3) The purchasing entity follows applicable procedures under the contract required for other governmental entities to purchase therefrom or leverage the contract; and
 - (4) The vendor provides written assurances to the purchasing entity that any contemplated purchases or resulting leveraged contract would not adversely impact the governmental entity which was the original signatory to the contract.
- d. A reverse auction process in accordance with the requirements of Iowa Code section 8B.24(5) “d.”
- e. A competitive selection process in the same manner as outlined in 11—Chapter 118 and in accordance with the requirements identified in rule 129—10.12(8B).
- f. Other agreements for the purchase, disposal, or other disposition of information technology, including but not limited to the following:
 - (1) Intergovernmental agreement. An intergovernmental agreement with a governmental entity which has the resources available to supply the information technology sought.
 - (2) Emergency procurement. An emergency procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “emergency” as set forth in this chapter is satisfied. The following requirements shall apply to an emergency procurement:
 1. 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 purchasing entity should consider price and availability of the information technology so that the purchasing entity obtains the best value for the funds spent under the circumstances.
 2. Justification for the emergency procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the

reasons the purchase is an emergency. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

3. The head of the purchasing entity shall sign all emergency justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign an emergency contract or amendment.

4. Use of an emergency procurement does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

(3) Sole source procurement. A sole source procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “sole source” as set forth in this chapter is satisfied. The following requirements shall apply to a sole source procurement:

1. Justification for the sole source procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase qualifies as a sole source. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

2. The head of the purchasing entity shall sign all sole source justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign a sole source contract or amendment.

3. Use of a sole source procurement method does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

10.3(2) Request for information (RFI). A request for information (RFI) is a nonbinding method the office or a participating agency may use to obtain market information from interested parties for a possible upcoming purchase. Information may include but is not limited to best practices, industry standards, technology issues, qualifications and capabilities of potential suppliers, current pricing, or existing contract vehicles. Agencies considering the use of an RFI may contact the office for information and guidance in using this process.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.4(8B) Master information technology agreements.

10.4(1) Master information technology agreements. In furtherance of the office’s duty to cooperate with other governmental entities in the procurement of information technology and in an effort to make such procurements in a cost-effective, efficient manner, the office may enter into master information technology agreements to procure information technology for participating agencies and other governmental entities, or may authorize participating agencies and other governmental entities to procure information technology thereunder, pursuant to any of the methods set forth in rule 129—10.3(8B). The office may procure information technology for participating agencies and other governmental entities from such master information technology agreements or may authorize participating agencies and other governmental entities to procure information technology directly therefrom. Master information technology agreements for particular information technology or a particular class of information technology may be awarded to a single vendor or to multiple vendors, in the sole discretion of the office, irrespective of the procurement method utilized.

10.4(2) Use of master information technology agreements.

a. If the office has entered into a master information technology agreement, a participating agency shall procure information technology through the master information technology agreement, unless:

- (1) The contract states that use of the master information technology agreement is optional;
- (2) An information technology governance document provides otherwise; or
- (3) The participating agency has obtained a waiver from the office pursuant to Iowa Code section 8B.21(5) and corresponding information technology waiver rules in 129—Chapter 8.

b. Unless otherwise stated in the master information technology agreement, any governmental entity may purchase from a master information technology agreement held by the office.

c. All governmental entities must notify the office of their intent to utilize a master information technology agreement held by the office and consult with the office about any proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations,

restrictions, requirements, or obligations found in the master information technology agreement, of which the governmental entity should be aware. A participating agency that obtains approval from the office for an acquisition as required by rule 129—10.7(8B) does not need to separately consult with the office as required by this paragraph before making a purchase under a master information technology agreement held by the office.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.5(8B) Prequalification of vendors. In accordance with Iowa Code section 8B.24(4), using an invitation to qualify, the office may prequalify a list of vendors capable of delivering particular information technology or a class of information technology. The office, in its sole discretion, may determine for what information technology or classes of information technology it would be appropriate to use an invitation to qualify.

10.5(1) Purpose. The purpose of an invitation to qualify for information technology acquisitions includes but is not limited to the following:

- a. Standardizing the terms and conditions relating to all information technology provided by vendors, thereby avoiding repetition and duplication of efforts.
- b. Accomplishing information technology assignments in a manner consistent with information technology governance requirements prescribed by the office.
- c. Reducing the time required for the solicitation of proposals from vendors for individual projects.

10.5(2) Evaluation criteria. The office shall develop the evaluation criteria for vendor prequalification based upon its expertise, information and research, and the needs of the office, participating agencies, and other governmental entities. The office shall develop evaluation criteria for each invitation to qualify. Examples of evaluation criteria include but are not limited to:

- a. Affirmative responses to mandatory agreement questionnaires.
- b. Ratings on professional/technical personnel questionnaires.
- c. Scoring in a specified range on client reference surveys.
- d. Competitive cost data by type of service.
- e. Acceptable vendor financial information.
- f. Ability to comply with information technology governance requirements, other applicable industry standards, regulatory requirements, or any combination thereof.
- g. Willingness and ability to submit personnel to background checks.

10.5(3) Issuance and time to respond. The office may issue invitations to qualify as needed. The office shall provide notice of the issuance of an invitation to qualify pursuant to rule 129—10.12(8B). In addition to the applicable evaluation criteria and other substantive requirements contained within the invitation to qualify, the office shall specify in the invitation to qualify:

- a. The date and time at which vendors may begin submitting responses.
- b. The form and manner in which responses shall be submitted to the office.
- c. The date and time at which vendor responses will no longer be accepted.

10.5(4) Response and evaluation. Vendors may apply for eligibility on a continuous basis during the time period the invitation to qualify remains open. The office will not accept vendor responses after the response window has closed but may extend or reopen the window if the best interests of the state would be served. The office may evaluate vendor responses for placement on a prequalified vendor list during the period that the invitation to qualify remains open or after the response window has closed. Vendors seeking to qualify must meet all the evaluation criteria established by the office for a particular category or type of solicitation. The office retains the sole discretion to determine whether vendors that submit responses meet the evaluation criteria established by the office and to weigh the evaluation criteria in the manner it deems appropriate to determine whether such vendors are responsible bidders and able to provide the particular information technology or class of information technology sought. An approved vendor shall remain prequalified for the period specified by the office in the invitation to qualify, unless the vendor fails to meet any minimum acceptable performance levels established by the office as permitted by subrule 10.5(7) or breaches any terms and conditions included in any contract agreed to by the vendor.

10.5(5) Not an award and execution of contracts. Vendor prequalification is not an award and does not create an obligation on the part of the office. However, prior to conducting subsequent solicitations

pursuant to subrule 10.5(6), prequalified vendors may be required to negotiate and agree to general terms and conditions which may be applicable to subsequent solicitations conducted pursuant to subrule 10.5(6).

10.5(6) *Subsequent solicitations.* Following the completion of the prequalification process, the office or governmental entities may select a prequalified vendor to provide specific information technology pursuant to a scaled-down competitive selection process without public notice. Such solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required by paragraph 10.12(1) “d.” Prequalified vendors receiving an award may be required to negotiate and agree to additional terms and conditions applicable to the specific information technology acquired.

10.5(7) *Acceptable performance levels.* The office may establish and notify prequalified vendors of minimum acceptable performance levels and institute performance tracking mechanisms on prequalified vendors. If a vendor’s performance falls below the minimum acceptable level, the vendor may be removed from the prequalified list.

10.5(8) *Approval/consultation required.*

a. In addition to the requirements of paragraph 10.5(8)“b,” before a participating agency may acquire information technology from a prequalified vendor, the participating agency must receive the approval(s) required by rule 129—10.7(8B).

b. All governmental entities must notify the office of their intent to acquire information technology from a vendor prequalified by the office pursuant to the office’s processes hereunder and consult with the office about the proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in any applicable contracts, of which the governmental entity should be aware.

10.5(9) *Appeal rights.* 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 pursuant to 129—Chapter 11.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.6(8B) Method of procurement, how determined. In determining which of the procurement methods set forth in Iowa Code section 8B.24(5) and rule 129—10.3(8B) to utilize or to authorize a participating agency to utilize in acquiring information technology, whether to establish a master information technology agreement pursuant to rule 129—10.4(8B), or whether to prequalify vendors pursuant to the prequalification process outlined in rule 129—10.5(8B), the office may consider the following nonexclusive list of factors:

1. The manner in which such decision would further the state’s information technology strategic plan.
2. The manner in which such decision would enhance the security of state information-technology systems, and the immediacy of the need to do so.
3. The manner in which such decision would improve compatibility, interoperability, and connectivity between state agencies.
4. The manner in which such decision would further improve statewide efforts to standardize data elements and better encourage or facilitate the sharing of data across state agencies.
5. The manner in which such decision would likely affect the cost to the state for the information technology.
6. The need to standardize the terms and conditions relating to the information technology provided by vendors with respect to a specific information technology or a class of information technology.
7. The administrative costs/overhead associated with pursuing an alternative method.
8. The likelihood that an alternative method would result in a different or better outcome.
9. The likely willingness and ability of state agencies to follow the office’s decision and leadership with respect to a particular information technology acquisition.
10. The needs of all state agencies.
11. The need to avoid repetition and duplication.
12. Whether such decision would improve compliance with the information technology standards and policies prescribed by the office, other applicable industry standards, state or federal regulatory requirements related to information security, or any combination thereof.
13. Whether such decision would reduce the time required to solicit proposals from vendors to obtain the required information technology.

14. Whether there is an emergency or other pressing need.
15. The competitiveness of the market for the particular information technology sought and the likelihood vendors would supply thorough and meaningful proposals in response to a solicitation as part of a competitive selection process.
16. Any other factors deemed relevant by the office.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.7(8B) Approval process for participating agencies.

10.7(1) Approval, when required. Any procurement of information technology, an information technology project, or information technology outsourcing satisfying any or all of the following conditions must receive prior approval from the office before a participating agency issues a competitive selection document; issues any order or other acquisition document, including an order under a master information technology agreement; or otherwise seeks to procure information technology through the office or on its own procurement authority (including but not limited to where such procurement authority is delegated by the office to a participating agency elsewhere in this chapter). Prior approval is required when the information technology acquisition, project, or outsourcing satisfies any or all of the following conditions:

- a. Costs \$25,000 or more; or
- b. Is projected to involve 750 agency staff hours or more; or
- c. Involves substantial information-security concerns, including but not limited to the sensitivity or confidentiality of the data involved; the location of the system, data to be stored therein, or both; or the data involved is subject to state or federal regulatory requirements governing data security, confidentiality, or integrity; or
- d. Involves significant compatibility, interoperability, or connectivity concerns.

The participating agency's approval request shall be submitted in the form and manner identified by the office. Participating agencies shall not break purchasing into smaller increments in order to avoid the threshold requirements of this rule.

