

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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Prior to 3/30/94, Campaign Finance Disclosure Commission [121]

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CHAPTER 1
IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 5]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 5]
[Prior to 8/21/02, see 351—Ch 5]

351—1.1(68A,68B) General agency description.

1.1(1) *Board established.* The Iowa ethics and campaign disclosure board is established as an independent agency of the executive branch of state government with the authority, powers, and duties set out in Iowa Code chapters 68A and 68B and Iowa Code section 8.7. The board is a “regulatory agency” as defined in Iowa Code section 68B.2(23).

1.1(2) *Election of officers.* On an annual basis at the board’s first meeting after April 30, the members shall elect a chair and vice chair, and members may be reelected or elected to a different office.

1.1(3) *Board meetings.* Meetings of the board are held at the call of the chair or at the request of at least four members of the board. The chair sets the time, place, and date of the meetings except when a meeting is requested by at least four members of the board. Meetings shall be held in compliance with the open meeting requirements in Iowa Code chapter 21. Minutes of meetings are available for viewing via the board’s Web site at www.iowa.gov/ethics. A person who wishes to be placed on the board agenda shall file an oral or written request with the board’s executive director at least 48 hours prior to the meeting.

1.1(4) *Voting and procedure.* Four board members constitute a quorum for conducting the business of the board. An affirmative vote of four board members is required for a motion to pass. The meetings shall be generally conducted according to rules of parliamentary procedure.

This rule is intended to implement Iowa Code section 68B.32 as amended by 2006 Iowa Acts, House File 2512, section 1, and Iowa Code Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, sections 2, 3, and 4.

351—1.2(68B) Requirements for requesting board advisory opinions.

1.2(1) *Who may request opinion.* Any person subject to the board’s jurisdiction may request a board advisory opinion, including a local official or local employee seeking an opinion on the application of the ethics laws in Iowa Code chapter 68B. A governmental entity not under the board’s jurisdiction may request a board advisory opinion on an issue subject to the board’s jurisdiction. A person requesting an opinion on the application of the ethics and lobbying laws in Iowa Code chapter 68B as applied to the legislative branch of state government shall be referred to the senate and house ethics committees. An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request.

1.2(2) *Form of request.* The request for an opinion shall be in writing and shall describe the specific transaction, conduct, or activity that the requesting person plans to undertake or is presently undertaking. Requests shall be sent to the board as provided in subrule 1.3(1).

1.2(3) *Jurisdiction.* The board will issue opinions pertaining only to Iowa Code chapter 68A, Iowa Code chapter 68B, Iowa Code section 8.7, or rules adopted thereunder.

This rule is intended to implement Iowa Code section 68B.32A(11).

351—1.3(68B) Processing of advisory opinion requests; routine administrative advice.

1.3(1) Requests for board advisory opinions shall be sent to the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319.

1.3(2) After receiving a qualified opinion request, the board’s legal counsel shall prepare a draft opinion for board review. Upon an affirmative vote of at least four members, the board will issue a board advisory opinion. Advice contained in a board opinion, if followed, constitutes a defense to a subsequent complaint that is based on the same facts and circumstances.

1.3(3) A person who receives a board advisory opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or

reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request.

1.3(4) Board advisory opinions are public records and shall be made available at the board office and via the board's Web site at www.iowa.gov/ethics.

1.3(5) Nothing in this rule precludes board staff from providing oral or written routine administrative advice when presented with oral or written inquiries from any person.

1.3(6) Nothing in this rule precludes a person who has received routine administrative advice from petitioning for a declaratory order. The board will refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requester demonstrates a significant change in circumstances from those in the board opinion.

1.3(7) On an annual basis the board shall review the advisory opinions issued for that year and determine which opinions should be adopted into rule pursuant to the procedures in Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 68B.32A(11).

351—1.4(68B) Board code of ethics.

1.4(1) Making monetary and in-kind contributions to the committees of candidates for Iowa public office is prohibited. However, contributions to candidates for federal office are permitted since the board has no jurisdiction over federal candidates.

1.4(2) Serving as an officer or member of a candidate's committee of a candidate for Iowa public office is prohibited, whether the service is volunteer or paid.

1.4(3) Making monetary or in-kind contributions to a political committee (PAC) is prohibited. However, contributions to a state party or a county central committee are permitted.

1.4(4) Running for or holding elected public office is prohibited. Running for or serving as an officer or member of any committee defined under Iowa Code chapter 68A is prohibited.

1.4(5) Public personal endorsement of a candidate or publicly taking a position in support of or opposition to a ballot issue is prohibited. This subrule does not prohibit a member of the board or staff from making a public personal endorsement of a federal candidate or a federal ballot issue since the board has no jurisdiction over federal candidates or federal ballot issues. Members and staff of the board may attend and participate in a presidential caucus.

1.4(6) Serving as a delegate to a county or state political party convention is prohibited.

1.4(7) Except due to service on the board, members of the board shall not be public officials or public employees.

1.4(8) Except due to service on the board, members of the board shall not be registered lobbyists in the state of Iowa.

1.4(9) As the board is defined as a "regulatory agency" under Iowa Code section 68B.2(23), members and staff of the board shall comply with the requirements of Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, and rule 351—6.11(68B) prior to selling or leasing goods or services to individuals, associations, or corporations subject to the board's regulatory authority.

1.4(10) Members and staff of the board shall comply with all of the requirements in Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules adopted by the board.

1.4(11) The prohibitions in this rule shall not apply to the spouse or other family members of a board member or employee of the board. However, actions by a spouse or other family member may create a potential conflict of interest on the part of the board member or employee that may necessitate recusal from a matter pursuant to Iowa Code section 68B.2A.

This rule is intended to implement Iowa Code section 68B.2A and section 68B.32 as amended by 2006 Iowa Acts, House File 2512, section 1.

351—1.5(22,68B) Availability of reports and information—copies provided; prohibitions. Rescinded IAB 10/25/06, effective 11/29/06.

351—1.6(68B) Board code of ethics. Rescinded IAB 10/25/06, effective 11/29/06.

351—1.7(68B) Board sales of goods and services. Rescinded IAB 10/25/06, effective 11/29/06.

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[◇] Two or more ARCs

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 10]

[Prior to 8/20/03, see 351—Ch 10]

351—2.1(22,68A,68B) Definitions. As used in this chapter:

“*Confidential record*” means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records may include information discovered as the result of an investigation until such time as the final action of the board is ordered. Confidential records also include matters in litigation by the board and information conveyed as a result of the attorney/client relationship. Confidential records also include records or information contained in records that the board 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, by 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 executive director of the Iowa ethics and campaign disclosure board, who is the person lawfully delegated authority by the policy-setting board to act for the agency in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record that identifies the individual and that 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 is in the physical possession of the board.

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

351—2.2(22,68A,68B) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22, and board staff shall cooperate with members of the public in implementing the provisions of that chapter.

351—2.3(22,68A,68B) Requests for access to records.

2.3(1) Location of record. A request for access to a record shall be directed to the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. If the requested record is not on file in the board office, the custodian will arrange for it to be retrieved from state archives and made available in the board office.

2.3(2) Office hours. Records shall be made available from 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays. Records made available via the board’s Web site at www.iowa.gov/ethics are available at all hours and on all days.

2.3(3) Request for access. Requests for access to records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.3(4) Granting access to records. The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22 and this chapter. The decision to grant or deny access may be delegated to one or more designated employees. Access to an open record shall be granted immediately upon request. If the size or nature of the request requires time for compliance, the board shall comply with the request as soon as possible. However, access to such a record may be delayed for

one of the purposes authorized by Iowa Code chapter 22. The board shall promptly inform the requester of the reason for the delay.

2.3(5) Security of record. No person shall, without permission, search or remove any record from board files. Examination and copying of records shall be done under the supervision of board staff. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies may be made in the board office unless printed copies are available. If copying equipment is not available in the office where a record is kept, the board shall permit its examination in that office and shall arrange to have copies promptly made elsewhere. Records made available on the board's Web site may be copied without restriction.

2.3(7) Fees.

a. Copying costs. Price schedules for regularly published records and for copies of records not regularly published shall be posted by the board. Copies may be made by or for members of the public at cost as determined and posted by the custodian of the record. The cost of postage and of other services provided in connection with the request may be charged as appropriate.

b. Search and supervisory fee. An hourly fee may be charged for actual board expenses in searching for, and supervising the examination and copying of, requested records. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. No fee shall be charged if the records are not made available for inspection, or if the time required does not exceed one-half hour in duration, or if the time required for the search was the result of a board error or a record-keeping problem. The board shall post the hourly fees to be charged in routine cases for search and supervision of records. The board shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

c. Advance deposits.

(1) The board may require a requester to make an advance deposit of the estimated fee.

(2) When a requester has previously failed to pay a fee charged under this subrule, the board may require advance payment of the full amount of any estimated fee before the board processes a new or pending request for access to records from that requester, as well as payment in full of the amount previously owed.

351—2.4(22,68A,68B) Procedures for access to confidential records. The following procedures for access to confidential records are in addition to those specified for all records in rule 351—2.3(22,68A,68B).

2.4(1) Proof of identity. A person requesting access to a confidential record shall be required to provide proof of identity.

2.4(2) Requests. A request to review a confidential record shall be in writing. A person requesting access to a confidential record may be required to sign a certified statement or affidavit enumerating the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts. Such request may be referred to the full board for consideration.

2.4(3) Request denied. When the custodian of a confidential record or the board denies a request for access to a confidential record, in whole or in part, the requester shall be notified in writing. The denial shall be signed by the custodian of the confidential record and shall include:

a. The name and title or position of the person or persons responsible for the denial and a brief citation to the statute or other provision of law that prohibits disclosure of the record;

b. A brief citation to the statute vesting discretion in the custodian to deny disclosure of the record; and

c. A brief statement of the grounds for the denial to this requester.

351—2.5(22,68A,68B) Request for treatment of a record as a confidential record.

2.5(1) Who may file request. Any person who would be aggrieved or adversely affected by disclosure of all or a part of a record to members of the public may file a request, as provided in this rule, for its treatment as a confidential record. Failure of a person to request confidential record treatment for all

or part of a record, such as information obtained in the course of a board investigation or to achieve voluntary compliance with Iowa Code Supplement chapter 68A or Iowa Code chapter 68B, does not preclude the board from treating it as a confidential record. The information may become a public record once the matter is resolved or dismissed.

2.5(2) *Form of request.* A request for the treatment of a record as a confidential record shall be in writing and shall be filed with the custodian of the record. The request shall include the specific grounds justifying confidential record treatment for all or part of the record; the specific provision of law that authorizes such confidential record treatment; and the name, address, and telephone number of the person authorized to respond to any board action concerning the request. A person filing such a request shall attach a copy of the record in question. The material to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the material to which the request applies shall be clearly marked confidential. If the original record is being submitted to the board by the person requesting confidentiality at the same time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are a confidential record. A request for treatment of all or portions of a record as a confidential record for a limited time period shall also specify the precise period of time for which such confidential record treatment is requested.

2.5(3) *Failure to request confidentiality.* If a person who has submitted business information to the board does not request confidential record treatment for all or part of that information, the custodian of records containing that information may assume that the person who submitted the information has no objection to its disclosure.

2.5(4) *Time.* A board decision with respect to the disclosure of all or parts of a record may be made when a request for its treatment as a confidential record is filed or when the board receives a request for access to the record.

2.5(5) *Effect of granted request.* If a request for 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 board decision will be placed in the public file in lieu of the original record.

2.5(6) *Effect of denied request.* If a request for confidential record treatment is denied, the board shall advise the requester in writing on the grounds the request was denied and treat the record as a confidential record for 30 days to allow the person requesting such treatment for the record an opportunity to seek injunctive relief. However, if the board determines that a 30-day delay is not in the public interest and furnishes the requester with a written copy of that determination, including the appropriate grounds, the record will be treated as a confidential record for at least three working days unless prior release of the record is necessary to avoid imminent peril to the public health, safety, or welfare. The board may extend the period of confidential record treatment of such a record beyond 30 days only if a court directs the board to treat the record as a confidential record or to the extent permitted by Iowa Code chapter 22 or with the consent of the person requesting access.

351—2.6(22,68A,68B) Procedure by which a subject may have additions, dissents or objections entered into the record. Except as otherwise provided by law, the subject shall have the right to have a written statement of additions, dissents or objections entered into the record. However, any additions, dissents or objections entered into the record shall not be considered evidence in a contested case proceeding. The subject shall send the statement to the Executive Director, Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The statement shall be dated and signed by the subject and shall include the subject's current address and telephone number.

351—2.7(22,68A,68B) Consent to disclosure by the subject of a confidential record. The subject of a confidential record may consent to board disclosure to a third party of that portion of the record concerning the subject. The consent must be in writing and must identify the particular record that may be disclosed, the particular person or class of persons to whom the record may be disclosed, and, where applicable, the time period during which the record may be disclosed. The subject and, where applicable, the person to whom the record is to be disclosed must provide proof of identity.

351—2.8(22,68A,68B) Notice to suppliers of information. When the board requests persons to supply information about themselves, the board shall notify those persons of the use that will be made of the information, which persons outside the board 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. Notice may be given in this chapter, on the written form used to collect the information, in a separate fact sheet or letter, in brochures, in formal agreements or contracts, in handbooks or manuals, orally, or by other appropriate means.

351—2.9(22,68A,68B) Disclosure without the consent of the subject.

2.9(1) *Open record.* An open record is routinely disclosed without the consent of the subject.

2.9(2) *Partial open record.* If the board is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

2.9(3) *Disclosure of confidential record.* To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 351—2.10(22,68A,68B) or in the notice for a particular record system.

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

c. To the legislative services agency.

d. In response to a court order or subpoena.

e. To a recipient who has provided the board 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.

f. 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.

g. Disclosures in the course of employee disciplinary proceedings.

351—2.10(22,68A,68B) Routine use.

2.10(1) *Defined.* “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose that is compatible with the purpose for which the record was collected. “Routine use” includes disclosures required to be made by statute other than Iowa Code chapter 22.

2.10(2) *Examples of routine uses.* To the extent allowed by law, the following are considered routine uses of all board records:

a. Disclosure to officers, employees, and agents of the board 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 initiative of the custodian, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Transfers of information within the board, to other state and federal agencies, or to local units of government as appropriate to administer the program for which the information is collected.

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

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained, including disclosure to the general public of information contained in reports required to be filed by Iowa Code Supplement chapter 68A or Iowa Code chapter 68B.

f. The following records are routinely disseminated to members of the public:

- (1) Reports and statements filed by campaign committees as authorized by Iowa Code Supplement chapter 68A.
- (2) Reports and statements filed by executive branch lobbyists as authorized by Iowa Code chapter 68B.
- (3) Personal financial disclosure forms filed by designated persons in the executive branch as authorized by Iowa Code section 68B.35.

351—2.11(22,68A,68B) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 351—2.7(22,68A,68B).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the board 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.

351—2.12(22,68A,68B) Release to subject.

2.12(1) *Filing of request.* The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 351—2.6(22,68A,68B). However, the board need not release the following records to the public:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject 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 Iowa Code section 22.7(5).

d. As otherwise authorized by law.

2.12(2) *Multiple subjects.* When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to more than one subject.

351—2.13(22,68A,68B) Availability of records.

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

2.13(2) *Confidential records.* The following records may be withheld from public inspection:

a. Sealed bids received prior to the time set for public opening of bids under Iowa Code section 72.3.

b. Tax records made available to the board under Iowa Code sections 422.72 and 422.20.

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

d. Agendas, minutes and tape recordings of closed meetings of a government body pursuant to Iowa Code subsection 21.5(4).

e. Records that constitute attorney work product, attorney-client communications, or that are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, and the Code of Professional Responsibility.

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

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board.

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)“d.”

h. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The board may have discretion to disclose some confidential records that 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 that authorizes limited or discretionary disclosure as provided in rule 351—2.4(22,68A,68B). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

351—2.14(22,68A,68B) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 351—2.1(22,68A,68B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the board are:

2.14(1) Personnel files. The board maintains files containing information about employees, families and dependents, and applicants for positions with the board. The files include payroll records, biographical information, medical information relating to disability, 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).

2.14(2) Campaign finance organization statements. These records include the name and address of the campaign committee and the name and address of the committee officers. The name of the committee may contain a personal identifier. This information is collected pursuant to Iowa Code Supplement section 68A.201 or may be voluntarily submitted and is stored on paper and in an automated data processing system. The information stored in the data processing system does not match, collate or permit comparison with other data processing systems. The information contained in statements of organization is public information.

351—2.15(22,68A,68B) Other groups of records. This rule describes groups of records maintained by the board other than record systems as defined in rule 351—2.1(22,68A,68B). These records are routinely available to the public. However, the board’s files of these records may contain confidential information pursuant to rule 351—2.13(22,68A,68B). The records listed may contain information about individuals. Unless otherwise stated, the authority for the board to maintain the record is provided by Iowa Code chapters 22 and 68B and Iowa Code Supplement chapter 68A.