10.7(2) Office's review of proposed procurement. When the office's prior approval is required by subrule 10.7(1), the office will review a proposed information technology procurement regardless of funding source, method of procurement, or agency procurement authority. The office will review a proposed procurement, without limitation:

- a. To determine whether the proposed procurement complies with applicable information technology governance requirements prescribed by the office, including but not limited to those of or relating to information security.
- b. To determine whether the proposed procurement method is advisable, considering the factors set forth in rule 129—10.6(8B), including but not limited to whether an established master information technology agreement may be utilized to procure the proposed information technology.
- c. To determine whether the proposed procurement is a necessary purchase or in the best interests of the state, considering, without limitation, the factors set forth in rule 129—10.6(8B).

10.7(3) Conditions. The office may place any condition the office finds desirable on an approval to protect the best interests of the state. For example, the office may condition its approval on:

- a. The incorporation of contractual protections or implementation of compensating controls to safeguard sensitive or confidential data to be stored, processed, or transmitted by or through the information technology.
- b. The ability of vendors to comply with state or federal regulatory requirements governing data security, confidentiality, integrity, or other similar requirements.
- c. The ability to achieve the necessary compatibility, interoperability, or connectivity with enterprise systems.
- d. Any other condition deemed desirable to protect the best interests of the state.

10.7(4) Outcome of review and requests for waiver.

- a. If the office approves a procurement proposed by a participating agency, in whole or in part, the procurement may proceed, subject to any conditions imposed by the office in accordance with subrule 10.7(3).

b. If the office denies a procurement proposed by a participating agency, the office will notify the participating agency of the available options, which may include modifying and resubmitting the request, canceling the request, or requesting an information technology waiver from the office pursuant to 129—Chapter 8.

c. A participating agency may not appeal or otherwise complain about an adverse decision rendered by the office unless or until the participating agency has requested a waiver from the office's decision pursuant to 129—Chapter 8.

10.7(5) Ongoing approval—when required. Once a procurement proposed by a participating agency is approved by the office, ongoing approval is not required, unless:

- a. There is a material modification to a previously approved procurement; or
- b. Communicated by the office to the participating agency in writing.

If additional approval is required pursuant to this rule, such approval shall follow the same process outlined in subrules 10.7(1) to 10.7(4).

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.8(8B) Consultation.

10.8(1) When required for nonparticipating agencies. The office of the governor and the offices of elective constitutional or statutory officers are not required to obtain prior approval from the office before acquiring information technology pursuant to rule 129—10.7(8B). However, pursuant to Iowa Code section 8B.23(2), the office of the governor and the offices of elective constitutional or statutory officers must consult with the office prior to procuring information technology, consider the information technology standards adopted by the office, and provide a written report to the office relating to decisions regarding such acquisitions upon request by the office.

10.8(2) Encouraged for non-information technology acquisitions. Even where an information technology acquisition is not appropriately deemed an information technology acquisition, the office may provide advice to or consult with any governmental entity regarding the acquisition of goods, services, or an outsourcing of state functions when the acquisition includes a substantial information-technology component, includes a substantial information-security component, or would grant a third party access to the state's sensitive or confidential information. Such consultation is generally encouraged to ensure, by way of example only:

- a. Appropriate contractual protections or compensating controls are incorporated or implemented to safeguard sensitive or confidential data or information.
- b. The chosen vendor is able to comply with any applicable state or federal regulatory requirements governing data security, confidentiality, integrity, or otherwise.
- c. The vendor's information-technology systems comply with applicable information technology governance requirements.
- d. The vendor's information-technology systems are adequately designed or architected in a manner that will adequately safeguard the state's sensitive or confidential information.
- e. The vendor's information-technology systems will be capable of adequately and securely connecting to or interfacing with state information-technology systems, to the extent necessary.

10.8(3) Master information technology agreements and invitations to qualify. In accordance with and as further set forth in paragraphs 10.4(2)"c" and 10.5(8)"b," all governmental entities must notify the office of their intent to utilize master information technology agreements or to acquire information technology from a vendor prequalified by the office in accordance with the office's prequalification and subsequent solicitation processes and to consult with the office about any such proposed acquisition.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.9(8B) Delegated procurement authority. Subject to the approval and consultation processes and requirements set forth in rules 129—10.7(8B) and 129—10.8(8B), participating agencies may procure information technology through a competitive selection process administered by the participating agency consistent with the purchasing thresholds and requirements established by this rule.

10.9(1) *Agency direct purchasing—basic tier.* For information technology purchases that do not exceed the following dollar thresholds, participating agencies may procure information technology without competition:

a. Non-master-information-technology-agreement information technology devices costing less than \$1,500.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is less than \$5,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is less than \$15,000.

c. Non-master-information-technology-agreement information technology devices or services from a TSB for purchases of less than the amount determined by the department of administrative services by rule, but not to exceed \$25,000. Participating agencies shall search the TSB directory on the web and purchase directly from a TSB if it is reasonable and cost-effective to do so. A participating agency must confirm that the vendor is certified as a TSB by the department of inspections and appeals prior to making a purchase pursuant to this subrule.

10.9(2) *Agency direct purchasing—middle tier.* For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using either formal or informal competition:

a. Non-master-information-technology-agreement information technology devices costing greater than or equal to \$1,500 but less than \$5,000.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$5,000 but less than \$50,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is greater than or equal to \$15,000 but less than \$150,000.

10.9(3) *Agency direct purchasing—advanced tier.* For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using only formal competition:

a. Non-master-information-technology-agreement information technology goods costing greater than or equal to \$5,000.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$50,000, or when the estimated value of the multiyear information technology services contract in the aggregate, including any extensions or renewals, is greater than or equal to \$150,000.

10.9(4) *Training, when required.* Participating agency personnel engaged in the purchase of information technology at the middle or advanced tier shall have completed enhanced procurement training identified by the office.

10.9(5) *Misuse of agency authority.*

a. Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding the purchasing thresholds established by this rule.

b. Except as otherwise authorized or permitted by the office, purchasing authority delegated to participating agencies by this rule shall not be used to avoid the use of master information technology agreements.

10.9(6) *Other methods where authorized by office.* The office may authorize participating agencies to make direct purchases utilizing any other procurement methods outlined in rule 129—10.3(8B) on a case-by-case basis.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.10(8B) Duration of master information technology agreements. The initial term of a master information technology agreement shall be as determined by the office. Following the initial term, a master information technology agreement may be extended or renewed by the office for a number of periods and in durations as determined by the office.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.11(8B) Duration of information technology contracts. Each contract signed by the office or a participating agency shall have a specific starting and ending date and may be structured in a manner that includes an initial term and option(s) for renewal terms. The initial term, renewal term, and total term may be of a duration as determined by the office or participating agency making the purchase. Unless otherwise authorized or permitted by the office, information technology contracts entered into by the office or a participating agency shall not exceed ten years. Information technology contracts should be assessed on a regular basis so the enterprise obtains the best value for the funds spent; avoids inefficiencies, waste or duplication; and is able to take advantage of new innovations, ideas, and technologies.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.12(8B) Requirements applicable to competitive selection process.

10.12(1) Notice of competitive selection.

a. Opportunity posting. The office and each participating agency shall provide public notice of solicitations by posting notice of every formal competitive selection opportunity to the official centralized procurement website operated by the department of administrative services. Alternatively, a participating agency may add a link to the centralized procurement website that connects to the website maintained by the agency on which requests for bids and proposals for that agency are posted. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state website operated by the department of administrative services.

b. Other forms of notice. In addition to the requirements and options set forth in paragraph 10.12(1) “a,” notice of competitive bidding opportunities and proposals may also be provided by print, telephone or fax, email or other electronic means, or by other means that give reasonable notice to vendors.

c. 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 reissued.

d. 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 website for posting.

e. Vendor intent to participate. In the event the office 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.

10.12(2) Specifications in competitive selection process. Specifications shall be as set forth in the applicable competitive selection documents but shall generally comport with the following guidelines. Such guidelines shall not be construed or interpreted as limiting the office or participating agencies in developing specifications or terms and conditions in competitive selection documents that are necessary to effectively and efficiently procure information technology.

a. Limitations on brands and models. Specifications used in competitive selection documents shall generally be written in a manner that encourages competition. 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 or a specific brand or model is necessary to maintain compliance with an information technology requirement; to maintain or improve compatibility, interoperability, or connectivity with or across state information-technology systems and equipment; or to adequately safeguard the confidentiality, integrity, or availability of confidential or sensitive data or information or information systems.

b. Life cycle cost and energy efficiency. The office or participating agencies shall consider life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

c. Financial security. The office or participating agencies may require bid, appeal, litigation, fidelity, or performance security or bond, or any combination thereof, as designated in the competitive selection documents or by rule. 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 office or participating agency. When required, security shall not be waived.

10.12(3) Award.

a. How determined. In determining which vendor(s) should receive an award following a competitive selection process, the office or participating agency shall select a vendor(s) on the basis of criteria contained in the competitive selection documents.

b. Intent to award. After evaluating responses to a solicitation using formal competition, the office or participating agency shall notify each vendor that submitted a response to the solicitation of its intent to award to a particular vendor(s) subject to execution of a written contract(s). Such notice may be made by electronic means, including to the vendor's authorized representative and corresponding email address as identified in the vendor's proposal. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s).

c. Rejection of bids or proposals. The office and participating agencies reserve the right to reject any or all responses to solicitations at any time for any reason. New bids or proposals may be requested at a time deemed convenient to the office or participating agency involved.

d. Minor deficiencies and informalities. In addition to any waiver rights reserved or processes included in the competitive selection documents, the office and participating agencies reserve the right to waive minor deficiencies and informalities if, in the judgment of the office or participating agency, the best interest of the state will be served.

e. Ties and preferences. If an award is based on the highest score and there is a tied score, or if the award is based on the lowest cost and there is a tied cost, the award shall be determined as follows:

(1) Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, first preference will be given to the Iowa vendor. Ties 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. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing process outlined in subparagraph 10.12(3)“e”(3) will be held among the Iowa vendors only.

(2) If a tie does not include an Iowa vendor or Iowa-produced or Iowa-manufactured product, preference will be given to a vendor based in the United States or products produced or manufactured in the United States over a vendor based or products produced or manufactured outside the United States.

(3) If a tie neither includes an Iowa vendor or Iowa-produced or Iowa-manufactured product nor a United States vendor or United States-produced or United States-manufactured product, a drawing may be held in the presence of the vendors that tied or in front of at least three noninterested parties. All drawings shall be documented.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.13(8B) Performance reviews and suspension/debarment.

10.13(1) Review of vendor performance. The office, in cooperation with other governmental entities, may periodically review the performance of vendors. State agencies obtaining information technology from vendors are encouraged to document vendor performance throughout the duration of any contract and report any problems to the office as they are identified. Performance reviews shall be based on the specifications or service levels in the vendors' contract(s) or as set forth or identified in any applicable statement of work, order, or other applicable acquisition document. Performance reviews shall include but need not be limited to:

- a.* Compliance with applicable contract specifications or requirements;
- b.* On-time delivery; and
- c.* Accuracy of billing.

Performance reviews help determine whether vendors are responsible bidders for future projects.

10.13(2) Suspension or debarment. Prior performance on a state contract may cause a vendor to be disqualified or preclude a vendor from being considered a qualified or responsible bidder in future procurements. In addition, a vendor or subcontractor of a vendor may be suspended or debarred for any of the following reasons:

- a.* Failure to deliver within specified delivery dates without prior agreement of the office or applicable governmental entity;
- b.* Failure to deliver in accordance with contract specifications or requirements;
- 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;

- e. Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation, executive orders, or contract terms of conditions;
- f. Evidence that a vendor has willfully filed or submitted a false certificate or information with or to the office or other governmental entities;
- g. Suspension or debarment by the federal government;
- h. Any other reason identified in the competitive selection documents or contract.

The office shall notify any vendor considered for suspension or debarment and provide the vendor an opportunity to respond to and cure any deficiencies prior to suspending or debarment any vendor. If the vendor fails to remedy the situation after receiving such notice, the office may suspend the vendor from eligibility for state information technology acquisitions for a period of time as specified by the office or debar the vendor from all future state business. The office may notify the department of administrative services of the office's final decision. The department of administrative services may, in its discretion, take reciprocal action as it relates to the acquisition of goods and services of general use.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.14(8B) Additional requirements and authorizations to information technology acquisitions and agreements.

10.14(1) Information technology shall not be performed or obtained pursuant to a contract until all parties to the contract have signed a written contract. If an information technology contract requires the execution of orders or statements of work to effectuate individual transactions, information technology shall not be performed or obtained until the appropriate transactional document(s) is executed by both parties in a signed writing. A vendor that provides information technology to a governmental entity prior to the execution of a contract or appropriate transactional document shall not be entitled to any payment for the information technology.

10.14(2) Except to the extent of any conflict or inconsistency with this chapter, all information technology service contracts shall, to the extent applicable, comply with the requirements of 11—Chapter 119.

10.14(3) The office and participating agencies may enter into a contract for information technology in which a contractual limitation of vendor liability is provided for as authorized by and in accordance with 11—Chapter 120.

10.14(4) All information technology contracts shall comply with the requirements of 11—Chapter 121, which, among other requirements, requires state agencies entering into contracts to include a clause in every contract prohibiting employment discrimination and requiring compliance with applicable laws, rules, and executive orders governing equal opportunity in employment and affirmative action.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

129—10.15(8B) 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 or final disposition of any vendor appeal taken in accordance with 129—Chapter 11, whichever occurs later. Aggrieved or adversely affected vendors may only obtain proposals or other relevant evidence or information in furtherance of an appeal pursuant to the disclosure/protective order processes set forth in 129—Chapter 11. 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. State agencies will not release the subject material while the matter is being adjudicated.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code chapter 8B.

[Filed ARC 4825C (Notice ARC 4711C, IAB 10/23/19), IAB 12/18/19, effective 1/22/20]

CHAPTER 11 VENDOR APPEALS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—11.1(8B) Purpose.

11.1(1) The office is required to institute procedures to ensure effective and efficient compliance with information technology standards established by the office, and to develop policies and procedures that apply to all information technology goods and services acquisitions and ensure the compliance of all participating agencies. In furtherance of that objective, these rules establish the process by which vendors may challenge the office's or participating agencies' administration of competitive selection processes, prequalification processes, or reverse auction processes administered by the office or participating agencies as authorized by the office. A vendor's failure to utilize this process shall be deemed a failure to exhaust administrative remedies.

11.1(2) These rules shall not apply if a purchasing entity has adopted its own rules governing award or disqualification decisions of or by the purchasing entity that conflict with these rules. However, even if a purchasing entity has adopted its own vendor appeal rules, the purchasing entity may elect to follow these rules in the case of information technology goods and services acquisitions to the extent the purchasing entity has stated its intention to follow these rules in the competitive selection documents or other applicable solicitation documents.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.2(8B) Definitions. The definitions in Iowa Code section 8B.1 and rule 129—10.2(8B) shall apply to this chapter. In addition, the following definitions shall also apply:

"Award," for purposes of this chapter, means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process or reverse auction process, or decision to not prequalify or remove a vendor from a prequalified list as part of a prequalification process.

"Head of the purchasing entity" means the head of the purchasing entity or that person's designee.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.3(8B) Filing an appeal.

11.3(1) *Notice of intent to appeal.* Any vendor that filed a timely bid or proposal and that is aggrieved or adversely affected by an award ("appellant"), including a decision of the purchasing entity to disqualify a vendor, may appeal the decision by filing a notice of intent to appeal with the entity issuing the competitive selection documents or other applicable solicitation documents ("purchasing entity") to the purchasing entity's address as identified in the competitive selection documents or other applicable solicitation documents. The purchasing entity must actually receive the notice of intent to appeal within the time frame specified in the competitive selection documents or other applicable solicitation documents for the notice of intent to appeal and thereby the appeal to be considered timely. If the competitive selection documents or other applicable solicitation documents are silent on the time frame to appeal, the time frame shall be five days from the date of the issuance of the notice of intent to award. Failure to timely file a notice of intent to appeal will result in dismissal.

11.3(2) *Initial disclosures—public, redacted proposals and evaluation materials.* Following the purchasing entity's receipt of the notice of intent to appeal, the purchasing entity will transmit to the appellant a public copy from which claimed confidential or proprietary information has been excised of the awardee's proposal and, to the extent applicable, evaluation committee materials, documentation, analysis, and results. Upon written request of the appellant, the purchasing entity will provide a public copy from which claimed confidential or proprietary information has been excised of unsuccessful vendors' proposals. The appellant shall be entitled to no additional discovery, materials, or information in furtherance of the appellant's appeal unless and until the proceedings advance to a second-tier review.

11.3(3) *Notice of appeal.* Within five days of the appellant's receipt of the initial disclosures required by subrule 11.3(2), the appellant shall file a formal notice of appeal with the purchasing entity to the

purchasing entity's address as identified in the competitive selection documents or other applicable solicitation documents. Such notice of appeal shall conform to and comply with the form and format and content requirements set forth in subrules 11.3(4) and 11.3(5). The purchasing entity must actually receive the notice of appeal within the five-day time frame. Failure to timely file a notice of appeal will result in dismissal.

11.3(4) Form and format. Notices of appeal should be concise and logically arranged. No other technical forms of pleading are required.

11.3(5) Contents. Notice pleading is not permitted. The notice of appeal shall:

- a. Include the name, address, email address, and telephone and facsimile numbers of the vendor;
- b. Be signed by the vendor or the vendor's authorized representative;
- c. Identify the specific award forming the basis of the vendor's challenge;
- d. Set forth information establishing the timeliness of the appeal;
- e. State the specific legal and factual grounds upon which the vendor is appealing the award, in a manner that ties the underlying factual assertions to the legal grounds forming the basis of the appeal;
- f. Describe how the vendor is aggrieved or adversely affected by the award;
- g. If applicable, explain whether and why the vendor failed to raise the issue(s) raised in the appeal through a request for clarification process or other question and answer process available during the competitive selection process;
- h. State that the vendor agrees and consents to, and by submitting its notice of appeal to the purchasing entity stipulates to the entry of, a protective order as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information relevant to the vendor's appeal should the matter proceed to a second-tier review; and
- i. Set forth the specific relief requested, i.e., whether the vendor is requesting that the award be reversed in its entirety or remanded back to the purchasing entity to correct any legal errors.

11.3(6) Public records. A notice of appeal shall be considered a public record and may be distributed to third parties, including to the vendor's competitors, in accordance with rule 129—11.4(8B). If the vendor believes the notice of appeal contains information that should be maintained by the purchasing entity as proprietary or confidential in accordance with applicable law, the vendor must conspicuously identify such a request on the first page of the notice of appeal; mark each page upon which confidential or proprietary information appears; submit a public copy from which claimed confidential or proprietary information has been excised (information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible); enumerate the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential in the notice of appeal; and explain why disclosure of the specific information would not be in the best interest of the public in the notice of appeal. Notwithstanding the foregoing, intervenors, including competitors of the vendor filing the notice of appeal, may still receive an unredacted copy of a notice of appeal subject to the protective order requirements and processes set forth in this chapter.

11.3(7) Failure to comply. An appeal may be dismissed for failure to comply with any of the requirements of this rule.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.4(8B) Notice of receipt of appeal to awardee and intervention.

11.4(1) Notice of likely appeal. Following the purchasing entity's receipt of a timely notice of intent to appeal, the purchasing entity shall promptly give notice of the likely appeal to the awardee(s), if any.

11.4(2) Intervention. The awardee(s) may intervene within five days of such notification by filing a notice of intent to intervene with the purchasing entity.

11.4(3) Initial disclosures—notice of appeal and public, redacted proposals and evaluation materials. Following the purchasing entity's receipt of a timely formal notice of appeal in accordance with subrule 11.3(3), the purchasing entity will transmit to the intervenor(s) a public copy from which claimed confidential or proprietary information has been excised of the formal notice of appeal and the appellant's proposal and, to the extent applicable, evaluation committee materials, documentation, analysis, and results. Subject to agreement and consent by the awardee(s) to the entry of a protective order in accordance

with the provisions of this chapter governing protective orders, the purchasing entity may provide unredacted copies of the formal notice of appeal to the intervenor(s). If the intervenor(s) does not agree to the entry of a protective order, the purchasing entity will only provide the awardee(s) with a public, redacted copy of the notice of appeal. Upon written request of the intervenor, the purchasing entity will provide a public copy from which claimed confidential or proprietary information has been excised of unsuccessful vendors' proposals. The intervenor(s) shall be entitled to no additional discovery, materials, or information unless and until the proceedings advance to a second-tier review.

11.4(4) *Intervention.* Within five days of the appellant's receipt of the initial disclosures required by subrule 11.4(3), the intervenor(s) may submit a written justification defending the award, which written justification shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations set forth in rule 129—11.3(8B) applicable to notices of appeal.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.5(8B) First-tier review.

11.5(1) *Internal review.* Following the receipt of a notice of appeal in accordance with rule 129—11.3(8B) and written justification or expiration of the period for intervention in accordance with rule 129—11.4(8B), the purchasing entity shall conduct an internal review of the grounds upon which the vendor challenges the award and the facts and circumstances involved. The purchasing entity shall issue a brief written decision affirming, modifying, or reversing, in whole or in part, the award and order any relief as determined appropriate by the purchasing entity.

11.5(2) *Consultation with office.* The office may consult with and assist other purchasing entities in conducting the review required by this rule.

11.5(3) *Waiver.*

a. An issue that is not raised in the original notice of appeal shall be deemed waived for purposes of any first-, second-, or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such issues may not be raised for the first time at a second-tier review hearing.

b. If a competitive selection document or other solicitation document contains a request for clarification process, or other similar question and answer process, failure of a vendor to raise an issue (including but not limited to related to the bid specifications) that could have been raised as part of that process shall constitute a waiver of any objection or argument as part of any first-, second-, or third-tier review or judicial review; such waiver is intended to ensure that purchasing entities are able to correct material issues or errors with competitive selection documents or award processes as early as possible in an orderly and efficient fashion, in a manner that is fair to all prospective vendors, and in a manner that avoids costly and time-consuming litigation to purchasing entities and the state.