2.15(1) Rule making. Public documents generated during the promulgation of board rules, including notices and public comments, are available for public inspection. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

2.15(2) Board records. Agendas, minutes, and materials presented to the ethics and campaign disclosure board are available from the custodian, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5 or that are otherwise confidential by law. Board records may contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

2.15(3) Publications. The board receives a number of books, periodicals, newsletters, and government documents. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state library or law library. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

2.15(4) Office publications. The board publishes instructional manuals, forms, form letters, calendars, and brochures. These publications are routinely made available to the public. This information is not stored in an automated data processing system.

2.15(5) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, office correspondence, and printing and supply requisitions. Some of this information is in the state of Iowa automated data processing system.

2.15(6) Decisions, orders, and opinions. All final decisions, orders, and opinions are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects or requesters of the order, decision, or opinion. This information is collected pursuant to Iowa Code chapters 17A and 68B. This information is not stored in an automated data processing system.

2.15(7) Policy manuals. The board employees' manual, containing the policies and procedures for programs administered by the board, is available from the custodian except as noted in rule 351—2.14(22,68A,68B).

2.15(8) Campaign finance disclosure reports. These records contain information about campaign committees that include itemization of the source of contributions, a list of expenditures, itemization of fundraising events, debts incurred, donors of goods or services, loan transactions, and details of contracts with consultants. These records may include an individual's name and address. These records are required by Iowa Code Supplement section 68A.402 and may be voluntarily submitted. These records are available by paper and are accessible via the board's Web site at www.iowa.gov/ethics.

2.15(9) Federal repository. The board serves as the Iowa repository for public viewing of a variety of disclosure reports required to be filed under the jurisdiction of the Federal Election Commission. These records are accessible via the board's Web site at www.iowa.gov/ethics through a computer modem connected with the Federal Election Commission's database. The computer records are for viewing, and reports may be printed. The terminal does not permit these records to be changed or deleted. Reports are accessed by the name of the reporting committee. Information in this database does not match, collate, or permit comparison with other data processing systems.

2.15(10) Executive branch lobbying reports. The board serves as the repository for public viewing of executive branch lobbyist registration statements, executive branch lobbying reports, and executive branch lobbyist client reports. These reports are available by paper and are also accessible via the board's Web site at www.iowa.gov/ethics. The information disclosed on these reports is required by Iowa Code sections 68B.36, 68B.37, and 68B.38. This information does not match, collate, or permit comparison with other data processing systems.

2.15(11) Personal financial disclosure. The board serves as the repository for the filing of personal financial disclosure forms (Form PFD) for designated positions in the executive branch. These reports are available by paper and are also accessible via the board's Web site at www.iowa.gov/ethics. The information disclosed on these forms is required by Iowa Code section 68B.35. This information does not match, collate, or permit comparison with other data processing systems.

351—2.16(22,68A,68B) Data processing systems. None of the data processing systems used by the board compare personally identifiable information in one record system with personally identifiable information in another record system.

351—2.17(22,68A,68B) Limitation of applicability. This chapter does not:

2.17(1) Require the board to index or retrieve records that contain information about a person by that person's name or other personal identifier.

2.17(2) Make available to the general public a record that would otherwise not be available to the general public under Iowa Code chapter 22.

2.17(3) Govern the maintenance or disclosure of, notification of or access to, a record in the possession of the board that is governed by the rules of another agency.

2.17(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

2.17(5) Make available records compiled by the board 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 board.

These rules are intended to implement Iowa Code chapters 22 and 68B and Iowa Code Supplement chapter 68A.

351—2.18(68B) Use of information prohibited. Pursuant to Iowa Code section 68B.32A(6) as amended by 2007 Iowa Acts, Senate File 40, section 3, the information obtained from statements or reports filed with the board under Iowa Code chapter 68A, Iowa Code chapter 68B, Iowa Code section 8.7, or rules adopted by the board shall not be copied or otherwise used for any commercial purpose. For purposes of this rule, “commercial purpose” shall include solicitations by a business or charitable organization.

2.18(1) Exceptions. The following uses of information for solicitations are permissible:

a. Information used in newspapers, magazines, books, or other similar communications, so long as the principal purpose of such communications is for providing information to the public and not for other commercial purpose.

b. Soliciting political campaign contributions.

2.18(2) Sanctions. Any person violating this rule shall be subject to the board’s disciplinary process set out in Iowa Code chapter 68B and the board’s rules.

This rule is intended to implement Iowa Code section 68B.32A(6) as amended by 2007 Iowa Acts, Senate File 40, section 3.

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CHAPTER 3
IOWA ELECTION CAMPAIGN FUND
[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 2]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 2]
[Prior to 8/20/03, see 351—Ch 2]

351—3.1(68A) Interpretation of checkoff markings. For the purpose of implementing Iowa Code Supplement section 68A.601, the director of revenue shall, wherever feasible, interpret the marking of a tax return so as to give effect to the taxpayer's intent, as follows:

3.1(1) In a case of a single taxpayer who marks the columns designated for "spouse," the marking shall have the effect of making a \$1.50 contribution so designated if only one box is marked.

3.1(2) A single taxpayer marking the box "spouse" and then marking only one box for "yourself" shall be deemed to have contributed \$1.50 as indicated by the box marked for the single taxpayer.

3.1(3) In a case of a single taxpayer marking more than one box, this shall have the effect of making a contribution to the campaign fund to be divided among the eligible parties.

3.1(4) Taxpayers filing a joint or combined return who mark more than one box under "yourself" shall be deemed to have indicated their intention to contribute \$1.50 to the campaign fund to be divided among the eligible parties. Taxpayers filing a joint or combined return who mark more than one box under "spouse" shall be deemed to have indicated their intention to contribute \$1.50 to the campaign fund to be divided among the eligible parties.

3.1(5) The words "mark," "marks," and "marking" shall mean any X, check, circle, line, filling in of the square, or any other reasonable indication of the intention of the taxpayer.

3.1(6) Any taxpayer who directs that \$1 of the taxpayer's tax liability be paid over to the Iowa election campaign fund may also donate an additional \$2 to be allocated to or among the qualifying political parties in the same manner as the taxpayer's \$1 designation. If a husband and wife file a joint return, each spouse may direct that an additional \$2 be donated pursuant to the provisions of this subrule. The \$2 donation will reduce the taxpayer's refund or increase the amount due with the return, and must be made on the original return for the current year.

This rule is intended to implement Iowa Code Supplement section 68A.601.

351—3.2(68A) Distribution of funds.

3.2(1) Multiple parties. If two political parties are listed on the Iowa individual income tax return for a tax year for purposes of the checkoff to the Iowa election campaign fund and a taxpayer designates on the return that the checkoff contribution is to be divided between the political parties, the contribution shall be divided equally between the two political parties. However, if more than two political parties are listed on the income tax return for the checkoff to the Iowa election campaign fund, the contribution shall be divided among the political parties pursuant to Iowa Code Supplement section 68A.602.

3.2(2) Effect of filed return. A checkoff made on a return filed with the Iowa department of revenue cannot be changed or revoked. Once a check is certified, the designation shall not be rescinded if the taxpayer later amends the return to reduce the tax liability to zero. A tax return containing a political checkoff must be filed within 12 months after the close of the taxpayer's tax year for the checkoff to be counted.

This rule is intended to implement Iowa Code Supplement sections 68A.601 and 68A.602.

351—3.3(68A) Director of revenue—monthly reports. The director of revenue shall submit a report to the board and each state party chair on the twenty-fifth day of each month of the amount of money remitted to the Iowa election campaign fund that month and the total year-to-date amount during that taxable year. The report by the director of revenue for the month of November in the year in which the general election occurs that certifies the amount of election campaign funds available to the parties shall be the last funds available to the parties under the application submitted by the parties pursuant to subrule 3.3(1).

This rule is intended to implement Iowa Code Supplement section 68A.605.

351—3.4(68A) Funds—application and transfer. Iowa election campaign funds shall be applied for by and transferred to political parties eligible to receive such funds in a manner that substantially complies with the following:

3.4(1) *Time requirements.* Upon the director of revenue's receipt of the party's application for funds, the party may request the transfer of all or any part of the election campaign funds to which it is presently entitled. However, the last claim voucher for a year in which a general election occurs should be submitted to the director of revenue no later than November 25. The last warrant written by the director of revenue in a general election should be issued to the political party no later than December 1.

3.4(2) *Additional funds.* The director of revenue shall, after making the last payment, commence to accumulate any additional funds received by that office from the department of revenue and shall hold them for distribution according to these rules for the next succeeding general election. Accumulation of funds shall not be construed to include any funds not utilized by a political party that revert to the general fund of the state pursuant to Iowa Code Supplement section 68A.607.

3.4(3) *Interest statements.* Each year the treasurer of state shall submit to the director of revenue and to the board a statement detailing the amount of interest income credited to the state account of each political party during the 12-month period ending November 30.

This rule is intended to implement Iowa Code Supplement section 68A.605.

351—3.5(68A) Nonlegitimate Iowa election campaign fund expenses; documentation; return of funds.

3.5(1) *Prohibited during primary election.* Funds accumulated in the Iowa election campaign fund shall not be used to expressly advocate the nomination, election, or defeat of any candidate during the primary election. This prohibition also applies when two or more candidates from the same party seek office in a special election.

3.5(2) *Limitation on types of expenditures.* The Iowa election campaign fund may only be used to purchase services or items set out in this rule or as otherwise permitted by the board.

3.5(3) *Documentation by political parties.* The chair of each political party receiving funds from the Iowa election campaign fund shall provide invoices and canceled checks or cash receipts for all expenditures related to such funds. The funds shall be maintained in a separate account. Upon completion of each general election cycle, the board shall conduct an audit of the expenditure records maintained by each political party receiving funds from the Iowa election campaign fund. Party records relating to expenditures from the Iowa election campaign fund shall be maintained by the party for a period of five years.

3.5(4) *Return of funds.* If the board determines that any part of the funds have been used for improper expenses, the board may order the political party or candidate to return all or any part of the total funds paid to that political party for that election. When such funds are returned, the funds shall be deposited in the general fund of the state.

This rule is intended to implement Iowa Code Supplement sections 68A.605 and 68A.606.

351—3.6(68A) Legitimate campaign expenses. All Iowa election campaign funds shall be used only for legitimate campaign expenses. "General election" as used in these rules shall be the same as defined in Iowa Code section 39.3.

3.6(1) *General election candidates.* Any expenditure that expressly advocates the nomination, election, or defeat of a candidate during the general election or a special election that does not involve two or more candidates from the same political party.

3.6(2) *Party staff.* Party staff and general election campaign staff salaries, fringe benefits and applicable payroll taxes, including travel expenses, lodging, and food for party staff and general election campaign candidates and staff. Each staff person must be listed by name, the amount paid as net salary, fringe benefits, applicable payroll taxes and the amount paid for expenses.

3.6(3) *Party activities.* Travel expenses, lodging and food for public officials who promote party activities or travel with general election candidates in campaign activities.

3.6(4) *Building costs.* Building costs, utilities, and maintenance for the office locations of the state political parties or general election candidates.

3.6(5) *Office expenses.* Expenses of the office operations of the political parties, including printing and copying charges, postage costs, telephone charges, computer services, bank charges, election records, parking costs and miscellaneous office supplies used during the general election.

3.6(6) *Candidate recruitment.* Party expenses for the initial recruitment of candidates for public office by the political parties are allowed.

3.6(7) *Expenses by volunteers.* Expenses for volunteer activities, meeting costs, and fundraising costs during the general election.

This rule is intended to implement Iowa Code Supplement sections 68A.605 and 68A.606.

351—3.7(68A) *Loss of party status.* A political party that loses its status as a political party by failing to meet the requirements of Iowa Code section 43.2 shall no longer be entitled to funds from the Iowa election campaign fund. This prohibition commences on January 1 of the year following the general election, and any subsequent funds designated to go to a party that has lost its party status shall revert to the general fund of the state.

This rule is intended to implement Iowa Code Supplement sections 68A.602 through 68A.607.

351—3.8(68A) *Filing of Iowa election campaign fund report.* Pursuant to Iowa Code section 68A.606, each state political party shall produce evidence to the board no later than January 25 of each year that all income tax checkoff funds received from the Iowa election campaign fund were utilized exclusively for campaign expenses. A state political party filing a true and accurate report under this rule shall be deemed to be in compliance with the statute.

3.8(1) *Filing of report.* A state political party shall file an Iowa election campaign fund report disclosing all of the following for the period covered:

- a. The period covered by the report and the name of the state political party.
- b. A summary total of cash on hand at the beginning of the period, receipts received, expenditures made, and the ending balance for the period.
- c. A total of receipts received from the Iowa election campaign fund.
- d. The name of the source and the amount of interest or investment income received.
- e. The name and mailing address of any person to whom an expenditure was made, including the date, purpose, and amount of each expenditure.
- f. The date and signature of the person filing the report.

3.8(2) *When filed.* The report shall be filed on or before January 25 of each year. If the due date falls on a weekend or holiday, the reporting deadline shall be extended to the next business day.

3.8(3) *Place of filing.* The report shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. The report may be filed by fax at (515)281-3701. A report filed by mail shall be postmarked with a United States Postal Service postmark on or before the due date.

3.8(4) *Failure to file.* A state political party that fails to timely file the report shall be assessed a \$50 civil penalty. A state political party seeking a waiver of an assessed civil penalty shall follow the procedure set out in rules 351—4.60(68B) and 351—4.61(68B).

This rule is intended to implement Iowa Code sections 68A.606(1) and 68B.32A(8).

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CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 4]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 4]

DIVISION I
ORGANIZATIONAL REQUIREMENTS

351—4.1(68A,68B) Requirement to file statement of organization (DR-1)—persons subject to requirements; financial thresholds; where to file; when due.

4.1(1) *Persons subject to requirement.* Every committee shall file a statement of organization (Form DR-1) within ten days from the date of its organization. The forms shall be either typewritten or printed legibly in black ink.

a. "Committee" defined. "Committee" includes the following:

(1) A "candidate's committee" that is the committee, even if the committee consists only of the candidate, designated by a candidate for a state or local office to receive contributions, make expenditures, or incur debts in excess of \$750.

(2) A "political committee" (PAC) that is a committee exceeding the \$750 organizational threshold to expressly advocate the nomination, election, or defeat of candidates or to expressly advocate the passage or defeat of a ballot issue. The board shall automatically classify as a political committee any political organization that loses its status as a political party because it fails to meet the requirements of Iowa Code section 43.2. The board shall automatically classify as a political committee any county central committee that operated under the former political party.

(3) A "state statutory political committee" (state party), "county statutory political party" (county central committee), or "city statutory political committee" (city central committee).

(4) A person that wishes to register a committee for purposes of using the short form "paid for by" attribution statement shall file Form DR-SFA pursuant to rule 351—4.11(68A).

b. When organization occurs; financial thresholds. At the latest, organization is construed to have occurred as of the date that the committee first exceeded \$750 of financial activity in a calendar year in any of the following categories: contributions received (aggregate of monetary and in-kind contributions); expenditures made; or indebtedness incurred.

c. Permanent organizations temporarily engaging in political activity. The requirement to file the statement of organization applies to an entity that comes under the definition of a "political committee" (PAC) in Iowa Code Supplement section 68A.102(18) by receiving contributions, making expenditures, or incurring debts in excess of \$750 in any one calendar year for the purpose of expressly advocating the election or defeat of a candidate for public office, or for the purpose of expressly advocating the passage or defeat of a ballot issue. A permanent organization that makes a one-time contribution in excess of \$750 may in lieu of filing a statement of organization follow the procedure in rule 351—4.35(68A). A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

4.1(2) *Place of filing.* Statements of organization shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.1(3) *Time of filing.* A statement of organization shall be filed with the board within ten days after the financial filing threshold in subrule 4.1(1) has been exceeded. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed statements must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.1(4) *Candidate defined.* For purposes of Iowa Code chapters 68A and 68B and the rules of the board, "candidate" means an individual who takes affirmative action to seek nomination or election to a state or local public office. For purposes of Iowa Code chapter 68A and any rules of the board on

campaigning for public office, “candidate” includes any judge or judicial employee who is required by law to stand for retention. “Takes affirmative action” includes making a public announcement of intention to seek nomination or election, making any expenditure or accepting any contribution for nomination or election, distributing petitions for signatures for nomination, filing nomination papers or an affidavit of candidacy, or being nominated by any convention process set out by law.

4.1(5) *Ballot issue defined.* “Ballot issue” means a question that has been approved by a political subdivision or the general assembly to be placed before the voters or is otherwise required by law to be placed before the voters. “Ballot issue” does not include the nomination, election, or defeat of a candidate.

This rule is intended to implement Iowa Code Supplement sections 68A.201 and 68A.401.

351—4.2(68A,68B) Information required: committee name.

4.2(1) *Full name required.* The statement of organization shall include the full name of the committee. A committee using an abbreviation or acronym as part of the committee name shall provide with the statement of organization a written explanation of the full word or words that are abbreviated or that form the acronym.