11.5(4) *Final decision and request for second-tier review.* The purchasing entity's written decision shall become final unless within five days of the issuance thereof a vendor that is aggrieved or adversely affected by such decision files a request for second-tier review. A request for second-tier review shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations, set forth in rule 129—11.3(8B) applicable to notices of appeal. An issue that was raised in the original notice of appeal but that is not again raised in a request for second-tier review shall be deemed waived for purposes of any second- or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such unraised issues may not be raised for the first time at a second-tier review hearing.

11.5(5) *Nonparticipation of agency head or designee.* The head of the purchasing entity or that person's designee who will serve as final decision maker in the event of a third-tier review, as applicable, shall not participate in the internal review or formulation of the written decision required by this rule.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.6(8B) Informal debriefing. Within five days of the issuance of a first-tier review decision, on the purchasing entity's own motion or if requested by the appellant or intervenor following an adverse first-tier review decision, the purchasing entity may grant an opportunity for the adversely affected party to appear before the purchasing entity for an informal discussion and debriefing of the basis of the first-tier decision

and surrounding facts and circumstances forming the basis of such decision. This is an elective step in the process and is not required as a prerequisite to initiating a second-tier review. Likewise, the purchasing entity is neither required to offer nor required to grant a request for an informal debriefing.

11.6(1) An informal debriefing is intended to provide an interested party with an opportunity to share in an informal setting the party's concerns with the process leading to the award. A party is not required to attend an informal debriefing, but attendance is strongly encouraged.

11.6(2) Because proposals, notices of appeal, and evaluation committee materials, documentation, analysis, and results may contain confidential or proprietary information, a party's participation may be contingent on the party's agreeing and consenting to the entry of a protective order in accordance with the provisions of this chapter governing protective orders, or the discussion will be limited to the public, redacted contents of materials or information forming the basis of any discussion.

11.6(3) A party may be represented by legal counsel at an informal debriefing.

11.6(4) Following the informal debriefing, the purchasing entity may affirm, modify, or reverse, in whole or in part, its prior decision, or the appellant may withdraw its appeal.

11.6(5) The head of the purchasing entity or that person's designee who will serve as final decision maker in the event of a third-tier review, as applicable, shall not participate in an informal debriefing conducted in accordance with this rule or in preparing any decision or order affirming, modifying, or reversing, in whole or in part, a prior decision.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.7(8B) Second-tier review.

11.7(1) *Hearing scheduled.* Upon receipt of a request for second-tier review, the purchasing entity shall contact the administrative hearings division of the department of inspections and appeals to conduct a hearing. The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's administrative rules governing contested case proceedings, unless the provisions of this chapter provide otherwise. In applying the office's administrative rules governing contested case proceedings where the purchasing entity is an entity other than the office, the terms "office" and "chief information officer" shall be deemed to refer to the applicable purchasing entity and head of the purchasing entity as defined in this chapter, respectively. 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 request for second-tier review was received by the purchasing entity.

11.7(2) *Appeal security.* To the extent required in the competitive selection documents or other applicable solicitation documentation, the vendor initiating the appeal shall supply to the purchasing entity an appeal security equal to 25 percent of total contract value with the request for second-tier review. For the purpose of this rule, "contract value" means the aggregate total compensation the vendor is likely to receive under the entire term of the contract, including all extensions and renewals, if awarded. If the contract value is not readily discernable, the purchasing entity will supply the vendor with an estimate upon request, which estimate shall be final. A vendor forfeits an appeal security if, as determined by the purchasing entity, following resolution of the appeal, the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor. Failure to supply the purchasing entity with the appeal security required by this rule shall result in dismissal of the appeal.

11.7(3) *Discovery.* Any discovery by the appellant is limited to what actually occurred at the purchasing entity as it relates to the award process in accordance with the review standards set forth in this chapter. Overbroad or unduly burdensome discovery requests shall not be permitted.

a. Additional disclosures. In addition to the materials, documents, and information disclosed as part of the initial disclosures processes set forth in rules 129—11.3(8B) and 129—11.4(8B), and, to the extent such materials, documents, or information contain or are comprised of confidential or proprietary information, subject to a protective order entered in accordance with rule 129—11.11(8B), the purchasing entity will promptly transmit to the other parties any additional, relevant materials, documents, or information identified as part of its internal review during the first-tier review. Generally, relevant materials, documents, or information include:

- (1) The competitive selection documents and any amendments thereto;
- (2) Bids, proposals, or other like responses submitted by prospective vendors; and
- (3) Documentation generated during the evaluation process, including the final results.

b. Discovery requests. As a condition of requesting a second-tier review, the appellant is required to promptly respond to discovery requests made by the purchasing entity to the appellant, which requests may, by way of example only, be designed to probe whether the appellant failed to disclose information relevant to the award process that would have resulted in the appellant's disqualification or whether the appellant engaged in any previously unreported inappropriate contact with the purchasing entity that would have resulted in the appellant's disqualification. An appellant that would have been disqualified lacks standing and is not prejudiced by the purchasing entity's decision to issue an award to a different vendor.

c. Protective orders. Because proposals, notices of appeal, and evaluation committee materials, documentation, analysis, and results may contain confidential or proprietary information, a party's access to such materials, documents, or information is contingent on the entry of a protective order in accordance with the provisions of this chapter governing protective orders, or the party's access will be limited to the public, redacted contents of such materials, documents, or information.

11.7(4) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet either in person or by telephonic or electronic means prior to the hearing to discuss the evidence to be presented.

11.7(5) Hearings.

a. Telephonic or electronic hearings preferred. Except where the determination of material factual issues presented turns on the credibility of witnesses, or where otherwise ordered by the presiding officer on the presiding officer's own motion, hearings shall be conducted by telephonic or electronic means. A party requesting an in-person hearing shall bear the burden of forwarding sufficient reasons to justify an in-person hearing. If the hearing is conducted by telephonic or electronic means, the parties must deliver all exhibits to the office of the presiding officer at least three days prior to the time the hearing is conducted.

b. Recording and transcription. Oral proceedings in connection with a vendor appeal may be either recorded by mechanized means or transcribed by a certified shorthand reporter at the request of a party. A party requesting that a certified shorthand reporter transcribe the hearing shall bear the costs. Parties may obtain copies of recordings or transcriptions of proceedings from the presiding officer or certified shorthand reporter, as applicable, at the requester's expense.

c. Retention time. The purchasing entity shall file and retain the recording or transcription of oral proceedings for at least five years from the date of the decision.

11.7(6) Proposed decision. The presiding officer shall issue a proposed, written decision within 30 days of the hearing.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.8(8B) Third-tier review. The proposed decision from a second-tier review shall become the final decision of the purchasing entity within ten days after the presiding officer has mailed the proposed decision to the parties unless prior to that time a party submits a request for third-tier review of the proposed decision in accordance with the provisions of this rule or the purchasing entity initiates review of the proposed decision on its own motion.

11.8(1) A party appealing the proposed decision to the head of the purchasing entity shall mail or deliver a request for third-tier review to the purchasing entity's headquarters and to the office's headquarters. A request for third-tier review shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations, set forth in rule 129—11.3(8B) applicable to notices of appeal. An issue that was raised in the original notice of appeal and again raised in a request for second-tier review but not raised in the request for third-tier review shall be deemed waived for purposes of any third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such unraised issues may not be raised for the first time at any oral proceedings held in connection with a request for third-tier review.

11.8(2) The party appealing the proposed decision shall be responsible for causing the transfer of and otherwise submitting the record forming the basis of prior stages to the presiding officer, including filing

the recording and transcript generated as part of the second-tier review. The party appealing the proposed decision shall bear the cost of such transfer and submission, including the cost of obtaining the recording and transcript generated as part of the second-tier review.

11.8(3) Any party may submit to the purchasing entity exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a request for third-tier review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The head of the purchasing entity shall notify the parties if the head of the purchasing entity deems oral arguments by the parties to be appropriate.

11.8(4) When the head of the purchasing entity consents or on the head of the purchasing entity's own motion, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The head of the purchasing entity shall notify all parties in advance of the scheduled time and place for oral arguments. An oral argument may be either recorded by mechanized means or transcribed by a certified shorthand reporter at the request of a party. A party requesting that a certified shorthand reporter transcribe an oral argument shall bear the costs. Parties may obtain copies of recordings or transcriptions of proceedings from the head of the purchasing entity or certified shorthand reporter, as applicable, at the requester's expense.

11.8(5) The head of the purchasing entity shall review the proposed decision based on the record developed and issues properly raised and decided in all prior stages. The issues for review shall be those specified in the party's request for third-tier review and which were properly raised or decided during all prior stages. The head of the purchasing entity shall not take any further evidence. The head of the purchasing entity shall issue a final decision of the purchasing entity. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

11.8(6) The office may consult with and assist another purchasing entity in conducting a third-tier review.

11.8(7) Any party may file an application for rehearing in accordance with Iowa Code section 17A.16(2) and rule 129—6.30(8B,17A).

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.9(8B) Standards, burdens, and remedies applicable in vendor appeal. The following standards, burden of proof and persuasion, and available remedies shall apply at all stages of review before the purchasing entity, including first-, second-, and third-tier reviews.

11.9(1) *Standard of review/prejudice.* Before the purchasing entity, the standard of review to be applied during a vendor appeal, including for purposes of either a first-, second-, or third-tier review, is whether the procurement process substantially complied with the relevant rules or legally binding procedures applicable to the award process at issue and, if not, whether there is prejudice to the nonprevailing vendor(s) because:

a. The noncompliance demands a conclusion that the award process was not conducted fairly, openly or objectively; and

b. Compliance with the rule or legally binding procedure would have resulted in a different outcome.

11.9(2) *Burden of proof and persuasion.* Before the purchasing entity, including for purposes of a first-, second-, or third-tier review, the aggrieved or adversely affected vendor seeking to set aside a notice of intent to award bears the burden of proof and persuasion as the moving party. The burden of proof is clear and convincing evidence.

11.9(3) *Remedies for noncompliance.* Before the purchasing entity, at any stage, including as part of a first-, second-, or third-tier review, if a determination is made that an award process failed to substantially comply with the standard set forth in subrule 11.9(1) and resulted in the requisite prejudice, the remedy for such founded noncompliance shall be narrowly tailored and specifically designed to remediate the specific noncompliance. Wholesale remedies invalidating or voiding solicitations should be avoided unless the facts and circumstances are such that no conceivable measures could be taken to remediate the founded noncompliance.

a. Remedies for founded noncompliance may include, but shall not be limited to:

(1) Remanding the award back to the evaluation committee or other applicable selection group with directions to take steps to remedy the noncompliance and reissue the award if the purchasing entity

determines the contract is still necessary to meet the purchasing entity's governmental or business needs or objectives;

(2) Where the facts and circumstances are such that no conceivable measures could be taken to remediate the founded noncompliance, voiding the award process and resulting contract and requiring that the contract be recompleted if the purchasing entity determines a contract is still necessary to meet the purchasing entity's governmental or business needs or objectives.

b. In determining the appropriate remedy, consideration shall be given to all the circumstances surrounding the award, including the seriousness of the deficiency, the degree of prejudice to other parties or to the integrity of the procurement system, the good faith of the parties, the cost to the purchasing entity, the urgency of the solicitation, and the impact on the purchasing entity's mission and best interests of the state.