4.2(2) *Duplication of name prohibited.* The committee name shall not substantially duplicate the name of another committee organized under Iowa Code Supplement chapter 68A. The board shall determine whether two committee names are in substantial duplication in violation of Iowa Code Supplement section 68A.201(2) “a.” A committee substantially duplicating the name of another organized committee shall choose a new committee name upon notification from the board. A candidate who files an amended statement of organization to reflect a change in office sought shall not be required to change the name of the candidate’s committee unless the committee’s name substantially duplicates the name of another organized committee.

4.2(3) *Candidate’s surname required in committee name.* A candidate filing a statement of organization on or after July 1, 1995, shall include the candidate’s surname within the committee name. This requirement also applies to a new candidate’s committee organized by a candidate who has a preexisting candidate’s committee but who organizes a new candidate’s committee or files an amended statement of organization.

This rule is intended to implement Iowa Code Supplement section 68A.201.

351—4.3(68A,68B) Information required: committee purpose; party affiliation.

4.3(1) *Committee purpose.* An organized campaign committee shall identify the purpose of the committee on the statement of organization. The purpose shall be indicated in part by designating the committee as one of the following types of committees:

Type 1 - A candidate’s committee for a statewide or legislative candidate or a judge standing for retention. This type of committee is referred to as a state candidate’s committee.

Type 2 - A political committee that expressly advocates for or against candidates at the state level or expressly advocates for or against a statewide ballot issue. This type of committee is referred to as a statewide PAC.

Type 3 - A state statutory political committee. This type of committee is referred to as a state party.

Type 4 - A county statutory political committee. This type of committee is referred to as a county central committee.

Type 5 - A candidate’s committee for a candidate seeking county office. This type of committee is referred to as a county candidate’s committee.

Type 6 - A candidate’s committee for a candidate seeking city office. This type of committee is referred to as a city candidate’s committee.

Type 7 - A candidate’s committee for a candidate seeking school board or other political subdivision office except for a county or city office. This type of committee is referred to as a school board or other political subdivision candidate’s committee.

Type 8 - A political committee that expressly advocates for or against candidates for county office. This type of committee is referred to as a county PAC.

Type 9 - A political committee that expressly advocates for or against candidates for city office. This type of committee is referred to as a city PAC.

Type 10 - A political committee that expressly advocates for or against candidates for school board or other political subdivision except for county or city candidates. This type of committee is referred to as a school board or other political subdivision PAC.

Type 11 - A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a local ballot issue committee.

4.3(2) Party affiliation. A candidate's committee is deemed to be established to expressly advocate the election of a candidate for public office. Each candidate's committee shall designate the political affiliation of the candidate. Any other committee shall designate that it is either established to expressly advocate the election or defeat of candidates or the passage or defeat of a ballot issue.

This rule is intended to implement Iowa Code Supplement section 68A.201.

351—4.4(68A,68B) Information required: officers; committee information; signatures.

4.4(1) Committee officers. The committee shall disclose on the statement of organization the name, mailing address, telephone number, and office of each committee officer. Each candidate's committee shall appoint a treasurer who shall be an Iowa resident and at least 18 years of age. A candidate's committee may also appoint a committee chairperson who is not limited by residency or age. Every other committee shall appoint a separate treasurer and chairperson, each of whom shall be at least 18 years of age. Except for a candidate's committee, every committee shall either have an Iowa resident as treasurer or shall maintain all of the committee's funds in bank accounts in a financial institution in Iowa.

4.4(2) Committee address and telephone number. The address and telephone number of the candidate as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to the candidate's committee. The address and telephone number of the committee chairperson as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to every other committee except for a candidate's committee. If an electronic mail address has been provided on the statement of organization, communication from the board to a committee shall be sent by electronic mail.

4.4(3) Signatures. The candidate and treasurer shall sign the statement of organization filed by a candidate's committee. The chairperson and treasurer shall sign a statement of organization filed by any other type of committee. A statement of organization filed electronically using the board's Web site is deemed signed when filed.

This rule is intended to implement Iowa Code Supplement section 68A.201.

351—4.5(68A,68B) Segregation and timely deposit of funds; information required: identification of financial institution, account name; notice to treasurer.

4.5(1) Segregation and deposit of funds. All committee funds shall be maintained in a financial institution and shall be segregated from any other funds held by a candidate, officer, member, or associate of the committee. The committee treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee.

4.5(2) Exception from segregation of committee funds. A candidate's committee that receives contributions only from the candidate is not required to maintain a separate account. A permanent organization temporarily engaging in activity that qualifies it as a political committee that uses existing general operating funds and does not solicit or receive funds from other sources for campaign purposes is not required to maintain a separate account.

4.5(3) Identification of financial institution and account. The committee shall disclose on the committee's statement of organization the name and mailing address of all financial institutions in which committee funds are maintained. The committee shall also disclose the name and type of all accounts in which committee funds are maintained, and the name of any such account shall be the same as the committee name on the statement of organization.

4.5(4) Notice to treasurer. Any person who receives contributions for a committee shall render the contributions to the treasurer within 15 days of receipt and provide the committee treasurer with the reporting information required by Iowa Code Supplement section 68A.203(2).

This rule is intended to implement Iowa Code Supplement sections 68A.201 and 68A.203.

351—4.6(68A,68B) Amendments to statement of organization; requirement for new statement of organization for new office sought.

4.6(1) Amendment within 30 days. If there is a change in any of the information disclosed on a statement of organization, the committee shall file an amended statement within 30 days of the change. An amended statement of organization shall be filed with the board and the board shall make available to the appropriate county commissioner of elections an amended statement filed by a county, city, school, or other political subdivision committee.

4.6(2) New office sought. A candidate who filed a statement of organization for one office but eventually seeks another office may file an amended statement of organization to reflect the change in office sought in lieu of dissolving the old committee and organizing a new committee. A candidate who has filed a statement of organization for one office and then exceeds the financial activity threshold as set forth in Iowa Code section 68A.102(5) for a new office shall, within ten days of exceeding the threshold, file either an amended statement of organization disclosing information for the new office sought or organize and register a new committee.

This rule is intended to implement Iowa Code Supplement section 68A.201.

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

351—4.7(68A,68B) Disclosure reporting required; information on initial report; minimum filing if no activity.

4.7(1) Disclosure reporting required. Every committee that has filed a statement of organization under Iowa Code section 68A.201 and rule 351—4.1(68A,68B) or has exceeded the financial activity threshold set out in Iowa Code section 68A.102(5) or (18) prior to the cutoff date for reporting campaign transactions shall file a campaign disclosure report pursuant to Iowa Code section 68A.402.

4.7(2) Information on initial report. The first disclosure report filed by a committee shall include the relevant financial information covering the period from the beginning of the committee's financial activity through the end of the current reporting period.

4.7(3) Funds available from prior committee. If funds are available to a candidate's committee from a prior candidacy of that candidate, or to a ballot issue committee from a prior effort on a ballot issue, and the prior candidacy or effort had not exceeded the financial reporting threshold, the carryover balance shall be disclosed by the new committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover, the date of the prior election, and the name and address of any source that made contributions to the candidacy or ballot effort that totaled more than \$750 during the preceding three calendar years.

4.7(4) Funds available from preballot issue activity. Funds that are raised for an activity that is not included in the definition of a ballot issue in Iowa Code Supplement section 68A.102(1) and that are made available to a subsequent ballot issue committee shall be disclosed by the committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover balance, the date of the preballot issue activity, and the name and address of any source that made contributions to the activity that totaled more than \$750 during the previous three calendar years.

4.7(5) No financial activity during reporting period. A committee that did not have any financial activity during the relevant reporting period for which a disclosure report is due shall be required to file only Form DR-2. However, if the committee had previously disclosed debts or loans, those obligations shall again be disclosed on either Schedule D - Incurred Indebtedness or Schedule F - Loans Received and Repaid, as appropriate, and the schedule or schedules shall be included with Form DR-2. A candidate's committee that has reportable campaign property under Iowa Code Supplement section 68A.304 shall

disclose the property on Schedule H - Campaign Property and the schedule shall be included with Form DR-2.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.8(68A,68B) Disclosure reporting required—where reports filed.

4.8(1) *Place of filing.* Disclosure reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-4073, as an E-mail attachment, or electronically through the board's Web site at www.iowa.gov/ethics.

4.8(2) *Reports made available.* The board shall post on its Web site at www.iowa.gov/ethics all statements and reports filed under Iowa Code chapter 68A.

4.8(3) *Records retention.* The board shall maintain and retain all statements and reports filed under Iowa Code chapter 68A under the applicable provisions of Iowa Code chapter 305.

This rule is intended to implement Iowa Code section 68A.401 as amended by 2007 Iowa Acts, Senate File 39, section 5, and 2007 Iowa Acts, House File 413, section 1.

351—4.9(68A) Campaign disclosure report due dates.

4.9(1) *Statewide office, general assembly, judge standing for retention.* A candidate's committee of a candidate for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
May 19	January 1 through May 14
July 19	May 15 or Wednesday preceding primary election* through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 or Wednesday preceding general election* through December 31 of election year

b. Supplementary report.

<u>Report due</u>	<u>Covering period</u>
Friday preceding primary election*	May 15 through Tuesday preceding primary election*
Friday preceding general election*	October 15 through Tuesday preceding general election*

*If supplementary report required. See subrule 4.9(2).

c. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

d. Special election.

<u>Report due</u>	<u>Covering period</u>
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

*This report is in addition to the election year reports required under paragraph 4.9(1) "a."

4.9(2) *Statewide office or general assembly—supplementary reports.* In addition to reports required under subrule 4.9(1), a supplementary report is required if contributions received during the period beginning on the date of initial financial activity, or the day after the period covered by the last report, as applicable, through the Tuesday preceding the primary or general election equal or exceed the following thresholds:

<u>Office sought</u>	<u>Contribution threshold</u>
Governor	\$10,000 or more
Other statewide office	\$5,000 or more
General assembly	\$1,000 or more

4.9(3) County candidate. A candidate's committee of a candidate for county office shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

<u>Report due</u>	<u>Covering period</u>
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

*This report is in addition to the election year reports required under paragraph 4.9(3) "a."

4.9(4) City candidate. A candidate's committee of a candidate for city office shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before the runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

<u>Report due</u>	<u>Covering period</u>
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

*This report is in addition to the election year reports required under paragraph 4.9(4) "a."

4.9(5) School board or other political subdivision. A candidate's committee of a candidate for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

<u>Report due</u>	<u>Covering period</u>
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

*This report is in addition to the election year reports required under paragraph 4.9(5) "a."

4.9(6) State statutory political committee (state political party). A committee defined in Iowa Code Supplement section 68A.102(22) as a state statutory political committee shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(7) County statutory political committee (county central committee). A committee defined as a county statutory political committee in Iowa Code Supplement section 68A.102(12) shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(8) State political committee (state PAC). A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
July 19	January 1 through June 30
January 19 (next calendar year)	July 1 through December 31

4.9(9) *County political committee (county PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for county office shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(10) *City political committee (city PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for city office shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(11) *School board or other political subdivision political committee (school board or other local PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(12) Statewide or local ballot issue committee (ballot issue PAC). A committee expressly advocating the passage or defeat of a statewide or local ballot issue shall file campaign disclosure reports as follows:

a. Election year.

<u>Report due</u>	<u>Covering period</u>
Five days before election	Date of initial activity or previous report through ten days before election
May 19	Date of initial activity or previous report through May 14
July 19	Date of initial activity or previous report through July 14
October 19	Date of initial activity or previous report through October 14
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

b. Nonelection year.

<u>Report due</u>	<u>Covering period</u>
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(13) Permanent organizations. A permanent organization temporarily engaging in political activity as described in Iowa Code Supplement section 68A.102(18) shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The committee shall file reports on the applicable due dates as required by this rule. The reports shall identify the source of the original funds used for a contribution made to a candidate or a candidate's committee. When the permanent organization ceases to be involved in the political activity, the permanent organization shall dissolve the political committee. "Permanent organization" means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities.

4.9(14) Election year defined. "Election year" means a year in which the name of the candidate or ballot issue appears on a ballot to be voted on by the electors of the state of Iowa. For state and county statutory political committees, "election year" means a year in which primary and general elections are held.

This rule is intended to implement Iowa Code section 68A.402.

351—4.10(68A,68B) Time of filing. A report must be physically received by the board or, if mailed, shall bear a United States Postal Service postmark dated on or before the report due date. Faxed, E-mailed, or electronically filed reports must be submitted on or before 11:59 p.m. of the report due date. However, as provided in Iowa Code Supplement section 68A.402 as amended by 2008 Iowa Acts, Senate File 2400, sections 24 and 28, any report that is required to be filed five days or less prior to an election must be physically received by the board prior to 4:30 p.m. on the report due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the first working day when the board office is open.

This rule is intended to implement Iowa Code Supplement section 68A.402 as amended by 2008 Iowa Acts, Senate File 2400, sections 24 and 28.

351—4.11(68A) Voluntary registration—Form DR-SFA.

4.11(1) *Persons voluntarily registering a committee.* A person that has not exceeded the \$750 financial filing threshold may file Form DR-SFA for purposes of using the short form “paid for by” attribution statement under Iowa Code section 68A.405 and rule 351—4.38(68A). A person using the short form “paid for by” attribution statement shall file Form DR-SFA with the board prior to distributing the political material containing the short form “paid for by” attribution statement.

4.11(2) *\$750 threshold later exceeded.* A person filing Form DR-SFA shall not be required to file a statement of organization or be required to file disclosure reports unless the \$750 threshold is later exceeded. A person that later exceeds the \$750 threshold and that fails to timely file a statement of organization or to timely file disclosure reports may be subject to the appropriate board sanctions as set out by statute and board rule.

This rule is intended to implement Iowa Code sections 68A.201 and 68A.405.

351—4.12(68A,68B) Exception from reporting requirement—reports due within five days of one another. When two disclosure reports are due from the same committee within five days of each other, the activity may be combined into one report. A committee choosing this option shall file a report on or before the second due date that covers the extended reporting period.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.13(68A,68B) Report forms—summary page (DR-2) and supporting schedules. The board may require committees to submit relevant information not specifically delineated in Iowa Code Supplement chapter 68A on their disclosure report where the report form asks for and leaves space for information. All information shall be pertinent to the duties of the board.

4.13(1) *Official reporting forms.* The disclosure reporting forms provided by the board shall be the official forms on which the disclosure reports shall be submitted. Machine copies of original report forms are acceptable. The standard forms for campaign disclosure reports are:

- DR-2 — Disclosure Summary Page
- Schedule A — Monetary Receipts
- Schedule B — Monetary Expenditures
- Schedule C — (Reserved)
- Schedule D — Incurred Indebtedness
- Schedule E — In-kind Contributions
- Schedule F — Loans Received and Repaid
- Schedule G — Consultant Activity
- Schedule H — Campaign Property

4.13(2) *Computer-generated reports.* Committees may generate a disclosure report in lieu of using a board-approved paper report or the board’s electronic filing system so long as the generated report contains the same information and is in the same basic format as a board-approved paper report. Committees generating their own reports must submit the reports for prior board approval before use.

4.13(3) *Typewritten or legible ink reports required.* Information which is provided on all forms shall be either typewritten or printed legibly in black ink. Approved computer-generated reports satisfy this requirement.

4.13(4) *Special information required for city, school, or local ballot issue elections.* Committees expressly advocating the election or defeat of a candidate for city or school public office, or expressly advocating the passage or defeat of a local ballot issue, shall indicate in the designated spaces on the report summary page the date that the election is to be held, the period covered by the disclosure report, and the control county responsible for conducting the election.

4.13(5) *Signature on DR-2 Report Summary Page.* A disclosure report shall be signed by the individual filing the report. A disclosure report filed electronically using the board’s Web site is deemed signed when filed.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.403.

351—4.14(68A,68B) Schedule A - Monetary Receipts.

4.14(1) *Reporting of all monetary receipts; chronological listing.* The committee shall report the amounts of all monetary receipts which are accepted by the committee during the reporting period. If a contribution is returned to a contributor prior to the end of the reporting period and is not deposited into the committee's bank account, the contribution is deemed to have been rejected and shall not be reported. A contribution which is physically received and either deposited into the committee's account or not returned by the end of the reporting period is deemed to have been accepted. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.14(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) that the contribution was physically received by a person on behalf of the committee. If the contribution is by check, the date of the contribution to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check. For contributions received by mail, the date of the contribution to be reported shall be the date that the recipient physically opens the envelope.

4.14(3) *Name and address of contributor; joint accounts.* The schedule shall include the name and address of each person who has made one or more contributions of money to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds \$25, except that the itemization threshold is \$200 for a state statutory political committee and \$50 for a county statutory political committee. In the case of a contribution by check, the contributor name on the disclosure report shall be the name shown as the account name on the account, except that if the check is on a joint account, the contribution shall be presumed to be from the person who signs the check. If the committee chooses to itemize contributions that are less than the required itemization threshold, it may do so, but shall either do so for all contributions or none of the contributions under the threshold.

4.14(4) *Unitemized contributions and freewill donations.* If the committee does not choose to itemize all contributions under the itemization threshold (\$25 for most committees, see Iowa Code Supplement section 68A.402(3)“b”), it shall aggregate these contributions and report the aggregate amount as “unitemized contributions.” No date received is required to be provided for miscellaneous unitemized contributions. Unitemized contributions may be solicited and received through a freewill donation such as a “fish bowl” or “pass the hat” collection if the collection is in compliance with rule 351—4.30(68A,68B). Unitemized contributions collected through freewill donations (the net amount of the collection after the itemization of those persons whose contributions of more than \$10 in the freewill collection resulted in exceeding the annual itemization threshold) shall be reported by showing the net amount as “unitemized contributions—pass the hat (or can collection or fish bowl, for example) collection.” The “date received” to be reported for a freewill donation is the date a representative of the committee takes possession of the proceeds of the collection.

4.14(5) *Relationship to candidate.* In the case of contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity. “Consanguinity” means a relative through descent from common ancestors (by blood). “Affinity” means a relative through a current marriage. A husband has the same relation, by affinity, to his wife's blood relatives as she has to them by consanguinity and vice versa. “Degree of kinship” is determined by counting upward from one of the persons in question to the nearest common ancestor, and then down to the other person, calling it one degree for each generation in the ascending as well as the descending line. Under this rule, a woman's sister is related to her by consanguinity in the second degree. The sister is thus related to the woman's husband by affinity in the second degree. Other examples of relationships within the third degree between a contributor and a candidate would be the following: children and stepchildren (first degree); siblings and half-siblings (second degree); grandparents (second degree); grandchildren (second degree); aunts and uncles (third degree); nieces and nephews (third degree); great-grandparents (third degree) and great-grandchildren (third degree), all irrespective of whether the blood relationship is to the candidate or to the candidate's spouse.

4.14(6) ID number and check number. If a contribution to a statewide or general assembly candidate or a judge standing for retention is from a statewide political committee (PAC) or a state party committee, the candidate receiving the contribution shall include on the candidate's disclosure report the board-assigned identification number of the contributing committee and the check number by which the contribution was made. A list of ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.14(7) Fund-raiser income. Contributions arising from the sale of goods or services at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.14(8) Interest and other monetary receipts other than contributions. If the monetary receipt is not a "contribution," the name and address of the source of the funds shall be identified in the space provided for the name and address of "contributor," with a notation as to the purpose of the payment, such as "bank interest."

4.14(9) Reverse entries—refunds. If a committee determines to decline or otherwise return a contribution after it has been received, accepted, and deposited, the committee may issue a refund to the contributor, which shall be reported on Schedule A as a reverse entry, reducing the monetary receipts.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.15(68A,68B) Schedule B - Monetary Expenditures.

4.15(1) Date expended. The committee shall report the amounts of all itemized expenditures (expenditures of \$5 or more) made by the committee for the reporting period chronologically by the date expended. The date of the expenditure is the date the check is issued. The complete date (month/day/year) shall be provided.

4.15(2) Name and address of recipient. The schedule shall include the name and address of each person to whom disbursements, other than loan repayments, were made during the reporting period. (Loan repayments shall be reported on Schedule F.)

4.15(3) Purpose of expenditure. The schedule shall include a description of the purpose of each disbursement. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "reimbursement for candidate lodging to attend campaign event," or "mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

4.15(4) Miscellaneous (unitemized) expenses. Notwithstanding the other provisions of this rule, disbursements of less than \$5 may be shown as miscellaneous disbursements or expenses for the period so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed \$100.

4.15(5) Candidate ID number and committee check number. If a contribution is made by a statewide political committee (PAC) or a state party committee to a statewide or general assembly candidate or a judge standing for retention, the committee making the contribution shall include on the committee's disclosure report the board-assigned identification number of the recipient candidate's committee and the check number by which the contribution was made. A list of candidate ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.15(6) Check transactions required. All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check. Cash withdrawals and "petty cash" accounts are not permitted. Committees' activities which necessitate cash drawers or other cash transactions shall be conducted and reported as provided by rule 351—4.36(68A,68B).

4.15(7) Reverse entries—refunds. If a committee receives a refund of all or part of a disbursement previously made, the committee shall report the refund on Schedule B as a reverse entry, reducing the monetary expenditures. The purpose should include an explanation as to why the refund was made.

4.15(8) *Interest paid; bank charges.* Although repayments of loan principal are reported on Schedule F (see rule 351—4.18(68A,68B)), interest payments on loans shall be reported on Schedule B. Bank service charges and fees (e.g., monthly service fees, costs for check printing, returned check charges) shall also be reported and identified on Schedule B.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.16(68A,68B) Schedule D - Incurred Indebtedness.

4.16(1) *Reporting of debts and obligations other than monetary loans.* The committee shall report all debts and obligations owed by the committee which are in excess of the thresholds in subrule 4.14(3). This applies to any unpaid debt or obligations incurred by the committee for the purchase of a good or service, either as a debt or obligation owed to the immediate provider of the good or service, or as a debt or obligation owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee. However, monetary loans to the committee (which are deposited directly into the committee's account) shall be reported on Schedule F, not on Schedule D.

4.16(2) *Date incurred; balance owed.* The committee shall report the amounts of all indebtedness owed by the committee at the end of the reporting period, reported chronologically by the date incurred. The date the debt or obligation is incurred is the date on which the committee committed to obtaining the good or service underlying the obligation. This date may be earlier than the date the provider of the good or service issues a bill to the committee. For example, if the committee places a printing order, but the printer does not issue a bill until some time after the order is placed, the date which shall be reported as the date the debt was incurred is the date the order is placed, not the date the bill was issued. If the precise amount of the final bill is not known by the time the report is due, the committee shall provide its best estimate as to what the obligation will be, with an indication "(e)" that the amount reported is an estimate. The complete date (month/day/year) shall be provided. Debts and obligations incurred and reported in a prior reporting period but which remain unpaid as of the end of the current reporting period shall be included, showing the remaining balance on the obligation, as well as any new obligations incurred in the current reporting period. Payments of all or part of a previously reported obligation shall be reported as expenditures on Schedule B.

4.16(3) *Name and address of person to whom the debt or obligation is owed.* The schedule shall contain the name and address of each person to whom an obligation is owed, including both those obligations which were incurred during the reporting period and those outstanding obligations which are being carried forward from prior reports. If the obligation is owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee, the original nature of the obligation shall be provided; the name and address of the original provider of the good or service shall also be provided, unless the nature of the obligation indicates that the obligation is for the anticipated reimbursement for mileage or postage stamps.

4.16(4) *Nature of obligation.* The schedule shall include a description of the nature of each obligation. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "anticipated reimbursement for candidate lodging to attend campaign event," or "anticipated mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.17(68A,68B) Schedule E - In-kind Contributions.

4.17(1) *Reporting of all in-kind contributions; chronological listing.* The committee shall report the amounts of all in-kind contributions which are accepted by the committee during the reporting period. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.17(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) on which the in-kind contribution was physically received by a person on behalf of the committee.

4.17(3) *Name and address of contributor.* The schedule shall include the name and address of each person who has made one or more in-kind contributions to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds \$25, except that the itemization threshold is \$200 for a state statutory political committee and \$50 for a county statutory political committee.

4.17(4) *Relationship to candidate.* In the case of in-kind contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

4.17(5) *Description of in-kind contribution; loaned equipment as in-kind contribution.*

a. The schedule shall include a description of the good or service contributed to the committee in kind. The description shall be a clear and concise statement that specifically describes the transaction which has occurred.

b. A committee's use of equipment owned by another organization, committee, or individual is reportable as an in-kind contribution. Equipment includes, but is not limited to, typewriters, calculators, copy machines, office furniture, computers and printers.

4.17(6) *Fair market value.* The committee shall provide either the actual (if known) or estimated fair market value of the good or service received.

4.17(7) *Fund-raiser item.* Goods or services contributed in kind for sale at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.17(8) *Unitemized contributions.* Notwithstanding the other provisions of this rule, in-kind contributions with a fair market value less than the itemization threshold noted in subrule 4.17(3) may be reported as "unitemized in-kind contributions."

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.18(68A,68B) Schedule F - Loans Received and Repaid.

4.18(1) *Reporting of monetary loans (not debts and obligations for goods and services).* The committee shall report all loan activity made to or repaid by the committee during the reporting period. This applies to any loan of money which is deposited into the committee's accounts. However, other debts and obligations owed for the provision of goods or services to the committee (which are not monetary advances deposited into the committee's account) shall be reported on Schedule D, not on Schedule F.

4.18(2) *Report of lump sum of unpaid loans carried over from last report.* The schedule shall contain a beginning entry of the total unpaid loans as of the last report. Loans received and itemized on prior reports should not be re-itemized on the current report, except as necessary to indicate repayment activity.

4.18(3) *Date received.* The schedule shall include the complete date (month/day/year) the loan was physically received by a person on behalf of the committee. If the loan was by check, the date of the loan to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check.

4.18(4) *Date paid.* The schedule shall include the complete date (month/day/year) a full or partial loan repayment is made by the committee. The date of the repayment is the date the check is issued. Full or partial loan repayments shall be shown on this schedule and should not be reported on Schedule B. However, loan interest payments shall be reported on Schedule B (see rule 351—4.15(68A,68B)) and not on Schedule F. Loans which may be and are forgiven in full or in part are considered in-kind

contributions and shall be itemized on Schedule E, with a cross-reference entry in the space provided on Schedule F.

4.18(5) *Name and address of lender.* The schedule shall include the name and address of each person who has made one or more loans of money to the committee during the reporting period, or to whom the committee makes a full or partial loan repayment during the reporting period. If the person who made the loan to the committee is not the original source of the money, when the original source of the money is a third party (such as a bank which loans money to an individual who loans it to the committee) or if a third party has personally paid and assumed a loan from the original lender (such as an individual who pays off the loan to the bank with the expectation of receiving the loan repayment from the committee), the report shall also identify the name and address of the third party.

4.18(6) *Relationship to candidate.* In the case of monetary loans to candidates' committees, the schedule shall include information indicating whether the lender is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.19(68A) Schedule G - Breakdown of Monetary Expenditures by Consultants. A committee that enters into a contract with a consultant for future or continuing performance shall be required to report expenditures made to the consultant and the nature of the performance of the consultant that is expected to be received by the committee. A committee is required to report in Part 1 of Schedule G any contracts with consultants that it has negotiated, the complete name and address of the consultant, the period of time during which the contract is in effect, and estimates of performance to be derived from the contract. Expenditures made to the consultant during a reporting period shall be reported with all other expenditures on Schedule B, and debts incurred with the consultant during the reporting period shall be reported with all other debts on Schedule D. Additionally, a detailed breakdown of the expenditures made by the consultant shall be reported by the committee in Part 2 of Schedule G and shall include the date of the expenditure, the purpose of the expenditure and the amount of the expenditure. The description of the purpose of the expenditure shall be consistent with the provisions of subrule 4.15(3).

For purposes of this rule, "contract" means an oral or written agreement between two parties for the supply or delivery of specific services in the course of the campaign. "Performance" means the execution or fulfillment of the contractual agreement. "Nature of performance" means a clear description of the specific services received or benefit derived as the result of a contract with a consultant. "Estimate of performance" means a clear description of the services the committee reasonably expects to receive or the benefit the committee reasonably expects to derive during the period of the contract.

This rule is intended to implement Iowa Code sections 68A.102(9) as amended by 2005 Iowa Acts, House File 312, section 3, and 68A.402A.

351—4.20(68A,68B) Schedule H - Campaign Property.

4.20(1) *Ongoing inventory.* Equipment, supplies, or other materials purchased with campaign funds or received in kind are campaign property. Campaign property, other than consumable campaign property, with a value of \$500 or more when acquired by the committee shall be listed on the inventory section of the schedule. The property shall be listed on each report until it is disposed of by the committee or its residual value falls below \$100 and the property is listed once as having a residual value of less than \$100. "Consumable campaign property" means stationery, yard signs, and other campaign materials that have been permanently imprinted to be specific to a candidate or election. For property purchased by the committee, the date purchased shall be the earlier of the date the committee attained physical possession of the property or the date the committee issued payment for the property. For in-kind contributions, the date received shall be the date on which the committee attained physical possession of the property. The committee shall provide the complete date (month/day/year). The schedules shall include the purchase price of property purchased by the committee and the actual or estimated fair market value of property received as an in-kind contribution, as well as the actual or estimated current fair market value of the property at the end of the current reporting period.

4.20(2) Sales or transfers of campaign property. The schedule shall include information regarding the sale or transfer of campaign property, other than consumable campaign property, which occurred during the current reporting period. The information shall include the complete date of the transaction (month/day/year), the name and address of the purchaser or donee, and a description of the property. If the property is sold, the information shall include the sales price received; if the property is donated, the information shall include the fair market value of the property at the time of the transfer.

This rule is intended to implement Iowa Code Supplement sections 68A.304 and 68A.402.

351—4.21(68A) Reconciled bank statement required with January report and final report.

4.21(1) A committee that participates in an election at the state level and that is required by Iowa Code Supplement section 68A.402 to file a disclosure report on or before January 19 of each year shall attach to or submit with that disclosure report a copy of the committee's bank statement that includes activity through December 31 of the year reported.

4.21(2) A committee that participates in an election at the county, city, school, or other political subdivision level and that is required by Iowa Code Supplement section 68A.402 to file a disclosure report on or before January 19 of each year is not required to attach or submit a copy of the committee's bank statement unless requested to do so by the board. If such a committee is requested to file the bank statement, the committee shall comply with the requirements of rule 351—4.21(68A).

4.21(3) If the bank statement cycle is such that the committee has not received the statement including activity through December 31 by the date for filing the January report, the committee shall separately file or submit the bank statement within ten days after receipt of the statement by the committee.

4.21(4) The committee shall include a reconciliation to justify outstanding checks and other discrepancies between the ending balance on the bank statement and the ending balance on the disclosure report.

4.21(5) A committee that files a final disclosure report shall comply with the requirements of subrule 4.55(5) concerning the filing of a final bank statement.

4.21(6) A committee seeking a waiver from the requirements of this rule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.22(68A,68B) Verification of reports; incomplete reports.

4.22(1) The board staff will review and desk audit each disclosure report. The board may contact other parties to verify the accuracy and completeness of the reports. The board may contact a representative of the committee and may contact other parties to determine the authenticity of information provided about filed reports.

4.22(2) If, upon review, board staff determine that a committee's report is incomplete because required information has been omitted or has been incorrectly reported, the staff shall communicate the deficiencies to the committee. A failure to satisfactorily respond to or to remedy the error or omission may be grounds for a violation of Iowa Code Supplement section 68A.402 as a failure to file a report which conforms to the requirements of that provision.

This rule is intended to implement Iowa Code Supplement section 68A.402 and Iowa Code section 68B.32A.

351—4.23(68A,68B) Amendment—statements, disclosure reports and notices. A committee may amend a previously filed statement of organization, disclosure report or notice of dissolution. To amend a previously filed statement, report or notice, the committee shall file an amended document on the approved form and shall designate on the form in the space provided, if applicable, that the document being filed is an amendment to a previously filed statement, report or notice. The term "amended document" as used in this rule shall mean a document on forms issued by the board which includes

only the information which is being added, deleted or changed from a previously filed statement of organization or notice of dissolution.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.24(68A) Reporting of state party building fund transactions. Pursuant to Federal Election Commission Advisory Opinion 2004-28, the board will permit a state statutory political committee (state party committee) to receive contributions from corporations, insurance companies, and financial institutions when those contributions are placed in the state party building fund account, the contributions are used to pay for costs associated with the building, and all transactions involving the fund are disclosed pursuant to this rule.

A state party committee filing a state party building fund report under this rule shall use either the report form prescribed by the board or a computer-generated report so long as the report includes the information required under subrule 4.24(2).

4.24(1) *Period covered.* A state party building fund report shall cover the time period from January 1 through December 31 of the previous year.

4.24(2) *Information to be disclosed.* The following information shall be disclosed on a state party building fund report:

a. The name and address of the state party committee.
b. The name and address of each person who makes a contribution in excess of \$200, or contributions in the aggregate that exceed \$200 during the period covered, to the state party building fund. If no contributions were received for the fund, the report shall disclose \$0.00 as contributions received.

c. The date and the amount of the contribution. If aggregate contributions from one person are received that exceed \$200, the amount to be disclosed shall be the total amount received from that person for the period covered and the date to be disclosed shall be the date of the last contribution.

d. The total amount of all contributions of \$200 or less received during the period covered. This total amount shall be disclosed as being received from “unitemized” with the date of the contribution being the last day of the reporting period.

e. The name and mailing address of each person to whom an expenditure that exceeds \$200 is made, or expenditures in the aggregate that exceed \$200 during the period covered, from the state party building fund. If no expenditures were made from the fund, the report shall disclose \$0.00 as expenditures made.

f. The date and the amount of the expenditure. If aggregate expenditures that exceed \$200 are made to one person, the amount to be disclosed shall be the total amount made to that person for the period covered and the date to be disclosed shall be the date of the last expenditure.

g. The total amount of all expenditures of \$200 or less made during the period covered. This total amount shall be disclosed as being expended to “unitemized” with the date of the expenditure being the last day of the reporting period.

h. The signature and date of the individual filing the state party building fund report.