11.9(4) Award of costs against appellant. If at any point in the appeal process an appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor, the purchasing entity may order any one or combination of the following against the appellant:

- a. Dismissal of the appeal;
- b. The payment of costs incurred in administering the process, including any hearing and related expenses;
- c. The payment of attorneys' fees and consultant and expert witness fees;
- d. Suspension or debarment from future opportunities; or
- e. Forfeiture of the appeal security supplied in accordance with subrule 11.7(2).

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.10(8B) Stay of agency action for vendor appeal.

11.10(1) When available.

a. 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 additional appeal bond equal to 120 percent of the total contract value. If the contract value is not readily discernable, the office will supply the vendor with an estimate upon request, which estimate shall be determinative. A vendor forfeits an appeal security if, as determined by the purchasing entity, following resolution of the appeal the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor.

b. Any party adversely affected by a final decision and order may petition the purchasing entity for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the purchasing entity within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

11.10(2) When granted. In determining whether to grant a stay, the purchasing entity shall consider the factors listed in Iowa Code section 17A.19(5) "c."

11.10(3) Vacation. A stay may be vacated by the issuing authority upon application of the purchasing entity or any other party.

11.10(4) Where no stay. Except where provided otherwise in the contract between the parties, in the absence of a stay, the purchasing entity may, in its discretion, proceed to enter into a contract with the awardee during the pendency of the appeal. In the event the purchasing entity enters into a contract with the awardee during the pendency of an appeal and the contract is ultimately determined to be void through this appeal process, following the exhaustion of all opportunities for further appeal including intra-agency appeal or judicial review or appeal therefrom, the original awardee shall only be entitled to amounts, if any, due and owing for actual services or deliverables provided up to the date the contract is declared void and the opportunity for further appeal has fully expired.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.11(8B) Protective orders.

11.11(1) General rule/purpose. To facilitate the fair and objective evaluation of proposals and cost-effective administration of vendor appeal processes, information and materials of or related to procurement processes or awards will not be released or otherwise available for public inspection prior to the issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with this chapter, whichever occurs later. By submitting materials, documents, or information to the office as part of a competitive selection process or other award process, the vendor agrees and consents to the purchasing entity’s distribution of such materials, documents, or information to third parties, including other vendors that may be the submitting vendor’s competitors, as part of an appeal process, including, subject to the entry of a protective order in accordance with this rule, materials, documents, or information comprised, in whole or in part, of confidential or proprietary information. For purposes of any materials, documents, or information disclosed as part of a vendor appeal, parties are only entitled to materials, documents, or information comprised, in whole or in part, of confidential or proprietary information after a protective order has been entered in accordance with this rule. By filing a notice of appeal in accordance with rule 129—11.3(8B) or a written justification in accordance with rule 129—11.4(8B), the appellant or the awardee, as applicable, agrees and consents to the entry of a protective order in substantially the same form as set forth in this rule as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information related to the appeal. In the absence of a protective order, parties will only receive public, redacted copies of materials or information.

11.11(2) How issued. In order to facilitate the exchange of information and materials as is necessary to facilitate an efficient and effective appeal process, the purchasing entity may enter a protective order(s) on its own motion or on the request of any party seeking access to confidential or proprietary information. The purchasing entity generally will not issue a protective order where an appellant is not represented by counsel, in which case the parties will only receive a public, redacted copy(ies) of information and materials.

11.11(3) Form of protective order. Protective orders entered in accordance with this rule shall be issued in substantially the following form and shall establish procedures for access to confidential and proprietary information, identification and safeguarding of that information, and submission of redacted copies of documents omitting confidential and proprietary information.

(Name Of Purchasing Entity)

<p>(Name of Appellant), Appellant, V. (Name of Purchasing Entity), Respondent, (Name of Intervenor(s), if any), Intervenor.</p>	<p>Docket No. ____ (“Action”) Protective Order</p>
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Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information. Accordingly, (Name of Purchasing Entity) (“Purchasing Entity”) enters the following protective order (“Order”) to govern the proceedings. Where the term “Purchasing Entity” as used herein refers to the Purchasing Entity serving in an adjudicatory capacity in connection with this Action, such reference, to the extent the procedural posture of the Action at the time necessitates such an understanding, shall be understood as referring to any tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” (referred to both individually and collectively as “Label”). A Label shall be

placed clearly on each page of the Protected Material (except native files, deposition and hearing transcripts) for which such protection is sought. A Label shall be included in the title of the designated native files. For any deposition and hearing transcripts, a Label shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY.”

2. With respect to documents, information or material designated “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” (referred to both individually and collectively as “DESIGNATED MATERIAL”), subject to the provisions herein and unless otherwise stated herein or provided by applicable law or rule, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Iowa Rules of Civil Procedure; (b) all prehearing and hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pleadings, exhibits to pleadings and other filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

3. Protected Material (i.e., “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY”) may be designated as such at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL or Labeled shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s) as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Material and any documents, information or material derived from or based on such Protected Material.

4. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the producing party, upon order of the Purchasing Entity, or as set forth in paragraph 12 herein:

(a) outside counsel of record in this Action for the Parties. The Attorney General’s Office shall be considered outside counsel of the Purchasing Entity for purposes of this Order;

(b) employees of such outside counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action, provided the names and titles of such in-house counsel have been disclosed to the designating party;

(d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other Party’s consent to designate one or more additional representatives, the other Party shall not unreasonably withhold such consent, and the requesting Party may seek leave to designate such additional representative(s) if the requesting Party believes the other Party has unreasonably withheld such consent;

(e) outside consultants or experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; and (2) before access is given, the consultant or expert has completed the Acknowledgment Form attached as Exhibit A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or expert to afford the producing Party an opportunity to object to and notify the receiving Party in writing that it objects to the disclosure of the Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Purchasing Entity within fifteen (15) days of the notice, or within such

other time as the Parties may agree, seeking resolution of the dispute with respect to the proposed disclosure. No disclosure shall occur until all such objections are resolved by agreement of the Parties or order of the Purchasing Entity;

(f) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial/hearing consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and

(g) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

5. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a third party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

6. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

7. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material "RESTRICTED – ATTORNEYS' EYES ONLY."

8. For Protected Material designated RESTRICTED – ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 4(a), 4(b), 4(c), 4(f) and 4(g).

9. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall gather all copies of such documents, information or other material and return them to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party within ten (10) business days.

10. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities.

11. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party; (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer,

director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraphs 8 and 9 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of litigating this Action (subject to paragraph 4 of this Order); (vii) court reporters and videographers; (viii) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. Such DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or in an order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

12. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as “Confidential” in accordance with this Order.

13. Any DESIGNATED MATERIAL that is filed in connection with this Action shall be filed under seal and shall remain under seal until further order of the Purchasing Entity. The filing party shall be responsible for informing the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a prehearing pleading filed with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall, except to the extent otherwise provided for or required by applicable law or rule, be redacted to the extent necessary and the pleading or exhibit filed publicly with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

14. The Order applies to prehearing discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at any hearing of this Action, or from using any information contained in DESIGNATED MATERIAL at any hearing of this Action, subject to any prehearing order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

15. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) business days of receipt of the written request, the requesting Party may apply to the Purchasing Entity for relief. Upon any such application to the Purchasing Entity, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Iowa Rule of Civil Procedure 1.517, subject to that Rule’s provisions relating to sanctions. In making such application, the requirements of the Iowa Rules of Civil Procedure shall be met. Pending the Purchasing Entity’s ruling or order on such application, or the ruling or order by the tribunal serving as an agent of the Purchasing Entity in connection with this Action, the original designation of the designating Party shall be maintained and respected.

16. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the Acknowledgment Form is attached as Exhibit A.

17. To the extent that any discovery is taken of persons who are not Parties to this Action and in the event that such third parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, such third parties may agree to be bound by this Order.

18. To the extent that discovery or testimony is taken of third parties, the third parties may designate as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” any documents, information, or other material, in whole or in part, produced or given by such third parties. The third parties shall have ten (10) business days after production of such documents, information, or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as “CONFIDENTIAL” in accordance with this Order.

19. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall be returned to the producing Party or, where agreed to by the producing Party, destroyed by the receiving Party. The receiving Party shall verify the return or destruction, as applicable, by affidavit furnished to the producing Party upon the producing Party’s request.

20. The failure to designate documents, information, or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information, and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

21. Any Party knowing or believing that any other Party subject to this Order is in violation of or intends to violate this Order and after raising the question of violation or potential violation with the opposing Party and having been unable to resolve the matter by agreement, such Party may move the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

22. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

23. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or hearing privilege.

24. Each of the Parties shall also retain the right to file a motion with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action: (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

25. Nothing in this Order applies to a Party’s use of its own DESIGNATED MATERIAL which it designated as such pursuant to this Order, or to material which the Party had available to it through means other than discovery in this proceeding.

26. **(SAMPLE REGULATORY COMPLIANCE PROVISION—INSERT ALTERNATE OR ADDITIONAL LANGUAGE IF NATURE OF DATA OR INFORMATION POTENTIALLY INVOLVED IN ACTION REQUIRES AS MUCH)** The Parties recognize that they may be required to produce in response to discovery requests patient information protected by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations found at 45 C.F.R. parts 160, 162, and 164 (“HIPAA”). Any such information exchanged shall be subject to this Order, shall be used solely for the purpose of the litigation of this Action, and shall at all relevant times be protected by the Parties from further redisclosure by the Parties. Any document containing information protected by HIPAA shall be filed under seal and shall not be open to public examination. At the conclusion of the litigation of this Action, all documents exchanged that contain information protected by HIPAA shall be either returned to the disclosing Party or destroyed, with the exception that copies of such records may be retained for

document retention purposes only. At the end of any relevant document retention obligation, the documents protected by this provision of this Order shall be either returned to the disclosing Party or destroyed.

Exhibit A—(Name of Purchasing Entity)

<p>(Name of Appellant), Appellant, V. (Name of Purchasing Entity), Respondent, (Name of Intervenor(s), if any), Intervenor.</p>	<p>Docket No. ____ (“Action”) Protective Order Acknowledgment Form (“Acknowledgment Form”)</p>
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Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information.

I, _____, declare that:

1. My address is _____.
My current employer is _____.
My current occupation is _____.
2. I have received a copy of the Protective Order in this Action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” that is disclosed to me.
4. Promptly upon termination of these actions, I will return or destroy, as applicable, all documents and things designated as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” that came into my possession, and all documents and things that I have prepared relating thereto, to or at the direction of the outside counsel for the party by whom I am employed.
5. I hereby submit to the jurisdiction of the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for the purpose of enforcement of the Protective Order in this Action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

IT IS SO ORDERED.