4.24(3) *Place of filing.* A state party building fund report shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-3701.

4.24(4) *Time of filing.* A state party building fund report shall be filed on or before January 31 of each year. If mailed, the report must bear a United States Postal Service postmark dated on or before the due date. A faxed report must be submitted on or before 11:59 p.m. on the due date. If January 31 falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date shall be extended to the next working day when the board office is open.

4.24(5) *Failure to file.* If the board determines that a state party committee has failed to timely file a state party building fund report, the state party committee is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code sections 68A.402A(1)“k” and 68A.503.

351—4.25(68A,68B) Legitimate expenditures of campaign funds.

4.25(1) Expenses which may be paid from campaign funds for campaign purposes include, but are not limited to, the following items so long as the items promote or enhance the candidacy of the candidate:

- a.* Electronic media advertising, such as radio, cable television and commercial television.
- b.* Published advertising, such as newspaper, magazine, newsletter and shopper advertising.
- c.* Printed promotional materials, such as brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, campaign business cards, direct mailings, postcards and “cowboy” political cards.
- d.* Political signs, such as yard signs, car signs, portable outdoor advertising, stationary outdoor advertising and billboards.
- e.* Political advertising specialty items, such as campaign buttons, campaign stickers, bumper stickers, campaign pins, pencils, pens, matchbooks, balloons, scratch pads, calendars, magnets, key chains, campaign caps and T-shirts.
- f.* Travel and lodging expenses of the campaign workers for campaign purposes and political party activities. Travel and lodging expenses for a candidate to attend a national political party convention are also permitted.
- g.* Contributions to political party committees.
- h.* The purchase of tickets to a meal for the candidate and one guest so long as the attendance at the meal by the candidate and guest is for the sole purpose of enhancing the candidacy of any person.
- i.* General campaign expenditures, such as printing, copy machine charges, office supplies, campaign photographs, gambling permits, fund-raiser prizes, postage stamps, postage meter costs, bulk mail permits, telephone installation and service, facsimile charges, and computer services. However, the purchase or rental of formal wear to attend a political event is not a permissible general campaign expenditure.
- j.* Purchase or lease of campaign equipment, such as copy machines, telephones, facsimile machines, computer hardware, software and printers.
- k.* Purchase or lease of campaign office space, parking lots or storage space and the payment for campaign office utilities and maintenance.
- l.* Payment of salaries, fringe benefits, bonuses, and payroll taxes of paid campaign staff. Family members who perform actual work or services for a campaign may be compensated for such work or services.
- m.* Payment for check printing and financial institution banking service charges.
- n.* Lease or rental of a campaign vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that noncampaign miles are reimbursed to the committee at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, the purchase of a campaign vehicle is prohibited.
- o.* Reimbursement to candidates and campaign workers for mileage driven for campaign purposes in a personal vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code.
- p.* Payment for food expenses and supplies for campaign-related activities, such as the purchase of food, beverages and table service for fund-raising events or campaign volunteers. However, except as provided in paragraph “*h*,” the purchase of tickets for meals or fund-raising events for other candidates is prohibited, and the purchase of groceries for the candidate or candidate’s family is also prohibited. Payment for meals for the candidate (other than those involving tickets for fund-raiser events as addressed in paragraph “*h*”) is permitted as an allowable expenditure for campaign purposes if the meal was associated with campaign-related activities.
- q.* Payment of civil penalties and hearing costs assessed by the board.
- r.* Payment for the services of attorneys, accountants, consultants or other professional persons when those services relate to campaign activities.

s. Subscriptions to newspapers and periodicals that circulate within the area represented by the office that a candidate is seeking or holds, that contain information of a general nature about the state of Iowa, or that contain information useful to all candidates such as The Wall Street Journal and Roll Call. Candidates who are unsure whether a subscription is permissible shall seek guidance from the board prior to paying for the subscription with campaign funds.

t. Membership in service organizations including a local chamber of commerce that the candidate joins solely for the purpose of enhancing the candidate's candidacy.

u. Repayment of campaign loans made to the committee. Candidates who make loans to their own committees shall not charge interest on the loans in excess of 5 percent.

v. Purchase of reports of other candidates and political committees so long as the reports' contents are not used for solicitation or commercial purposes.

w. Donations to charitable organizations unless the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent is employed by the charitable organization and will receive a direct financial benefit from a donation.

x. Contributions to federal, state, county and city political party committees.

y. Refunds to contributors when a contribution has been accepted in error, or when a committee chooses to dispose of leftover funds by refunding them in prorated shares to the original contributors.

z. Payment for items with a purchase price not to exceed \$250 per person that are presented to committee workers in recognition of services to the committee.

aa. Expenses incurred with respect to an election recount as provided in Iowa Code section 50.48.

bb. The sharing of information in any format such as computer databases containing yard sign locations or lists of registered voters with another candidate's committee.

4.25(2) Expenses which may be paid from campaign funds for educational and other expenses associated with the duties of office include, but are not limited to, the following items:

a. Purchase or lease of office supplies and equipment, such as paper, copy machines, telephones, facsimile machines, computer hardware, software and printers.

b. Travel, lodging and registration expenses associated with attendance at an educational conference of a state, national, or regional organization whose memberships and officers are primarily composed of state or local government officials or employees. However, meal expenses are not allowable as expenses associated with the duties of office under any circumstances.

c. Meals and other expenses incurred in connection with attending a local meeting to which the officeholder is invited and attends due to the officeholder's official position as an elected official.

d. Purchases of small, incidental items such as pencils, pens, rulers and bookmarks provided to members of the public touring the offices of the state or a political subdivision. However, such items distributed on public property shall not expressly advocate the election or defeat of a candidate or the adoption or defeat of a ballot issue as prohibited in Iowa Code Supplement section 68A.505. For example, a bookmark bearing the state seal could be distributed on public property, while a bookmark that identified the donor as a candidate for office could not be distributed on public property.

e. Gifts purchased for foreign dignitaries when the officeholder is part of an official trip out of the country such as a trade mission or exchange program.

f. Printing of additional stationery and supplies above the standard allotment of the state or political subdivision.

4.25(3) Expenses which may be paid from campaign funds for constituency services include, but are not limited to, the following items:

a. Mailings and newsletters sent to constituents.

b. Polls and surveys conducted to determine constituent opinions.

c. Travel expenses incurred in communicating with members of an elected official's constituency, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal

Revenue Code. However, meal expenses are not allowable as expenses associated with constituency services under any circumstances.

d. Holiday and other greeting cards sent to constituents.

This rule is intended to implement Iowa Code Supplement sections 68A.301, 68A.302, and 68A.303.

351—4.26(68A) Transfers between candidates.

4.26(1) *Transfer of assets between different candidates.* A candidate's committee may transfer an asset to a candidate's committee established by a different candidate so long as the recipient committee pays the transferring committee the fair market value of the asset and the transaction is properly disclosed on each committee's disclosure report.

4.26(2) *Transfer of assets for same candidate.* A candidate's committee may transfer funds, assets, loans, and debts to a committee established for a different office when the same candidate established both committees.

This rule is intended to implement Iowa Code Supplement section 68A.303.

351—4.27(68A) Filing of independent expenditure statement. Pursuant to Iowa Code section 68A.404 as amended by 2008 Iowa Acts, House File 2700, sections 116 and 117, any person except a candidate or a registered committee that makes one or more independent expenditures in excess of \$100 in the aggregate shall file an independent expenditure statement.

4.27(1) *Independent expenditure defined.* "Independent expenditure" means an expenditure for a communication that expressly advocates the nomination, election, or defeat of a candidate or that expressly advocates the passage or defeat of a ballot issue when the expenditure is made without the prior approval of or coordination with a candidate, candidate's committee, or a ballot issue committee. "Independent expenditure" also means "independent expenditure" as defined in subrule 4.53(3).

4.27(2) *Independent expenditure statement.* The following information shall be disclosed on the independent expenditure statement:

a. The name, mailing address, and telephone number of the person that files the statement, including the name, mailing address, and telephone number of a contact person, if applicable.

b. A description of the position that is advocated by the person that files the statement such as whether the communication was for a particular candidate or was against a particular candidate.

c. The name and address of the committee that benefits from the expenditure.

d. The dates on which the expenditure or expenditures took place.

e. A description of the nature of the action taken that resulted in the expenditure or expenditures such as a newspaper advertisement, direct mailing, or brochure.

f. The actual cost or fair market value of the expenditure or expenditures.

4.27(3) *Place of filing.* An independent expenditure statement shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-4073. The board shall immediately make the independent expenditure statement available for public viewing via the board's Web site at www.iowa.gov/ethics.

4.27(4) *Time of filing.* An independent expenditure statement shall be filed within 48 hours of the making of an independent expenditure exceeding \$100 or independent expenditures exceeding \$100 in the aggregate. An independent expenditure is deemed made at the time that the cost is incurred.

4.27(5) *Failure to file.* A person that fails to timely file an independent expenditure statement shall be subject to the imposition of civil penalties pursuant to 351—subrule 4.59(7).

4.27(6) *Attribution statement applicable.* Any person that makes an independent expenditure in any amount shall comply with the appropriate "paid for by" attribution statement pursuant to rule 351—4.38(68A,68B).

4.27(7) *Other filings not required.* A person that properly files an independent expenditure statement shall not be required to file a statement of organization registering a committee or file public disclosure reports.

4.27(8) Campaign committees. A committee that makes an independent expenditure shall disclose the transaction on the committee's appropriate disclosure report and shall not file an independent expenditure statement.

This rule is intended to implement Iowa Code section 68A.404 as amended by 2008 Iowa Acts, House File 2700, sections 116 and 117.

351—4.28(68A) Prohibition on contributions and independent expenditures by foreign nationals. As provided in Federal Election Commission regulation 11 CFR 110.20, a foreign national shall not, directly or indirectly, make a contribution or expenditure of money or other thing of value, or specifically promise to make a contribution, in connection with a state or local campaign or election in Iowa. A foreign national shall not, directly or indirectly, make a contribution to a campaign committee organized under Iowa Code Supplement chapter 68A. Foreign nationals are also prohibited from making independent expenditures in relation to any state or local campaign or election in Iowa.

4.28(1) Foreign national defined. "Foreign national" means a person who is not a citizen of the United States and who is not lawfully admitted for permanent residence. "Foreign national" also includes a "foreign principal," such as a government of a foreign country or a foreign political party, partnership, association, corporation, organization, or other combination of persons that has its primary place of business in or is organized under the laws of a foreign country. "Foreign national" shall not include any person who is a citizen of the United States or who is a national of the United States.

4.28(2) Acceptance of contributions and independent expenditures from foreign nationals. No person shall knowingly accept or receive any contribution from a foreign national with regard to such person's election-related activities.

4.28(3) Participation by foreign nationals in decisions involving election-related activity. A foreign national shall not, directly or indirectly, participate in the decision-making process of any person, including a corporation, labor organization, political committee, or political organization, with regard to such person's election-related activities. Decisions including election-related activities include decisions involving the making of contributions, donations, or expenditures in connection with elections for state or local office or decisions involving the administration of a political committee.

This rule is intended to implement Iowa Code Supplement chapter 68A.

351—4.29(68A,68B) Contributions by minors. Persons under 18 years of age may make contributions to a candidate or political committee if all of the following conditions exist:

1. The decision to contribute is made knowingly and voluntarily by the minor;
2. The funds, goods, or services contributed are owned or controlled exclusively by the minor, such as income earned by the minor, the proceeds of a trust for which the minor is the beneficiary, or a savings account opened and maintained exclusively in the minor's name; and
3. The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

This rule is intended to implement Iowa Code Supplement section 68A.404.

351—4.30(68A,68B) Funds from unknown source prohibited; subsequent identification of source; notice to contributors.

4.30(1) Anonymous contributions in excess of \$10 prohibited. No person shall make a contribution in excess of \$10 to a committee without providing the person's name and address to the committee. The committee shall not maintain in any campaign account funds in excess of \$10 that cannot be accounted for and reconciled with the committee's disclosure reports.

4.30(2) Escheat to the state. Any contribution in excess of \$10 from an unknown source or campaign funds in excess of \$10 that cannot be accounted for and reconciled shall escheat to the state of Iowa as required by Iowa Code section 68A.501 as amended by 2007 Iowa Acts, Senate File 39, section 8. A committee required to escheat shall escheat such funds by depositing the funds into the committee's campaign account and issuing a committee check to the general fund in the same amount. The committee

check shall be sent to the board office at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, for transmittal to the office of treasurer of state.

4.30(3) *Subsequent identification of source.* A committee discovering the source of any funds that have been escheated to the state may make an application to the board for a return of the funds if the following requirements are met:

- a. The committee has not dissolved;
- b. Documentation of the name and address of the source is provided;
- c. The amount requested to be returned is in excess of \$100; and
- d. The application is made within 90 days of the date of the deposit in the general fund of the state of Iowa.

4.30(4) *Notice at fund-raising event.* Pursuant to Iowa Code Supplement section 68A.501, a person requested to make a contribution at a fund-raising event shall be advised that it is illegal to make a contribution in excess of \$10 unless the person making the contribution also provides the person's name and address. Notice of the requirement to provide a person's name and address for a contribution in excess of \$10 may be made orally or in a written statement that is displayed at the fund-raising event.

This rule is intended to implement Iowa Code section 68A.501.

351—4.31(68A) Information required for a trust to avoid a contribution in the name of another person. A contribution to a committee by a trustee solely in the name of the trust constitutes a contribution in the name of another person as prohibited in Iowa Code Supplement section 68A.502 unless the recipient committee publicly discloses the contribution as provided in this rule.

4.31(1) *Living or revocable trust.* If the contribution involves a trust identified as a revocable trust or a living trust that does not file a separate trust tax return and whose federal tax ID number is the same as the social security number of the grantor who creates the trust and who is also a trustee, the contribution shall be reported by the recipient committee as being made by the "(name) revocable (or living) trust."

4.31(2) *Other trusts.* For a contribution involving a trust that does not qualify under subrule 4.31(1), the recipient committee shall identify the trust, the trustee, and the trustor.

4.31(3) *Registering a committee.* A trust, except for a living or revocable trust, that raises or spends more than \$750 for campaign activities shall register a political committee (PAC) and shall file disclosure reports. A trust, except for a living or revocable trust, that makes a one-time contribution in excess of \$750 may file Form DR-OTC in lieu of filing a statement of organization and filing disclosure reports.

This rule is intended to implement Iowa Code Supplement sections 68A.402(6) and 68A.502.

351—4.32(68A) Contributions from political committees not organized in Iowa. Iowa committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa committees provided the out-of-state committee complies with either subrule 4.32(1) or subrule 4.32(2). For purposes of this rule, "out-of-state committee" means a committee that is registered with the campaign enforcement agency of another state or is registered with the Federal Election Commission.

4.32(1) *Regular filings.* Out-of-state committees may choose to comply with the regular disclosure filing requirements in Iowa Code Supplement sections 68A.201 and 68A.402 by filing a statement of organization and periodic disclosure reports.

4.32(2) *Verified statement of registration.* In lieu of filing a statement of organization and regular disclosure reports as required by Iowa Code chapter 68A, the out-of-state committee shall file with the board a verified statement registration form (VSR) for each contribution in excess of \$50. The VSR shall contain the following information:

- a. The complete name, address and telephone number of the out-of-state committee;
- b. The state or federal agency with which the out-of-state committee is registered;
- c. All parent entities or other affiliates or sponsors of the out-of-state committee;
- d. The purpose of the out-of-state committee;
- e. The name, address and telephone number of an Iowa resident authorized to receive service on behalf of the out-of-state committee;
- f. The name and address of the Iowa recipient committee;

g. The date and amount of the contribution, including description if the contribution is in-kind; and

h. An attested statement that the jurisdiction with which the out-of-state committee is registered has reporting requirements substantially similar to those of Iowa Code chapter 68A. The statement shall include confirmation that the contribution is made from an account that does not accept contributions prohibited by Iowa Code section 68A.503 as amended by 2007 Iowa Acts, Senate File 42, section 2, unless the contribution from the out-of-state committee is made to an Iowa ballot issue committee.

4.32(3) Signature. The VSR shall be signed by the individual filing the VSR on behalf of the out-of-state committee.

4.32(4) Where filed. Every VSR filed for a contribution in excess of \$50 shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, electronically using the board's Web site at www.iowa.gov/ethics, as an E-mail attachment, or by fax at (515)281-4073.

4.32(5) When filed. The VSR shall be filed with the board on or before the fifteenth day after the date of the contribution, or mailed bearing a United States Postal Service postmark dated on or before the fifteenth day after the date of the contribution. For purposes of this subrule, "date of the contribution" means the day, month, and year the contribution check is dated. If the board deems it necessary, a copy of any contribution check may be required to be filed with the board. When a copy of a check is required to be filed with the board, the copy shall be filed within ten days after notice by the board.

4.32(6) Enhanced filing. An out-of-state committee determining that the jurisdiction under which the committee is registered does not have reporting requirements substantially similar to those of Iowa Code Supplement chapter 68A may choose to comply by enhancing the committee's filing in the other jurisdiction. The enhanced filing shall meet the reporting requirements of Iowa Code Supplement chapter 68A for the reporting period during which contributions to Iowa committees are made. The report shall cover a period of at least one month. An out-of-state committee choosing this option shall comply with the VSR procedures in subrule 4.32(2) and attach a signed statement that the report has been enhanced to satisfy the Iowa reporting requirements.

This rule is intended to implement Iowa Code section 68A.201(5) as amended by 2007 Iowa Acts, Senate File 39, section 3.

351—4.33(68A,68B) Reporting of earmarked contributions. A political committee is permitted to receive contributions from its contributors which are earmarked to be donated to a specific candidate's committee or another political committee. A political committee receiving and transmitting earmarked contributions is required to list on its disclosure report the name of the contributor and the name of the candidate or committee for which the contribution was earmarked. The political committee is further required to inform the treasurer of the recipient committee in writing of the name of the individual contributor, as well as the name of the committee which has collected the contribution. The committee receiving the earmarked contribution is required to disclose on its report both the name of the individual contributor and the sponsoring committee.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.34(68A) Request for inactive status by county central committees—procedure. Rescinded IAB 6/22/05, effective 7/27/05.

351—4.35(68A) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC. Pursuant to Iowa Code section 68A.402(9), a permanent organization temporarily engaging in activity that exceeds the \$750 financial filing threshold described in rule 351—4.1(68A,68B) is required to organize and register a political committee (PAC), file disclosure reports, and, upon completion of activity, file a notice of dissolution. A permanent organization that is temporarily a political committee shall comply with all of the campaign laws in Iowa Code chapter 68A and this chapter. A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

4.35(1) Form DR-OTC. A permanent organization that makes a one-time contribution in excess of \$750 to a committee may, in lieu of filing a statement of organization, disclosure reports, and a notice of dissolution, file Form DR-OTC. The following information shall be disclosed on Form DR-OTC:

- a. The name and address of the organization making the contribution.
- b. The name and address of a contact person for the organization making the contribution.
- c. The name and address of the campaign committee receiving the contribution. If the contribution is to a candidate or a candidate's committee, the source of the original funds used to make the contribution shall be disclosed.
- d. The date and amount of the contribution. If the contribution is an in-kind contribution, a description of the provided goods or services must be included.
- e. The date of election and the county in which the recipient committee is located if the committee is a county or local committee.
- f. The signature and date of the individual filing Form DR-OTC.

A permanent organization that makes more than one contribution is not eligible to file Form DR-OTC and is required to file a statement of organization, file disclosure reports, and file a notice of dissolution.

4.35(2) Place of filing. Form DR-OTC shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-3701.

4.35(3) Time of filing. Form DR-OTC shall be filed with the board within ten days after the one-time contribution in excess of \$750 is made. The form must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. A faxed Form DR-OTC must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.35(4) Failure to register. If the board discovers that a permanent organization has become subject to the provisions of Iowa Code Supplement chapter 68A but did not timely file a statement of organization or file Form DR-OTC, as applicable, the permanent organization is subject to the possible imposition of board sanctions.

4.35(5) Partial refund of contribution. A committee that receives a contribution from a permanent organization that causes the organization to become subject to the provisions of Iowa Code Supplement chapter 68A may refund all or part of a contribution to the organization so as to reduce the contribution to \$750 or less and remove the organization's filing obligations.

This rule is intended to implement Iowa Code sections 68A.102(18) and 68A.402.

351—4.36(68A) Cash transactions. All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check, debit card, or credit card. Cash withdrawals and "petty cash" accounts are not permitted. If a committee fundraising activity necessitates a cash drawer for making change or other cash transactions, the committee may issue a check payable to the committee treasurer or the candidate, in the case of a candidate's committee, or payable to the committee treasurer or the committee chairperson, in the case of a political committee. The purpose of the expenditure shall be reported on Schedule B as "cash advance for (describe activity, e.g., concession stand cash drawer)." Upon completion of the fundraising activity, the committee shall redeposit the same amount as that which was advanced into the committee account. The redeposit shall be reported as a reverse entry on Schedule B as a "redeposit of cash advance for (describe activity)." The proceeds of the fundraising activity (excluding the cash advance) shall be reported on Schedule A - Contributions Received.

This rule is intended to implement Iowa Code sections 68A.203 as amended by 2005 Iowa Acts, House File 312, section 5, and 68A.402A.

351—4.37(68A,68B) Record keeping.

4.37(1) Copies of reports. A committee shall preserve a copy of every report it files for at least three years following the filing of the report.

4.37(2) Supporting documentation. The documentation which supports a committee's disclosure report shall be preserved by the committee for at least five years after the due date of the report that

covers the activity documented in the records; however, a committee is not required to preserve these records for more than three years from the certified date of dissolution of the committee. At a minimum, the supporting documentation shall consist of all of the following:

a. A ledger or similar record-keeping device which details all contributions received by the committee. This record shall include the name and address of each person making a contribution in excess of \$10, with the date and amount of the contribution. In lieu of or in addition to a ledger, the committee may record contributions received through a receipt book or other method of individually documenting the contributions, such as by making and keeping copies of the contribution checks.

b. The check register for the committee's account(s).

c. Bank statements for the committee's account(s).

d. Copies of canceled or duplicate checks for committee expenditures, if available.

e. Copies of bills or receipts for committee expenditures.

f. For committees which pay reimbursement for committee-related mileage, copies of vehicle mileage logs, including travel dates, distance driven, and travel purpose (description of event or activity). For a candidate's committee which leases a vehicle, the mileage log shall detail all mileage driven on the vehicle, including non-committee-related mileage.

This rule is intended to implement Iowa Code Supplement sections 68A.203, 68A.302, 68A.402 and 68A.403 and Iowa Code section 68B.32A.

DIVISION III
POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

351—4.38(68A) Political attribution statement—contents. Published material that expressly advocates the election or defeat of a candidate or that expressly advocates the passage or defeat of a ballot issue shall contain a statement identifying the person paying for the published material. This statement is referred to as the “attribution statement.” The term “published material” means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, Internet Web site, campaign sign, or any other form of printed general public political advertising.

4.38(1) Registered committee. If the person paying for the published material is a committee that has filed a statement of organization, the words “paid for by” and the name of the committee shall appear on the material.

4.38(2) Individual, married couple, or unregistered candidate's committee. If the person paying for the published material is an individual, the words “paid for by” and the name and address of the individual shall appear on the material. Published material that is jointly paid for by a married couple shall include the words “paid for by” and the name and address of one member of the married couple. For purposes of this subrule, “individual” includes a candidate who has not filed a statement of organization to register a committee.

4.38(3) Multiple individuals. If more than one individual paid for the published material, the words “paid for by”, the names of the individuals, and either the addresses of the individuals or a statement that the addresses of the individuals are on file with the Iowa ethics and campaign disclosure board shall appear on the material. The addresses shall be provided to the board and made available for public inspection.

4.38(4) Organization or unregistered political committee. If the person paying for the published material is an organization, the words “paid for by”, the name and address of the organization, and the name of one officer of the organization shall appear on the material. For purposes of this subrule, “organization” includes an organization advocating the passage or defeat of a ballot issue but that has not filed a statement of organization to register a political committee.

4.38(5) Pooled efforts. If the published material is paid for by more than one person, the words “paid for by” and the identification of the persons as set out in this rule shall appear on the material.

This rule is intended to implement Iowa Code Supplement section 68A.405 as amended by 2004 Iowa Acts, House File 2319, section 4.

351—4.39(68A) Specific items exempted from or subject to attribution statement requirement; multiple pages. Iowa Code Supplement section 68A.405 requires the placement of a “paid for by” attribution statement on political advertising and political material, with certain exceptions.

4.39(1) Items exempted from requirement. The requirement to place a “paid for by” attribution statement does not apply to the following:

- a. Editorials or news articles of a newspaper or magazine that are not political advertisements.
- b. Small items upon which the inclusion of the attribution statement would be impracticable, such as yard signs, bumper stickers, pins, buttons, pens, pencils, emery boards, matchbooks and, except as set out in subrule 4.39(2), items that are smaller than 2 inches by 4 inches.
- c. T-shirts, caps, and other articles of clothing.
- d. Means of communication such as television and radio that are subject to federal regulations regarding an attribution requirement.
- e. Political advertising or political material placed by an individual who acts independently and spends \$100 or less of the individual’s own money to expressly advocate the passage or defeat of a ballot issue.

For purposes of this subrule, “yard sign” means a political sign with a total dimension of 32 square feet or less, regardless of whether both sides of the sign are used, that has been placed or posted on real property.

4.39(2) Items subject to requirement. The requirement to place a “paid for by” attribution statement applies to the following:

- a. Advertising such as yard signs larger than 32 square feet, billboards, posters, portable sign carriers, and signs affixed or painted to the side or top of a building or vehicle.
- b. Advertisements in a newspaper, magazine, shopper, or other periodical regardless of the size of the advertisement.
- c. Direct mailings, flyers, brochures, postcards, or any other form of printed general public advertising that is larger than 2 inches by 4 inches.
- d. Campaign Web sites.

4.39(3) Multiple pages. If the political advertising or political material consists of more than one page, the “paid for by” attribution statement need only appear on one page of the advertising or material. For a campaign Web site, the attribution statement need only appear on the home page of the site.

This rule is intended to implement Iowa Code Supplement section 68A.405.

351—4.40(68A,68B) Newspaper or magazine. For the purposes of these rules and Iowa Code Supplement section 68A.405, “newspaper or magazine” means a regularly scheduled publication of news, articles of opinion, and features available to the general public which does not require membership in or employment by a specific organization.

This rule is intended to implement Iowa Code Supplement section 68A.405.

351—4.41(68A,68B) Apparent violations; remedial action.

4.41(1) Administrative resolution. In an effort to informally resolve apparent violations of the requirement to place a “paid for by” attribution statement, the board may order administrative resolution of the matter. The board may direct the person responsible for placing the original published political material that did not include the attribution statement to place a correction notice in a local newspaper that reaches the same or substantially the same portion of the public that received the original published political material. A person may also resolve a violation of the “paid for by” attribution statement by resending corrected published political material to the same portion of the public that received the original published political material and by filing a copy of the corrected material with the board.

4.41(2) Form of correction notice. The correction notice shall be in substantially the following form: “On (date) (describe the type of published political material) was distributed that did not state who paid for it. The (describe the type of published political material) was paid for by (insert name).”

4.41(3) Board notice. The board shall notify the person who paid for the original published political material of the requirements of this rule.

4.41(4) Refusal to place correction notice. The board may initiate a contested case proceeding and impose discipline against any person who refuses to place a correction notice under this rule.

This rule is intended to implement Iowa Code section 68A.405 and Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

351—4.42(56,68B) Specific items exempted from or subject to attribution statement requirement. Rescinded IAB 2/4/04, effective 3/10/04.

351—4.43(56,68B) Apparent violations; remedial actions. Rescinded IAB 2/4/04, effective 3/10/04.

DIVISION IV
CORPORATE POLITICAL ACTIVITY

351—4.44(68A,68B) Use of corporate property prohibited. It is unlawful for a candidate's committee or other political committee to use any property of a corporate entity, and it is unlawful for a corporate entity to knowingly permit the use of its property by a candidate's committee or other political committee. "Corporate entity" as used in these rules means any profit or nonprofit corporation, and includes, but is not limited to, farm corporations, professional corporations (P.C.s), banks, savings and loan institutions, credit unions and insurance companies. For the purpose of these rules, the prohibited use of the property of a corporate entity shall include, but not be limited to, the following:

4.44(1) The physical placement of campaign materials on corporate property except as permitted under Iowa Code sections 68A.406 and 68A.503.

4.44(2) The use of motor vehicles, telephone equipment, long-distance lines, computers, typewriters, office space, duplicating equipment and supplies, stationery, envelopes, labels, postage, postage meters or communication systems of corporate entities.

4.44(3) The use of corporate entity facilities, premises, recreational facilities and housing that are not ordinarily available to the general public.

4.44(4) The furnishing of beverages and other refreshments that cost in excess of \$50 and that are not ordinarily available to the general public.

4.44(5) The contributing of money of the corporate entity.

4.44(6) Any other transaction conducted between a corporation and a candidate's committee or political committee is presumed to be a corporate contribution unless the candidate's committee or political committee establishes to the contrary.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.45(68A,68B) Corporate-sponsored political committee. These rules do not prevent a corporate entity from soliciting eligible members to join or contribute to its own corporate-sponsored political committee (PAC), so long as the corporate entity adheres to the provisions of Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.46(68A) Voter education. These rules do not prevent a corporate entity from providing or publicizing voter registration procedures, election day information, voting procedures or other voter education information, so long as the information provided does not expressly advocate the election or defeat of a clearly identified candidate. Also, these rules do not prevent a candidate's committee from using a corporate computer to generate and file a campaign disclosure report so long as the report does not expressly advocate the election or defeat of a clearly identified candidate.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.47(68A,68B) Permitted activity—reimbursement required. The prohibitions against certain transactions between corporate entities and candidates or committees expressly advocating the election or defeat of candidates contained in Iowa Code Supplement section 68A.503 and in rule 4.44(68A,68B) are not construed to prohibit activity that occurs consistent with this rule.

4.47(1) *Purchase or rental of office facility.* A candidate's committee or any other committee that expressly advocates the election or defeat of a candidate may purchase or rent property belonging to a corporate entity, so long as the purchase or rental is at fair market value. For the purpose of this subrule, "fair market value" means the amount that a member of the general public would expect to pay to purchase or rent a similar property within the community in which the property is located.

4.47(2) *Use of corporate facilities to produce or mail materials.* Any person who uses the facilities of a corporate entity to produce or mail materials in connection with a candidate election is required to reimburse the corporate entity within a commercially reasonable time for the normal and usual charge for producing or mailing such materials in the commercial market. For example, if it would otherwise cost 10 cents per page to have a brochure copied at a commercial printer, the corporate entity must be reimbursed at 10 cents per page even if the overhead and operating cost is only 5 cents per page. Likewise, the corporate entity must be reimbursed at the first-class mail rate even if the direct cost to the corporate entity is less through the use of its bulk mail permit. This subrule does not affect the ability of a commercial vendor to charge an amount for postage which is less than for first-class mail where the reduced or bulk mail charge is available to all similarly situated customers without respect to the political identity of the customer.

4.47(3) *Use or rental of corporate facilities by other persons.* Persons other than stockholders, administrative officers or employees of a corporate entity who make any use of corporate facilities, such as using telephones, facsimile machines, typewriters or computers or borrowing office furniture for activity in connection with a candidate election, are required to reimburse the corporate entity within a commercially reasonable time in the amount of the normal and usual rental charge. If one or more telephones of a corporate entity are used as a telephone bank, a rebuttable presumption is established that \$3 per telephone per hour, plus any actual long distance charges, is acceptable as a normal and usual rental charge.

4.47(4) *Use of airplanes and other means of transportation.*

a. Air travel. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses noncommercial air transportation made available by a corporate entity shall, in advance, reimburse the corporate entity as follows:

(1) Where the destination is served by regularly scheduled commercial service, the coach class airfare (without discounts).

(2) Where the destination is not served by a regularly scheduled commercial service, the usual charter rate.

b. Other transportation. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation made available by a corporate entity shall, within a commercially reasonable time, reimburse the corporate entity at the normal and usual rental charge.

4.47(5) *Equal access not required.* For the purpose of this rule, it is not necessary that the corporate entity be in the business of selling or renting the property, good or service to the general public; further, it is not necessary that the corporate entity provide access to the same property, good or service to other candidates or committees.

4.47(6) *Commercially reasonable time.* For the purpose of this rule, a rebuttable presumption is established that reimbursement to the corporate entity within ten business days is acceptable as within a commercially reasonable time.

4.47(7) *Loans and debts.* A financial institution may make a loan to a candidate or candidate's committee so long as the loan is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.18(68A,68B). A candidate or candidate's committee may owe a debt to an insurance company, financial institution, or corporation so long as the debt is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.16(68A,68B). The repayment of a loan or debt under this subrule shall be made prior to the dissolution of the committee pursuant to rule 351—4.57(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.48(68A,68B) Use of corporate facilities for individual volunteer activity by stockholders, administrative officers and employees. Rescinded IAB 8/2/06, effective 9/6/06.

351—4.49(68A,68B) Individual property. These rules do not apply to the personal or real property of corporate officers or of individuals employed or associated with a corporate entity and shall not abridge the free-speech rights and privileges of individuals.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.50(68A) Political corporations. The prohibitions in Iowa Code Supplement section 68A.503 on corporations that make expenditures to expressly advocate for or against a clearly identified candidate do not apply to a nonprofit advocacy corporation that has received certification as a political corporation pursuant to this rule.

4.50(1) Applicability. A political corporation may make an independent expenditure as defined in Iowa Code Supplement section 68A.404(1) to expressly advocate for or against a clearly identified candidate. However, a political corporation may not make direct contributions to a candidate's committee, state statutory political committee, county statutory political committee, or any political committee (PAC) that is established to expressly advocate for or against a clearly identified candidate.