Dated this the ____ day of ____.

(name of Purchasing Entity Representative or Agent Issuing Protective Order)

11.11(4) Violation of terms of protective order. Any violation of the terms of a protective order may result in the imposition of sanctions as the purchasing entity deems appropriate, including prohibition from participation in the remainder of the protest, dismissal of the protest, or suspension or debarment from future opportunities.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

129—11.12(8B) Issues not for consideration. The following are types of challenges that shall not form the basis of a vendor appeal. Any attempted vendor appeal that fits into one of the following categories shall be dismissed anytime sufficient information is obtained to determine the appeal fits into one of the following categories.

11.12(1) Contract administration. Relating to contract administration. The administration of an existing contract is within the discretion of the purchasing entity. Disputes between a vendor and the agency are resolved pursuant to the disputes clause of the contract.

11.12(2) Subcontract protests. Appeals of the award or selection, or proposed award or selection, of a subcontractor. Such selection is determined pursuant to the applicable clauses of the contract.

11.12(3) *Protests of orders.* Individual orders, statements of work, or other transactional documents executed under an existing contract, including a master information technology agreement.

11.12(4) *Alternative procurement methods.* A decision to procure information technology through a method other than a competitive selection process, reverse auction process, or prequalification process. Alternative procurement methods that do not properly form the basis of a vendor appeal under this chapter include but are not limited to:

- a. A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5)“a.”
- b. A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5)“b”(1) to (3).
- c. An intergovernmental agreement with a governmental entity that has the resources available to supply the information technology sought.
- d. An emergency procurement.
- e. A sole source procurement.

11.12(5) *Suspensions or debarments.* Suspensions or debarments.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code chapter 8B.

[Filed ARC 4826C (Notice ARC 4730C, IAB 10/23/19), IAB 12/18/19, effective 1/22/20]

CHAPTERS 12 to 19
Reserved

TITLE II
BROADBAND
CHAPTER 20
BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—20.1(8B,427) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply.

“As of date” means the as of date of the broadband availability maps and corresponding data sources utilized by the office in determining whether a communications service provider facilitates broadband service in a particular broadband block at or above the download and upload speeds specified in the definition of targeted service area and underlying the statewide map published and then in effect in accordance with rules 129—20.3(8B,427) and 129—20.4(8B,427).

“Broadband block” means:

1. Until the Federal Communications Commission (FCC) adopts and publishes a publicly available data set identifying a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), a census block.

2. If the FCC adopts and publishes a publicly available data set identifying a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), for purposes of the next iteration of the statewide map published in accordance with rule 129—20.4(8B,427) following the FCC’s adoption of such unit of measurement(s), such unit of measurement(s) as adopted by the FCC and which is located in this state.

“Broadband unit” or *“broadband units”* means a home, farm, school, or business within a broadband block as of the as of date. The number of broadband units within a broadband block shall be as represented on the statewide map published in accordance with rule 129—20.4(8B,427).

“Census block” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.

“Chief information officer” or *“CIO”* means the state chief information officer or the state chief information officer’s designee.

“Installation of the broadband infrastructure” means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

“Materially underserved” means a broadband block within which less than 10 percent of the geographic area comprising the broadband block is facilitated with broadband service exceeding tier 1 upload and download speeds.

“Meaningfully available” means broadband service that is facilitated to consumers on a commercially reasonable basis and without significant interruption or delay. In determining whether broadband service is meaningfully available on a commercially reasonable basis, the office may consider product or delivery attributes or characteristics such as availability in terms of average uptime and downtime or latency or delays in the transmission of data.

“Tier 1 targeted service area” or *“tier 1 TSA”* means a targeted service area within which broadband speeds do not exceed tier 1 speed levels.

“Tier 2 targeted service area” or *“tier 2 TSA”* means a targeted service area within which broadband speeds do not exceed tier 2 speed levels, but are greater than tier 1 speed levels.

“Tier 3 targeted service area” or *“tier 3 TSA”* means a targeted service area within which broadband speeds do not exceed tier 3 speed levels, but are greater than tier 2 speed levels.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—20.2(8B,427) Scope. This chapter interprets relevant provisions of Iowa Code sections 8B.1, 8B.10, and 8B.11; implements Iowa Code section 427.1(40); and applies to the office’s determinations of whether

a broadband block is a targeted service area and to persons who wish to challenge the office's finding on whether a broadband block is a targeted service area. References to Iowa Code chapter 8B or its subparts refer to Iowa Code chapter 8B as amended by 2021 Iowa Acts, House File 848, and as will be codified in the 2022 Iowa Code.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—20.3(8B,427) Broadband availability maps and data sources.

20.3(1) To determine whether a communications service provider facilitates broadband service in a particular broadband block at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area as of the as of date, the office may utilize the following data sources:

a. Fixed broadband availability maps and corresponding data sources made available by the FCC online.

b. Broadband availability maps and corresponding data sources developed or produced by contractors or third parties retained or utilized by the office for such purpose.

c. For purposes of identifying or verifying the number and location of broadband units within a broadband block, next generation (NG) 911 structure data, statewide address location data, or United States census data.

d. Other data sources made available by or through federal or state agencies, directly or indirectly.

20.3(2) In accordance with Iowa Code section 8B.10(3), all data sources relied on by the office in making the determination(s) contemplated by this rule and rule 129—20.4(8B,427) shall exclude mobile wireless or satellite data, capabilities, and delivery mediums.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—20.4(8B,427) Targeted service area determination.

20.4(1) The office will create a statewide map divided into broadband blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate broadband blocks that qualify as tier 1, tier 2, or tier 3 targeted service areas as of the as of date. The office will publicize the statewide map, which may include publishing online at ocio.iowa.gov/broadband.

20.4(2) In accordance with Iowa Code section 8B.10(1), the office shall periodically make renewed determinations of whether a communications service provider facilitates broadband service at or above the tier 1, tier 2, or tier 3 download or upload speeds specified in the definition of targeted service area by publishing an updated version of the statewide map. Such updates shall be made, to the extent updated maps and data sources are available at the time, no less frequently than prior to each round of grant applications solicited by the office pursuant to Iowa Code section 8B.11. The office is not required to make renewed determinations of whether a communication service provider offers or facilitates broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area more frequently than once per year.

20.4(3) As of the date of the office's publication of each version of the statewide map online at ocio.iowa.gov/broadband, targeted service area designations as shown on the statewide map shall be considered the office's final determination and finding of whether a particular broadband block constitutes a targeted service area, unless a person or party successfully challenges the office's determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office's determination and finding of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office's determination and finding with respect to that particular broadband block final and no longer subject to challenge. A party's failure to challenge the office's determination and finding of whether a particular broadband block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.

20.4(4) The office will designate all projects as addressing difficult to serve targeted service areas based on the office's determination, made in its sole discretion, of whether a proposal will result in the installation of broadband infrastructure in areas meeting the conditions set forth in Iowa Code section 8B.11(7). For the sake of clarity, the office will identify all tier 1 TSAs as difficult to serve targeted service areas.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—20.5(8B,427) Appeals.

20.5(1) *Notice of appeal.* Within 20 days after the office makes its final determination of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 targeted service area pursuant to rule 129—20.4(8B,427), any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

a. The notice of appeal shall set forth:

(1) The name, address, telephone number, and email address of the person or party;

(2) The particular broadband block(s) designation the person or party is challenging by stating:

1. The broadband block number(s) or other unique identifier as provided on the statewide map referenced in rule 129—20.4(8B,427);

2. The county in which the broadband block(s) is located as provided on the statewide map referenced in rule 129—20.4(8B,427);

(3) The manner in which the person or party is aggrieved or adversely affected by the office's determination; and

(4) The grounds upon which the appeal is based.

b. Accompanying the notice of appeal, the person or party shall provide the office with all evidence and information necessary to support the appeal.

20.5(2) *Filing.* Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by email at ociogrants@iowa.gov. To the extent electronic filing is not feasible, the notice of appeal and all corresponding evidence and information shall be mailed to: Office of the Chief Information Officer, 200 East Grand Avenue, Des Moines, Iowa 50309. If the notice of appeal and corresponding evidence and information are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

20.5(3) *Notification of and input from affected persons or parties.* Within ten calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at ocio.iowa.gov/broadband. From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by email to ociogrants@iowa.gov. To the extent electronic submission is not feasible, such evidence and information shall be mailed to: Office of the Chief Information Officer, 200 East Grand Avenue, Des Moines, Iowa 50309. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

20.5(4) *Internal review.* At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same broadband block(s) and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources identified and originally utilized in rules 129—20.3(8B,427) and 129—20.4(8B,427), and any other information deemed relevant by the office.

20.5(5) *Final agency decision.* Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the broadband block(s) in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources identified and originally utilized in rules 129—20.3(8B,427) and 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online at

ocio.iowa.gov/broadband. The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

20.5(6) *Time of filing.* In determining the date on which an appeal or request for a contested case proceeding is filed with the office, the following shall apply: an appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt.

20.5(7) *Public records.* The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Persons are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting evidence or information to the office as part of the appeals and contested case process outlined in this chapter. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all evidence and information submitted by persons or parties as public, nonconfidential records unless a person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. A person or party requesting confidential treatment of evidence or information submitted must:

- (1) Fully complete and submit to the office Form 22 (available online at ocio.iowa.gov/broadband);
- (2) Identify the request in the notice of appeal or, if evidence or information is submitted pursuant to subrule 20.5(3), identify the request in the transmittal email or the written explanation of why electronic filing was not feasible;
- (3) Conspicuously mark the outside of any submission as containing confidential evidence or information;
- (4) Mark each page upon which confidential evidence or information appears; and
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential evidence and information must be excised in such a way as to allow the public to determine the general nature of the evidence and information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each confidentiality request, the person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific evidence or information as confidential;
- (2) Justifies why the specific evidence or information should be maintained in confidence;
- (3) Explains why disclosure of the specific evidence or information would not be in the best interest of the public; and
- (4) Sets forth the name, address, telephone number, and email address of the individual authorized by the person or party submitting such evidence and information to respond to inquiries from the office concerning the confidential status of such evidence and information.

c. Failure to request that evidence or information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Persons may not request confidential treatment with respect to a notice of appeal or other similar documents. Blanket requests to maintain all evidence and information submitted as confidential will be categorically rejected.

20.5(8) *Probative evidence and information.* Examples of evidence and information the office would consider particularly probative of broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area as of the as of date for purposes of adjudicating an appeal of the office's determination of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 TSA include:

a. Signed attestations submitted to the office under penalty of perjury on forms provided by the office that the applicable broadband block(s) was or was not served as of the as of date with broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area.

b. Bills or invoices provided to or received by customers in the applicable broadband block(s) which identify the specific download and upload speeds provided or received as of the as of date.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—20.6(8B,427) Contested cases. A contested case initiated pursuant to this chapter shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's rules governing contested case proceedings (129—Chapter 6) unless the provisions of this rule provide otherwise. The definitions in rule 129—6.2(8B,17A) shall also apply to this rule.