4.50(2) Criteria. A corporate entity applying for certification as a political corporation shall meet all of the following criteria:

a. The corporation was organized solely for political purposes and engages in minor business activities that generate minimal income and that are incidental to its political purposes.

b. The corporation is not sponsored by a business corporation and has a policy of accepting only an insignificant and insubstantial amount of income from business corporations.

c. The corporation has no shareholders or others that have claims on its assets or earnings.

4.50(3) Application. A corporate entity seeking certification as a political corporation shall submit a letter affirming that the corporate entity meets all of the criteria set out in subrule 4.50(2). The application letter shall also include all other pertinent details of the corporate entity's activities and shall be signed by a corporate officer.

4.50(4) Board review. The board shall review an application letter from a corporate entity seeking status as a political corporation and shall issue a letter of approval or denial.

4.50(5) Denial or failure to seek certification. It shall be deemed a violation of Iowa Code Supplement section 68A.503 for a corporate entity that is denied certification as a political corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate. It shall be deemed a violation of Iowa Code Supplement section 68A.503 for a corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate without first seeking certification as a political corporation.

4.50(6) Filing. As required by Iowa Code Supplement section 68A.404, a corporate entity granted political corporation status that makes an independent expenditure in excess of \$750 in the aggregate shall file an independent expenditure statement within 48 hours after the making of the expenditure.

4.50(7) Campaign committee incorporation. An Iowa committee organized under Iowa Code Supplement chapter 68A that chooses to incorporate may do so without applying for certification as a political corporation. A committee that chooses to incorporate is not a prohibited contributor under Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement sections 68A.404 and 68A.503.

351—4.51(68A) Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable. Iowa Code Supplement section 68A.503 prohibits corporations from making contributions to state or local candidates in Iowa. This prohibition does not apply to incorporated media organizations that host candidate debates described in this rule.

4.51(1) Media organization defined. "Media organization" means a broadcaster, cable television operator, television programmer, television producer, bona fide newspaper, magazine, or any other

periodical publication. The media organization shall not be owned or controlled by a political party, political committee, or candidate.

4.51(2) *Debate structure.* The structure of the debate shall be left to the discretion of the media organization provided that at least two or more candidates for the particular office are invited to participate. The debate shall not be structured to promote or advance one candidate over another. In choosing which candidates to invite to a debate, the media organization shall use good faith editorial judgment that is reasonable and viewpoint-neutral.

4.51(3) *Funding debates.* A media organization may use its own funds and may accept funds donated by corporations to defray costs incurred in staging a candidate debate under this rule.

4.51(4) *Contribution reporting inapplicable.* The costs of a debate under this rule are not a reportable monetary or in-kind contribution under Iowa Code Supplement section 68A.402.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.503.

351—4.52(68A,68B) Corporate involvement with political committee funds.

4.52(1) *Corporate payroll deductions.* For purposes of interpretation of Iowa Code Supplement section 68A.503, the administrative functions performed by a corporation (profit or nonprofit corporation including, but not limited to, a bank, savings and loan institution, credit union or insurance company) to make payroll deductions for an employee organization's political committee and to transmit the deductions in lump sum to the treasurer of the political committee shall not be a prohibited corporate activity so long as the corporate entity is serving only as a conduit for the contributions.

4.52(2) *Electronic transfer of deposits.* A corporation, financial institution, or insurance company may receive and deposit checks that include both dues and PAC contributions. Contributions for the PAC shall be transferred as soon as possible into the PAC checking account and all disclosure, record-keeping, and record-retention requirements of Iowa Code chapter 68A shall be followed.

4.52(3) *Allowable costs of administration.* For the purposes of interpreting Iowa Code Supplement section 68A.503, subsection 3, which permits an entity otherwise forbidden from contributing to a candidate or a candidate's committee for "financing the administration of a committee sponsored by that entity," the following are considered to be allowable costs of administration:

a. Full or partial compensation for political committee staff, which may include both wages and benefits.

b. Expenses of transportation and travel incurred by political committee staff; however, this does not include expenses of transportation or travel if provided by a political committee or a staff member to a candidate, nor does this include expenses of meals or events held on behalf of a candidate.

c. Printing and office supplies related to routine office administration so long as the printing and supplies are not used to expressly advocate for or against any candidate.

d. Postage and stationery, including that necessary for mailing contributions to specific candidates. Postage and stationery necessary for distributing political material expressly advocating a specific candidate to persons other than the committee membership are not permitted.

e. Expenses of maintaining committee records and preparing financial disclosure reports, including costs associated with services provided by an accountant or other professional.

f. Promotional materials, such as stickers, pens, and coffee cups, so long as the items promote the political committee itself, but not a specific candidate.

An item which is excluded by this subrule from being an allowable cost of administration may still be provided by the committee, so long as that cost is paid for from contributions or other sources of funds other than the parent entity.

This rule is intended to implement Iowa Code Supplement section 68A.503.

DIVISION V
INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

351—4.53(68A,68B) Express advocacy; in-kind contributions; independent expenditures—definitions. For the purposes of Iowa Code Supplement chapter 68A, the following definitions apply.

4.53(1) Express advocacy. “Express advocacy” means any communication as defined in Iowa Code Supplement section 68A.102(14). “Express advocacy” includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

4.53(2) In-kind contribution. “In-kind contribution” means the provision of any good or service to a committee without charge or at a charge that is less than the usual and normal charge for such good or service. If a good or service is provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the good or service at the time of the contribution and the amount charged the committee. An in-kind contribution also includes any expenditure that meets the definition of a coordinated expenditure in subrule 4.53(4).

4.53(3) Independent expenditure. “Independent expenditure” means an expenditure by a person for goods or services, including express advocacy communication, on behalf of a candidate or a ballot issue which is not made with the knowledge and approval of a candidate or a ballot issue committee. “Independent expenditure” does not include incidental expenses (expenses of \$25 or less per incident absorbed by the volunteer which result from or arise out of the volunteer work) incurred by an individual in performing volunteer work.

4.53(4) Coordinated expenditure. “Made with the knowledge and approval of a candidate or ballot issue committee” means that there has been arrangement, coordination, or direction by the candidate or an agent or officer of the candidate’s committee or a ballot issue committee prior to the procurement or purchase of the good or service, or the publication, distribution, display, or broadcast of an express advocacy communication. This may also be referred to as a “coordinated expenditure.” An expenditure will be presumed to be coordinated when it is:

a. Based on information provided to the expending person by the candidate, the candidate’s committee, or the ballot issue committee with a view toward having an expenditure made; or

b. Made by or through any person who is or has been authorized to raise or expend funds; who is or has been an officer of the candidate’s committee or the ballot issue committee; or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate’s committee, or the ballot issue committee.

This rule is intended to implement Iowa Code Supplement section 68A.404.

DIVISION VI
COMMITTEE DISSOLUTION

351—4.54(68A) Committee dissolution; disposition of property; resolution of loans or debts. A committee shall not dissolve until all loans and debts are paid, forgiven, or transferred, and the remaining funds in the committee’s campaign account are distributed according to Iowa Code sections 68A.302 and 68A.303 and rule 351—4.25(68A,68B). In the case of a candidate’s committee, the disposition of all campaign property with a residual value of \$100 or more must be accomplished before dissolution.

4.54(1) Manner of disposition—candidates’ committees. A candidate’s committee shall dispose of campaign property with a residual value of \$100 or more through a sale of the property at fair market value, with proceeds treated as any other campaign funds, or through donation of the property as set out in Iowa Code section 68A.303(1). The candidate’s committee shall disclose on the committee’s campaign report the manner of disposition.

4.54(2) Resolution of loans and debts. The loans and debts of a committee may be transferred, assumed, or forgiven except that a loan or debt owed to a financial institution, insurance company, or corporation may not be forgiven unless the committee is a ballot issue committee. The committee shall

disclose on the committee's campaign report the transfer, assumption, or forgiveness of a loan or debt on the appropriate reporting schedules.

4.54(3) *Settlement of disputed loans and debts.* A dispute concerning a loan or debt may be resolved for less than the original amount if the committee discloses on the committee's campaign report the resolution of the dispute. If the dispute is between a candidate's committee and a financial institution, insurance company, or corporation, the candidate's committee shall submit a written statement to the board describing the loan or debt, the controversy, and the steps taken to settle or collect the loan or debt. The board will review the statement and determine whether to permit the candidate's committee to report the loan or debt as discharged.

4.54(4) *Unavailable creditor.* If the committee cannot locate a person to whom it owes a loan or debt, the committee shall provide the board with a written statement describing the steps the committee has taken to locate the creditor and shall request direction from the board as to what additional steps, if any, should be taken. If a candidate's committee owes a loan or debt to a financial institution, insurance company, or corporation, resolution of the matter shall include payment to a charitable organization or the general fund of the state of Iowa.

This rule is intended to implement Iowa Code section 68A.402B.

351—4.55(68A) Statement of dissolution; final report; final bank statement.

4.55(1) *Statement of dissolution.* A statement of dissolution (Form DR-3) shall be filed after the committee terminates its activity, disposes of its funds and assets, and has discharged all of its loans and debts. The statement shall be either typewritten or printed legibly in black ink and shall be signed by the person filing the statement. A statement of dissolution filed electronically using the board's Web site is deemed signed when filed.

4.55(2) *Place of filing.* Statements of dissolution shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.55(3) *Time of filing.* A committee seeking dissolution shall file a statement of dissolution within 30 days of terminating activity, disposing of funds and assets, and discharging all loans and debts. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the required due date. Faxed or electronically filed statements must be submitted at or before 11:59 p.m. on the required due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the next working day.

4.55(4) *Final report.* The committee shall file a final report disclosing the committee's closing transactions. Once the board staff reviews the report and determines that the committee has complied with all of the requirements of Iowa Code chapter 68A, the committee is no longer required to file campaign reports. If the board staff determines that the committee has not complied with all of the requirements of Iowa Code chapter 68A, the committee, prior to being dissolved, shall resolve all issues.

4.55(5) *Final bank statement.* A copy of the committee's final bank statement showing the committee's closing transactions and a zero balance shall be attached to or submitted with the committee's final report. A committee participating in an election at the county, city, school, or other political subdivision level is not required to file a final bank statement unless requested to do so by the board. A committee seeking a waiver from the requirements of this subrule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code section 68A.402B.

351—4.56(68A,68B) Disposition of property for dissolution of committee. Rescinded IAB 6/22/05, effective 7/27/05.

351—4.57(68A,68B) Assumption or settlement of debts and obligations. Rescinded IAB 6/22/05, effective 7/27/05.

DIVISION VII
CIVIL PENALTIES FOR LATE REPORTS

351—4.58(68B) Late-filed campaign disclosure reports.

4.58(1) *Late reports.* A campaign disclosure report is deemed filed late if it is not received on or before the applicable due date as set out in rule 351—4.9(68A).

4.58(2) *Methods of filing.* A campaign disclosure report may be filed by any of the following methods: hand-delivered, mailed, faxed, sent as an E-mail attachment, or sent electronically via the Internet. The location for filing reports is set out in rule 351—4.8(68A,68B).

4.58(3) *Physical receipt.* A report must be physically received by the board as set out in rule 351—4.10(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.59(68B) Routine civil penalty assessment for late-filed disclosure reports.

4.59(1) *Administrative resolution.* In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all late-filed disclosure reports. The board shall notify any person assessed a penalty of the amount of the assessment and the person's ability to request a waiver under rule 351—4.60(68B). A committee using the board's electronic filing system shall not be assessed a civil penalty if the board's electronic filing system is not properly functioning and causes the committee to be unable to timely file the report.

4.59(2) *County and local committee assessments.* County, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$20	\$50
15 to 30 consecutive days delinquent	\$50	\$100
31 to 45 consecutive days delinquent	\$100	\$200

4.59(3) *State committee assessments.* Statewide, general assembly, state statutory, and state political committees, and a judge standing for retention shall be assessed civil penalties for late-filed reports, except for supplementary and special election reports, in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$50	\$100
15 to 30 consecutive days delinquent	\$100	\$200
31 to 45 consecutive days delinquent	\$200	\$300

4.59(4) *Supplementary report assessments.* General assembly candidates' committees required to file supplementary disclosure reports shall be assessed a \$200 civil penalty for filing a supplementary report one or more days late. Statewide committees required to file supplementary disclosure reports shall be assessed a \$400 civil penalty for filing a supplementary report one or more days late.

4.59(5) *Special election assessments.* The committees of general assembly candidates to fill vacancies in special elections shall be assessed a \$100 civil penalty for filing a special election report one or more days late. The committees of statewide candidates to fill vacancies in special elections shall be assessed a \$200 civil penalty for filing a special election report one or more days late.

4.59(6) *Verified statement of registration assessments.* An out-of-state committee that chooses to file a verified statement of registration (VSR) as provided in Iowa Code Supplement section 68A.201 and rule 351—4.32(68A), but fails to file the VSR on or before the fifteenth day after the date of the contribution, shall be assessed a \$25 civil penalty per late-filed VSR. However, if there is a repeat delinquency by the committee in a 12-month period, the penalty shall be \$50.

For purposes of this subrule, “date of the contribution” means the day, month and year the contribution check is dated.

4.59(7) *Independent expenditure assessment.* A person that is delinquent in filing an independent expenditure statement shall be assessed a \$25 civil penalty for filing the statement one or more days delinquent, except that if there is a repeat delinquency by the person in timely filing an independent expenditure statement within a 12-month period, the penalty shall be \$50.

4.59(8) *Form DR-OTC assessment.* A permanent organization that has not previously made a contribution in excess of \$750 and that fails to file Form DR-OTC within ten days of notice to do so by the board shall be assessed a \$20 civil penalty. A permanent organization that has previously made a contribution in excess of \$750 and that fails to file Form DR-OTC within ten days of the date on which the contribution check is issued shall be assessed a \$20 civil penalty.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.60(68B) Requests for waiver of penalties. If a person believes that there are mitigating circumstances that prevented the timely filing of a report, the person may make a written request to the board for waiver of the penalty. A person seeking a waiver must submit the request to the board within 30 days of receiving a civil penalty assessment order. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or seek a contested case proceeding pursuant to rule 351—4.61(68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.61(68B) Contested case challenge.

4.61(1) *Request.* If the person accepts administrative resolution of a matter through the payment of the assessed penalty, the matter shall be closed. If the person chooses to contest the board’s decision to deny the request or grant a partial waiver of an assessed penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board’s decision.

4.61(2) *Procedure.* Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board’s rules. The burden shall be on the board’s legal counsel to prove that a violation occurred.

4.61(3) *Failure to request hearing.* Failure to request a contested case proceeding to appeal the board’s decision on a waiver request is failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.62(68B) Payment of penalty.

4.62(1) *Where payment made.* Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Such funds shall be deposited in the general fund of the state of Iowa.

4.62(2) *Who may make payment.* Payment may be made at the person’s discretion, including from funds of a committee or from personal funds of an officer of a committee. Payments from corporate entities as described in Iowa Code Supplement section 68A.503 are prohibited, except in the case of a ballot issue committee.

4.62(3) *Disclosure of payment.* If payment is made from a source other than committee funds and is for payment of an assessment to the committee, the payment shall be publicly disclosed as an in-kind contribution to the committee.

This rule is intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

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¹ Effective date of rule 4.16 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).

CHAPTER 5
USE OF PUBLIC RESOURCES FOR A POLITICAL PURPOSE

351—5.1(68A) Scope of chapter. Iowa Code Supplement section 68A.505 prohibits the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue. For the purposes of this chapter, the board will construe the phrase “expenditure of public moneys for political purposes” broadly to include the use of public resources generally. This chapter outlines the permissible and impermissible uses of public resources for a political purpose pursuant to Iowa Code Supplement section 68A.505 and board interpretations of the statute.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.2(68A) Applicability. This chapter applies to the use of resources that belong to the executive branch of state government, a county, city, public school, or other political subdivision by state and local campaigns in Iowa. This chapter does not apply to property belonging to the federal government or to the use of the executive branch of state government, a county, city, public school, or other political subdivision by a federal campaign.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.3(68A) Definitions. For purposes of this chapter, the following definitions apply:

“*Ballot issue*” means a question that has been approved to be placed before the voters or is otherwise required by law to be placed before the voters. “Ballot issue” does not include the nomination or election of a candidate.

“*Campaign*” means the organized effort to expressly advocate the nomination, election, or defeat of a candidate for state or local office in Iowa. “Campaign” also means the organized effort to expressly advocate the passage or defeat of a ballot issue.

“*Candidate*” means any individual who has taken affirmative action to seek nomination or election to a state or local office in Iowa.

“*Expressly advocate*” means “express advocacy” as defined in Iowa Code Supplement section 68A.102(14) and 351—subrule 4.53(1). “Express advocacy” includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

“*Political purpose*” means to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.

“*Public resources*” means the moneys, time, property, facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision.

“*Public school*” includes a school designated as a “charter school.”

This rule is intended to implement Iowa Code Supplement sections 68A.102 and 68A.505.