20.6(1) Notice of hearing. Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the broadband block(s) forming the basis of the contested case, or appealed the office's determination of the broadband block(s) forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence or information to the office pursuant to subrule 20.5(3) directly related to the broadband block(s) forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

20.6(2) Consolidation. In the event any contested cases concerning the same broadband block(s) are initiated separately, such matters shall be consolidated.

20.6(3) 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.

20.6(4) 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. In order to avoid duplication or the submission of extraneous materials, the parties must meet, either in person, by telephone, or by electronic means, prior to the hearing regarding the evidence to be presented.

20.6(5) Telephone hearing. If the hearing is conducted by telephone or other electronic means, 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. Telephone hearings shall be strongly encouraged.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 5173C, IAB 9/9/20, effective 10/14/20]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, and 427.1(40).

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

[Filed Emergency ARC 5658C, IAB 6/2/21, effective 5/7/21]

CHAPTER 21
BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—21.1(8B,427) Definitions. The definitions in rule 129—20.1(8B,427) shall apply to this chapter.
[ARC 2782C, IAB 10/26/16, effective 11/30/16]

129—21.2(8B,427) Scope. This chapter applies to communications service providers who request certification pursuant to Iowa Code section 427.1(40) from the office that an installation of the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area in a targeted service area(s).

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

129—21.3(8B,427) Application for certification. Applications for certification shall be completed and submitted by the means specified online at ocio.iowa.gov/broadband. In order to receive certification from the office, applications must be filled out in their entirety. Communications service providers making application to the office will be required to certify that all of the information contained in the application is accurate. If it is later determined that any of the information contained in the application is inaccurate, the office may revoke the certification, in whole or in part. An application for certification shall include without limitation the following information:

1. The communications service provider's legal and business name(s) and address(es) and the name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application for certification;

2. The broadband block number(s) or other unique identifier as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application (i.e., the targeted service area(s) in which the installation of the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area);

3. A description and overview of the specific technologies to be deployed (e.g., fixed wireless) that will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area;

4. Attestation that the broadband infrastructure installed in the targeted service area(s) will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area; and

5. Any other information as requested in the application.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

129—21.4(8B,427) Time of filing. Applications for certification must be received by the office at least ten days prior to the closure of the next applicable assessment deadline to be considered by the office for purposes of that reporting cycle. If the office does not receive an application within that time frame, the office may deny the application or consider the application as part of the next assessment cycle. Except as otherwise authorized by the office, an application for certification shall be deemed filed on the date of its actual receipt by the office. Notwithstanding the foregoing, except as otherwise authorized by the office, when an application for certification is filed during an open 20-day appeal period specified in 129—subrule 20.5(1) following the publication of an updated statewide map in accordance with rule 129—20.4(8B,427), an application for certification will not be deemed filed prior to the expiration of the 20-day appeal period.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—21.5(8B,427) Notice of decision and issuance of certificate. Following the timely filing of an application for certification and before the closure of the next assessment cycle, the office shall notify the

communications service provider by electronic means of its decision regarding the application for certification. If the decision is to deny the application or part of the application, such notice shall include a concise statement of the office's reasons for such denial, in whole or in part. A determination by the office to deny an application for certification, in whole or in part, may be appealed pursuant to 129—Chapter 6.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—21.6(8B,427) Contents of certification. The certification shall state the communications service provider for which the certification is being issued, the broadband block number(s) (as provided on the map referenced in rule 129—21.4(8B,427)) of the targeted service area(s) for which the certification is being issued and county(s) in which such targeted service area(s) resides, that the office has determined the broadband block(s) in which the installation will facilitate broadband service are targeted service area(s), that the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area, and the date on which the certification is issued by the office. Such certification shall be signed by the CIO.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

129—21.7(8B,427) Targeted service areas subject to challenge. To the extent an application for certification satisfies all other requirements of this chapter, if at the time such application is filed the office's determination of whether a particular broadband block forming the basis of such application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the judicial review and appeal procedures outlined in Iowa Code sections 17A.19 and 17A.20, the office will issue a certification. Notwithstanding the foregoing, the aspect(s) of the office's certification concerning broadband blocks forming the basis of the application for certification that is currently subject to such challenge shall be purely contingent and valid only to the extent the office's original determination is ultimately upheld at the end of the entire appeals process once final, including judicial review and any subsequent appeal. For purely administrative purposes, if a portion of an application for certification is later deemed invalid by operation of this rule, the office may require the communications service provider to file a new application pursuant to rule 129—21.3(8B,427).

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 5173C, IAB 9/9/20, effective 10/14/20]

129—21.8(8B,427) Certification of completion and field testing. To the extent applicable, after an installation of broadband infrastructure certified by the office is fully installed in a targeted service area, the communications service provider for which a certification was issued must certify to the office that such installation facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code section 427.1(40) "b" at any time after broadband service is available in a targeted service area. Such field tests may include but not be limited to speed tests from any location in a targeted service area in which the project was deployed or, in the case of wireline installations, the communications service provider's network operation center or central office. As applicable, noncompliance may be reported to the attorney general, the department of revenue, or applicable county board of supervisors.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

These rules are intended to implement Iowa Code sections 8B.1 and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

CHAPTER 22
BROADBAND GRANTS PROGRAM

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

129—22.1(8B) Definitions. The definitions in Iowa Code section 8B.1 and rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply:

“*Grantee*” means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

“*Project*” means an installation of broadband infrastructure by a communications service provider that facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11(1)“*a*” or “*b*” or 8B.11(6), whichever is applicable, in one or more targeted service areas.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—22.2(8B) Purpose and scope. This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. This chapter interprets relevant provisions of Iowa Code sections 8B.1 and 8B.11 and establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate unserved and underserved areas in the state, leveraging federal funds and public and private partnerships where possible, by awarding grants to communications service providers that reduce or eliminate targeted service areas by installing broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11 and this chapter. References to Iowa Code chapter 8B or its subparts refer to Iowa Code chapter 8B as amended by 2021 Iowa Acts, House File 848, and as will be codified in the 2022 Iowa Code.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—22.3(8B) Notice accepting grant funds.

22.3(1) The office shall provide notice to communications service providers when grant funds become available for distribution by the office by posting a “Notice of Funding Availability” (NOFA) online at iowagrants.gov and ocio.iowa.gov/broadband.

22.3(2) Such NOFA shall:

- a. Generally describe the application process.
- b. State the date, time, and manner by which applications for such grant funds must be submitted to the office in order to be eligible for consideration by the office for an award of grant funds.
- c. State the total amount of grant funds available for distribution under the applicable NOFA and provide an estimate of the date by which the office anticipates it will issue award(s).
- d. Describe the factors the office will consider in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- e. Set forth any measurement, technical, scoring, or other similar standards, formulas, or criteria the office will utilize in applying any factors considered by the office in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- f. Identify allowable and not disallowed expenditures which may be included in an applicant’s total project costs and set forth what constitutes sufficient and appropriate documentation for purposes of substantiating subsequent requests for reimbursement for allowable and not disallowed expenditures.
- g. State any other terms, conditions, requirements, or processes applicable to communications service providers submitting applications for grant funds, including but not limited to any grant agreement the office may require a grantee to enter into as a condition of receiving grant funds pursuant to subrule 22.6(1).

[ARC 4098C, IAB 10/24/18, effective 11/28/18]

129—22.4(8B) Applications for grant funds.

22.4(1) *Application process.* Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11. Applications shall be made and submitted in accordance with the terms of these rules and the NOFA.

22.4(2) *Contents of application.* In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

- a. The communications service provider's legal and business name(s) and address(es);
- b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;
- c. The broadband block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11;
- d. Attestation that the broadband infrastructure installed will facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11;
- e. Unless a specific cost allocation methodology is identified or required by the office as set forth in the NOFA, the specific methods or formulas the communications service provider will utilize in allocating the costs of and for broadband infrastructure for which reimbursement may be sought in proportion to such infrastructure's actual facilitation of broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in the targeted service areas forming the basis of the project;
- f. An anticipated project completion date in accordance with paragraph 22.6(3) "b." An applicant's anticipated project completion date may be used to determine whether a grantee's failure to complete a project in a timely manner warrants a finding of noncompliance for purposes of subparagraph 22.6(4) "b"(2).

22.4(3) *Deadlines.* The office will only consider applications received on or before the applicable deadline as stated in the NOFA, unless the office, in its sole discretion, establishes a different deadline for the submission of applications. The office may establish a different deadline for all applicants, but will not change the deadline for or at the request of any individual applicant.

22.4(4) *Confidentiality of contents of applications.* The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Applicants or other persons or parties submitting information to the office are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting applications or other information to the office. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all information submitted by applicants or other persons or parties as public, nonconfidential records unless an applicant or other person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. In addition to any other administrative requirements established by the NOFA, an applicant or other person or party requesting confidential treatment of portions of an application or other information submitted to the office must:

- (1) Fully complete and submit to the office Form 22 as provided by the office.
- (2) Identify the request in the NOFA, or if other information is submitted to the office, identify the request in the transmittal email or cover letter for the written correspondence.
- (3) Conspicuously mark the outside of any submission as containing confidential information.
- (4) Mark each page upon which confidential evidence or information appears.
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each request for confidential treatment, the applicant or other person or party:

(1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential.

(2) Justifies why the specific information should be maintained in confidence.

(3) Explains why disclosure of the specific information would not be in the best interest of the public.

(4) Sets forth the name, address, telephone number, and email address of the individual authorized by the applicant or other person or party submitting such information to respond to inquiries from the office concerning the confidential status of such information.

c. Failure to request that information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Applicants or other persons or parties may not request confidential treatment with respect to information specifically identified by the office in the NOFA as being subject to public disclosure. Blanket requests to maintain an entire application or all information otherwise submitted to the office as confidential will be categorically rejected.

22.4(5) *Limited exception for broadband infrastructure installed outside of targeted service areas.* Rescinded IAB 8/14/19, effective 9/18/19.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—22.5(8B) Application review process and award of grant funds.

22.5(1) and **22.5(2)** Rescinded IAB 6/2/21, effective 5/7/21.

22.5(3) *Office final decision.* The office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds for the installation of broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11.

a. In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA, affording the greatest weight to the factors in subparagraphs 22.5(3)“a”(1), 22.5(3)“a”(2), and 22.5(3)“a”(3), and Iowa Code section 8B.11(4)“a”(6):

(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds, including whether the project serves a rural area(s). Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427).

(2) The applicant’s total proposed budget for the project, including all of the following:

1. The amount or percentage of local or federal matching funds, if any, and any funding obligations shared between public and private entities.

2. The percentage of funding provided directly from the applicant, including whether the applicant requested from the office an amount less than the maximum amount the office could award pursuant to Iowa Code section 8B.11 and, if so, the percentage of the project cost that the applicant is requesting.

(3) The relative download and upload speeds of proposed projects for all the applicants.

(4) The specific product attributes resulting from the proposed project, including technologies that provide higher qualities of service, such as service levels, latency, and other service attributes as determined by the office.

(5) The percentage of broadband units in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 as a result of the project. The number of broadband units in a targeted service area shall be determined by reference to the statewide map referenced in rule 129—20.4(8B,427). Considering this factor is the means by which the office ensures underserved areas within targeted service areas are, to the extent possible, reduced or eliminated.

(6) The proportion of proposed projects that will result in the installation of broadband infrastructure in a targeted service area within which the only broadband service available provides the tier 1 download and upload speeds specified in the definition of targeted service area.

(7) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not make an award that exceeds the following percentages identified in Iowa Code section 8B.11(5) “a,” “b,” or “c” or 8B.11(6) “b,” whichever is applicable, of any communications service provider’s total estimated allowable project costs for a proposed installation of broadband infrastructure; or meeting the buildout speeds referenced in Iowa Code section 8B.11(1) or 8B.11(6), whichever is applicable.

c. In determining whether a project serves difficult to serve areas and thus qualifies for the 20 percent allocation identified in Iowa Code section 8B.11(7), the office will solely consider whether the project serves one or more targeted service areas within which no provider offers or facilitates broadband service that provides download and upload speeds less than or equal to the tier 1 download and upload speeds specified in Iowa Code section 8B.1(13) “a” (1). In such cases, any funds awarded to the project will be assigned to the 20 percent allocation made by the office. In the event that the 20 percent allocation in Iowa Code section 8B.11(7) is not fully subscribed, the office will be permitted to reallocate any unspent funds to projects that do not serve difficult to serve areas.

22.5(4) Notice to applicants of decision and right to appeal. The office shall notify each communications service provider awarded a grant by the office of the office’s decision(s) in accordance with the terms and conditions of the NOFA. The office will also post such decision(s) online at iowagrants.gov and ocio.iowa.gov/broadband. Unsuccessful applicants are solely responsible for reviewing such websites to determine their award status. Such agency decision(s) shall become final unless, within ten days of such email transmission or posting, an applicant which was adversely affected by a decision of the office files a request for a contested case proceeding pursuant to 129—Chapter 6. Failure to challenge the office’s decision under this rule by filing a request for a contested case within the ten-day period shall waive any claims an applicant may have related to the office’s administration of the process and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—22.6(8B) Administration of award.

22.6(1) Grant agreement required. The office may require a grantee to enter into a grant agreement with the office in accordance with the terms, conditions, and requirements of the NOFA. Such grant agreement may include, but not be limited to, the total amount of the grant funds awarded to the grantee; a description of the project to be completed by the grantee and specifications related thereto; a description of allowable expenditures; conditions related to the disbursement of grant funds; default and termination procedures; performance, certification, and verification requirements/criteria necessary to confirm project success/completion; and repayment requirements in the event the grantee does not fulfill its obligations under the agreement, these rules, or Iowa Code chapter 8B. In addition to any terms, conditions, or requirements specifically set forth in such agreement, any and all requirements established by Iowa Code chapter 8B, these rules, other applicable law, rule, or regulation, or the NOFA shall be deemed incorporated by reference into such grant agreement as if fully set forth therein.

22.6(2) Mapping data required. Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form acceptable to the office demonstrating specifically where broadband infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to the office. Such GIS data must enable the office to determine which specific broadband units within each targeted service area forming the basis of the project have access to broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 as a result of the project.

22.6(3) Reimbursements, record keeping/audits, performance/certification, and repayment. In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

a. *Reimbursement.*

(1) General. A grantee shall only be reimbursed by the office for:

1. Allowable and not disallowed expenditures actually and previously incurred by the grantee. What constitutes allowable or disallowable expenditures shall be further specified in the NOFA or grant agreement;

2. Expenditures for broadband infrastructure solely to the extent such broadband infrastructure facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 within targeted service areas forming the basis of the project; and

3. Expenditures for which the grantee is able to supply sufficient and appropriate documentation. What constitutes sufficient or appropriate documentation shall be further specified in the NOFA or grant agreement.

(2) Timing. Requests for reimbursement may be submitted to the office in accordance with the terms and conditions in the NOFA or grant agreement.

b. Performance/certification. After the completion of a project and not less than 60 days prior to four years from the date of issuance of the NOFA, or 60 days prior to four years from the appropriation of grant funds, whichever is earlier, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in each of the applicable targeted service areas identified in the original application, and identify the total number of broadband units actually receiving broadband service in each of the targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

c. Performance testing. The office may, in its discretion, conduct performance tests, on one or multiple occasions, for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) for up to five years after broadband service is certified as complete in accordance with paragraph 22.6(3)“*b.*” The office may exercise this right both before and after reimbursing a grantee for any claimed, allowable expenditures, but if the office elects to do so before reimbursing a grantee for any claimed, allowable expenditures, it will do so within a reasonable time, not to exceed one year, after broadband service is certified as complete in accordance with paragraph 22.6(3)“*b.*” Such performance tests may include but not be limited to:

(1) Speed tests anywhere between a grantee’s central office and the demarcation at any customer’s location in a targeted service area or broadband block in which the project was to be deployed;

(2) In the case of wireless installations, from any location in a targeted service area or broadband block in which the project was to be deployed; or

(3) In the case where a grantee does not have a customer in a targeted service area being served by the installation, certification obtained by the grantee and supplied to the office from an independent third party who is a properly licensed engineer that the installation facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

d. Disbursement/repayments.

(1) A grantee shall not be entitled to the applicable portion of any grant funds or shall be obligated to repay the office the applicable portion of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds the amount determined by Iowa Code section 8B.11(5) or 8B.11(6) of the grantee's estimated or final total allowable project costs, whichever is less.

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in a targeted service area identified in the original application;

2. A grantee fails to complete the project as proposed in the original application; or

3. Any representation or warranty made by a grantee in an application for grant funds, a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

e. Notice of default. If the office determines a grantee is not entitled to or is otherwise required to repay the office in accordance with paragraph 22.6(3) "d," the office may issue the grantee a "Notice of Default," which shall afford the grantee 30 days to cure the default. Whether a grantee has sufficiently cured the default shall be determined in the sole discretion of the office. If a grantee fails to cure the default within 30 days, the office may issue an order requiring the grantee to reimburse the office for the amount specified in the "Notice of Default."

22.6(4) Remedies for noncompliance. In addition to issuing a "Notice of Default" and subsequent order requiring the grantee to reimburse the office for failing to cure the default pursuant to paragraph 22.6(3) "e" and any other remedies available to the office pursuant to a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), the office may, for cause, find that a grantee is not in compliance with the requirements of Iowa Code section 8B.11, these rules, or a grant agreement entered into by the office and a grantee pursuant to subrule 22.6(1).

a. At the office's sole discretion, remedies for noncompliance may include, but are not limited to, the following:

(1) Issuing a warning letter stating that further failure to comply with program requirements within a stated period of time will result in a more serious action.

(2) Conditioning a future grant on compliance with program requirements within a stated period of time.

(3) Disallowing future reimbursements.

(4) Requiring that some or all previously issued grant funds be reimbursed to the office.

b. Reasons for a finding of noncompliance include, but are not limited to, one or more of the following:

(1) A violation of any of the terms or conditions of a grant agreement entered into between the office and a grantee pursuant to subrule 22.6(1);

(2) A grantee's failure to complete a project in a timely manner;

(3) A grantee's failure to comply with any applicable state or federal laws, rules, or regulations;

(4) Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

(5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that does not facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in a targeted service area identified in the original application;

(6) A grantee fails to complete the project as proposed in the original application;

(7) The total claimed exceeds amounts allowed by the grant agreement or statute;

(8) Any representation or warranty made by a grantee in an application for grant funds, an agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

22.6(5) Office's decision and right to appeal.

a. Any decision of the office entitled “proposed decision,” “final decision,” or other like caption as relating to any issues described in subparagraphs 22.6(5) “a”(1) through (5) below shall become final unless, within 30 days of the transmission of such decision by the office by email to the email address of the individual identified in paragraph 22.4(2) “b” or to the email address of a person otherwise identified by the grantee in writing prior to the issuance of such decision as the person authorized by the grantee to respond to inquiries regarding the administration of the grant, a grantee which is adversely affected by the decision files a request for a contested case proceeding pursuant to 129—Chapter 6.

(1) The interpretation, construction, or application of any terms or conditions or resolution of a dispute under a grant agreement entered into between the office and a grantee or under these rules;

(2) Whether or in what amount a grantee is entitled to reimbursement pursuant to a grant agreement entered into between the office and a grantee, or under these rules;

(3) Whether or in what amount a grantee must repay the office pursuant to a grant agreement entered into between the office and a grantee or under these rules;

(4) The imposition of any remedies for noncompliance in accordance with subrule 22.6(4); or

(5) Any other decision of the office that relates to the administration of a grant awarded pursuant to Iowa Code section 8B.11, these rules, or a grant agreement entered into between the office and a grantee.

b. Failure to challenge the office's decision under this rule by filing a request for a contested case within the 30-day period shall waive any claims an applicant may have related to the administration of a grant award and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—22.7(8B) Reallocation of grant funds. Subject to applicable law, including but not limited to Iowa Code section 8B.11(2) “c,” if grant funds that the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, applicable expenditures were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees or applicants or open additional rounds for applications. If the office awards additional grant funds to other grantees or applicants, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract amendments with the office providing for the expenditure of the additional grant funds and will otherwise be subject to Iowa Code section 8B.11 and these rules.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 5658C, IAB 6/2/21, effective 5/7/21]

129—22.8(8B,427) Targeted service areas subject to challenge. If at the time a grantee is awarded grant funds the office's determination of whether a particular broadband block forming the basis of the grantee's application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the office's administration of the award process is subject to challenge pursuant to subrule 22.5(4), including any subsequent judicial review or appeal therefrom as outlined in Iowa Code sections 17A.19 and 17A.20, the office may proceed to enter into a grant agreement with the grantee pursuant to subrule 22.6(1). Notwithstanding the foregoing or any contract executed between the parties to the contrary, the aspect(s) of the office's award(s) that is subject to such challenge at the time of such execution shall be valid and enforceable only to the extent the office's original determination or award process, as applicable, is ultimately upheld at the end of the entire appeals and contested case process once final, including judicial review and any subsequent appeal. If a broadband block is ultimately determined to not constitute a targeted service area, or a portion of an award is later deemed invalid, in whole or in part: the grantee shall not be entitled to any grant funds or reimbursement to the extent of any such noneligibility or invalidity; the office may require the grantee to amend the grant agreement to reflect such result; and the grantee will be required to reimburse the office for any corresponding funds previously distributed by the office.

[ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10(1), and 8B.11.

[Filed ARC 4098C (Notice ARC 3728C, IAB 4/11/18), IAB 10/24/18, effective 11/28/18]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

[Filed Emergency ARC 5658C, IAB 6/2/21, effective 5/7/21]