351—5.4(68A) Use of public resources for a political purpose prohibited.

5.4(1) General prohibition. Unless one of the exceptions in rule 351—5.5(68A) applies, the public officials and public employees of the executive branch of state government, a county, city, public school, or other political subdivision shall not permit public resources to be used to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.

5.4(2) Specific prohibitions. For purposes of clarifying the general prohibition on the use of public resources for a political purpose, the board has identified situations in which the use of public resources for a political purpose is prohibited unless one of the exceptions in rule 351—5.5(68A) applies. The following specific conduct or actions are deemed to be the prohibited use of public resources for a political purpose:

a. Using public resources to solicit or accept campaign contributions.

b. Using public resources to solicit votes, engage in campaign work, or poll voters on their preferences for candidates or ballot issues. The prohibition on polling voters by using public resources does not apply to authorized research at a public university.

c. Using a publicly owned motor vehicle to transport political materials, placing campaign signs on a publicly owned motor vehicle, or traveling to campaign-related events in a publicly owned motor vehicle.

d. Using public resources to produce and distribute communications that expressly advocate for or against candidates or that expressly advocate for or against ballot issues.

e. Placing campaign materials on public property including the placement of campaign signs in the public right-of-way.

5.4(3) *Transportation maps.* As provided in Iowa department of transportation rule 761—28.3(307), Iowa transportation maps are not to be sold or used for purposes of personal or professional gain. The paper version of the map is not to be altered for distribution in any way, including adding a name or address, by candidates running for political office. This prohibition does not apply to pictures of the governor and lieutenant governor and a personal message which may appear on the map.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.5(68A) Exceptions from prohibition on use of public resources for a political purpose.

5.5(1) *Expressing opinion by resolution.* Iowa Code Supplement section 68A.505 permits the state or a governing body of a county, city, public school, or other political subdivision to express an opinion on a ballot issue through the passage of a resolution or proclamation. It is also permissible for a member of a governing body of the state, county, city, public school, or other political subdivision to express the member's opinion on a ballot issue at a public meeting of the governing body.

5.5(2) *Public forum.* Any public resource that is open to a member of the general public to use for other purposes may be used for political purposes, including the distribution of political materials on windshields of vehicles that are parked in public parking lots.

5.5(3) *Candidate debate.* The executive branch of state government, a county, city, public school, or other political subdivision may permit the holding of a candidate debate or forum and the accompanying distribution of campaign materials on governmental property so long as at least two candidates seeking the same office are invited to attend the debate or forum.

5.5(4) *Reimbursement to governmental body.* A person may reimburse a governmental body for the use of a public resource for a political purpose so long as it can be demonstrated to the board that the use of the resource was also for a public purpose or furthered a public interest. The reimbursement shall be for the actual costs of the public resource or be for the same amount charged to a person using the public resource for any other purpose.

5.5(5) *Communications that do not expressly advocate.* Public resources may be used to produce and distribute communications that do not expressly advocate for or against a candidate or that do not expressly advocate for or against a ballot issue.

5.5(6) *Use of job title.* As there is no expenditure of taxpayer funds, job titles may be used for political purposes.

5.5(7) *Residence.* It is not deemed a violation of Iowa Code Supplement section 68A.505 for a public official or public employee to use for political purposes the portion of public property that is designated as the personal residence of the public official or public employee.

5.5(8) *Clothing or paraphernalia.* While performing official duties, a public official or public employee may wear clothes or wear political paraphernalia that expressly advocate for or against candidates or that expressly advocate for or against ballot issues. However, the administrative head of a state agency or of a department of a political subdivision may enact an internal policy that would prohibit the wearing of campaign materials on the public property of that agency or subdivision.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.6(68B) Board advice. Public officials, public employees, or other persons interested in using public funds for a political purpose may first seek advice or guidance from the board concerning the legality of the action or conduct.

5.6(1) *Advisory opinion.* A board advisory opinion applies a statute or rule to a particular factual situation. The procedure for requesting a board opinion is set out in rules 351—1.2(68B) and 1.3(68B). As provided in Iowa Code section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10, a board opinion, if followed, constitutes a defense to a subsequent complaint concerning the same facts and circumstances.

5.6(2) *Declaratory order.* Persons may also seek board guidance concerning the application of a statute or rule to a specific factual situation through the petition for declaratory order procedure set out in 351—Chapter 12.

5.6(3) *Board review of a communication.* Any person interested in producing and distributing a communication using public resources may submit the communication prior to its distribution for a board determination of whether or not the communication contains express advocacy.

This rule is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

351—5.7(68B) Complaints. Any person may file a complaint or provide information to the board alleging a violation of Iowa Code Supplement section 68A.505 or the rules of this chapter by a public official or a public employee of the executive branch of state government or a political subdivision of state government. The procedure for filing a complaint or providing information to the board is set out in Iowa Code section 68B.32B and 351—Chapter 9.

This rule is intended to implement Iowa Code section 68B.32B.

351—5.8(68A) Holders of certain government positions prohibited from engaging in political activities. Several statutes outside of the board's jurisdiction prohibit the holders of certain government positions from being engaged in political activities. The board does not enforce these statutory prohibitions. However, to assist the regulated community and the public, the board will maintain on its Web site at <http://www.state.ia.us/ethics/index.htm> a list of positions whose holders are prohibited from engaging in political activities.

This rule is intended to implement Iowa Code section 68A.505.

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CHAPTER 6
EXECUTIVE BRANCH ETHICS

DIVISION I
GENERAL PROVISIONS

351—6.1(68B) Scope of chapter. Pursuant to Iowa Code section 68B.32(1), the Iowa ethics and campaign disclosure board is to set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, and candidates for office in the executive branch of state government. Pursuant to Iowa Code Supplement section 68B.32A(12), the board is required to establish rules relating to ethical conduct for the executive branch of state government. This chapter sets the standards and establishes the rules for the ethical conduct of persons in the executive branch of state government.

This rule is intended to implement Iowa Code section 68B.32(1) and Iowa Code Supplement section 68B.32A(12).

351—6.2(68B) Definitions. For purposes of this chapter, the following definitions apply:

“*Agency of state government*” or “*state agency*” means any authority, board, bureau, commission, community college, department, division, office of a statewide elected official, or regents university.

“*Board*” means the Iowa ethics and campaign disclosure board.

“*Candidate for statewide office*” means a candidate for governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general.

“*Employee*” means an individual who is a paid employee of any agency of state government. “Employee” does not include an official or an independent contractor.

“*Executive branch of state government*” means an agency of state government.

“*Official*” means a statewide elected official, an executive or administrative head or heads of a state agency, a deputy executive or administrative head or heads of a state agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

“*State duties*” means the official duties, responsibilities, or activities of an official or employee that are mandated by law, rule, or court order, or that otherwise lawfully aid an agency of state government in carrying out the statutory functions of the agency.

This rule is intended to implement Iowa Code Supplement section 68B.2.

351—6.3(68B) Complaints or filing information alleging a violation.

6.3(1) *Who may file.* Any person may file a complaint or provide information to the board alleging a violation of Iowa Code Supplement chapter 68B or this chapter by officials, employees, and candidates for statewide office.

6.3(2) *Procedure.* The procedure for filing a complaint or providing information to the board alleging a violation of Iowa Code Supplement chapter 68B or this chapter is set out in Iowa Code section 68B.32B and 351—Chapter 9.

6.3(3) *Whistleblower protection.* A person who discharges or discriminates against an official or employee because the official or employee filed a complaint or provided information to the board shall be subject to the board’s complaint process if the official or employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an official or employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this subrule, “good faith” means that any statements or materials in a complaint or included as part of information provided to the board were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code Supplement section 68B.32A(13) and Iowa Code section 68B.32B.

351—6.4(68B) Board advice. Persons subject to the authority of the board under Iowa Code Supplement chapter 68B or this chapter may seek advice or guidance from the board concerning the legality of any action or conduct potentially affected by Iowa Code Supplement chapter 68B or this chapter.

6.4(1) Advisory opinion. A board advisory opinion applies a statute or rule under the board's jurisdiction to a particular factual situation. The procedure for requesting a board opinion is set out in rules 351—1.2(68B) and 351—1.3(68B). Pursuant to Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10, a board opinion, if followed, constitutes a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

6.4(2) Declaratory order. Persons may also seek board guidance concerning the application of a statute or rule under the board's jurisdiction to a specific factual situation through the petition for declaratory order procedure set out in 351—Chapter 12.

6.4(3) Routine administrative advice. A person may also receive oral or written routine administrative advice from board staff concerning the application of Iowa Code chapter 68B or this chapter. Routine administrative advice is not binding on the board, but may be offered as a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

This rule is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

DIVISION II
CONFLICT OF INTEREST AND MISUSE OF PROPERTY

351—6.5 to 6.7 Reserved.

351—6.8(68B) Misuse of public property. Iowa Code section 68B.32A(12) directs the board to establish rules relating to the misuse of public property by officials, employees, and candidates for statewide office.

6.8(1) Definition of public property. "Public property" means any real or personal property owned or controlled by the state of Iowa including but not limited to buildings, facilities, equipment, supplies, funds, records, files, and materials.

6.8(2) Prohibited uses. The following are deemed to be the misuse of public property by an official, employee, or candidate for statewide office:

a. Using public property to engage in an outside employment or activity that leads to an unacceptable conflict of interest as prohibited in Iowa Code section 68B.2A(1) "a."

b. Using public property to knowingly and purposefully send, receive, or view obscene material. "Obscene material" means any material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value.

This paragraph shall not apply to obscene materials that are sent or received as part of a law enforcement investigation or are authorized by law to be sent or received.

c. Using public property for personal financial gain. This prohibition does not apply to the receipt of lawful compensation for the performance of official state duties.

d. Using public property for a personal benefit to the detriment of the state.

e. Removing public property from a state building or facility for personal use.

f. Using public property to engage in political activities as prohibited in 351—Chapter 5.

This rule is intended to implement Iowa Code section 68B.32A(12).

351—6.9(68B) Use of confidential information. No official or employee shall disclose or use confidential information, including the contents of a sealed bid acquired during the course of the

official's or employee's state duties, for the personal gain or benefit of any person. This rule does not apply to the release of information that is mandated by law, rule, or court order.

This rule is intended to implement Iowa Code Supplement section 68B.32A(12).

DIVISION III
SALES OR LEASES OF GOODS OR SERVICES

351—6.10(68B) Prohibition on sales; when public bids required—disclosure of income. Pursuant to Iowa Code section 68B.3 as amended by 2007 Iowa Acts, Senate File 40, section 1, an official or employee shall not sell, in any one occurrence, goods or services having a value in excess of \$2,000 to a state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding.

6.10(1) Exceptions. The prohibition in Iowa Code section 68B.3 as amended by 2007 Iowa Acts, Senate File 40, section 1, and this rule shall not apply to any of the following:

- a. Sales of goods or services done as part of the official's or employee's state duties.
- b. The publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated by law for the publication of such materials and for which publication rates are fixed by law.
- c. Instruction at an accredited educational institution if the official or employee meets the minimum education and licensing requirements established for other instructors at the educational institution.

6.10(2) Sales to political subdivisions. An official who sells goods or services to a political subdivision of the state shall disclose on the official's Form PFD as provided in 351—Chapter 7 if income was received from the sale.

This rule is intended to implement Iowa Code section 68B.3 as amended by 2007 Iowa Acts, Senate File 40, section 1.

351—6.11(68B) Sales or leases by regulatory agency officials or employees. An official or employee of a regulatory agency shall not directly or indirectly sell or lease any goods or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, and this rule. This prohibition does not apply to sales or leases that are part of the official's or employee's state duties.

6.11(1) Applicability. Pursuant to Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, the board shall adopt rules specifying the method by which an official or employee of a regulatory agency may obtain consent to sell or lease a good or service to an individual, association, or corporation subject to the regulatory authority of the official's or employee's agency. This rule sets out the method of obtaining consent by a regulatory agency official or employee.

6.11(2) Definitions. For purposes of this rule, the following definitions apply:

"Agency" means a regulatory agency.

"Employee" means an employee of an executive branch regulatory agency and does not include an independent contractor or an official.

"Official" means a statewide elected official of a regulatory agency, an executive or administrative head or heads of a regulatory agency, a deputy executive or administrative head or heads of a regulatory agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a regulatory agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

"Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public

employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

6.11(3) Request for consent. An official's or employee's request for an agency's consent to the sale or lease of goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed with the official's or employee's agency at least 20 calendar days in advance of the proposed sale or lease of any goods or services.

b. The request shall include all of the following:

(1) The name of the individual, association, or corporation to which the goods or services are to be sold or leased;

(2) The relationship of the individual, association, or corporation to the agency;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the official or employee explaining how the proposed sale or lease of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, or create a conflict of interest under Iowa Code section 68B.2A.

6.11(4) Agency guidelines. Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, and the guidelines in this subrule shall be the sole legal authorities to be used by an agency in considering the granting of consent. In determining whether to grant consent, the agency shall take the following guidelines into consideration:

a. The official or employee seeking consent is not the person with the authority to determine whether consent should be granted.

b. The duties and functions performed by the official or employee seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods or services will be sold or leased.

c. The selling or leasing of the goods or services does not affect the official's or employee's duties or functions at the agency.

d. The selling or leasing of the goods or services will not cause the official or employee to advocate on behalf of the individual, association, or corporation to the agency.

e. The selling or leasing of the goods or services does not cause the official or employee to sell or lease goods or services to the agency on behalf of the individual, association, or corporation.

f. The selling or leasing of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

g. The request complies with the procedural requirements of subrule 6.11(3).

h. A regulatory agency may grant blanket consent for sales or leases to classes of individuals, associations, or persons when such blanket consent is consistent with subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

These guidelines shall be publicized and made known to all personnel throughout the agency.

6.11(5) Agency decision. The official's or employee's agency shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the official or employee and the agency. If the request is denied or granted conditionally, the agency shall state the reasons for the denial or conditional consent.

6.11(6) Appeal of denial. An official or employee who receives a denial or conditional consent may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.11(7) Copy of consent filed with board. Pursuant to Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, an agency granting consent shall file a copy of the consent with the board within 20 days of the granting of consent. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the individual who granted the consent.

6.11(8) *Consent not a defense.* Consent granted by an agency under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the official or employee to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2.

351—6.12(68B) Sales or leases by members of the office of the governor. A permanent full-time member of the office of the governor shall not directly or indirectly sell or lease any goods or services to registered lobbyists before the general assembly or the executive branch or to individuals, associations, or corporations that employ persons who are registered lobbyists before the general assembly or the executive branch except as provided in Iowa Code Supplement section 68B.4B as amended by 2006 Iowa Acts, House File 2593, section 3, and this rule. This prohibition does not apply to sales or leases that are part of the member's state duties.

6.12(1) *Request for consent.* A request submitted by a member of the office of the governor for consent to sell or lease goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed at least 20 calendar days in advance of the proposed sale or lease of any goods or services with the person responsible for hiring or approving the hiring of the member.

b. The request shall include all of the following:

(1) The name of the lobbyist, individual, association, or corporation to which the goods or services are to be sold or leased;

(2) The relationship of the lobbyist, individual, association, or corporation to the office of the governor;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the member explaining how the proposed sale or lease of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4B as amended by 2006 Iowa Acts, House File 2593, section 3, or create a conflict of interest under Iowa Code section 68B.2A.

6.12(2) *Guidelines for granting consent.* In determining whether to grant consent, the person responsible for hiring or approving the hiring of the member shall take the following guidelines into consideration:

a. The duties and functions performed by the member are not related to the authority of the office of the governor over the lobbyist, individual, association, or corporation.

b. The selling or leasing of goods or services by the member to the lobbyist, individual, association, or corporation does not affect the member's duties or functions at the office of the governor.

c. The selling or leasing of any goods or services by the member to a lobbyist, individual, association, or corporation does not include lobbying the office of the governor.

d. The selling or leasing of any goods or services by the member does not cause the member to sell or lease goods or services to the office of the governor on behalf of the lobbyist, individual, association, or corporation.

e. The selling or leasing of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

f. The request complies with the procedural requirements of subrule 6.12(1).

g. A blanket consent may be granted for sales or leases to classes of lobbyists, individuals, associations, or corporations when such blanket consent is consistent with subrule 6.12(2) and the granting of single consents is impractical or impossible to determine.

These guidelines shall be publicized and made known to members of the office of the governor.

6.12(3) *Decision.* The person responsible for hiring or approving the hiring of the member shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the member and the person. If the request is denied, the person shall state the reasons for the denial.

6.12(4) *Appeal of denial.* A member who receives a denial may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code Supplement section 68B.4B as amended by 2006 Iowa Acts, House File 2593, section 3, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.12(5) *Copy of consent filed with board.* Pursuant to Iowa Code Supplement section 68B.4B as amended by 2006 Iowa Acts, House File 2593, section 3, a copy of the consent granted to a member shall be filed with the board within 20 days of the granting of consent. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the person who granted the consent.

6.12(6) *Consent not a defense.* Consent granted under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the member of the office of the governor to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code Supplement section 68B.4B as amended by 2006 Iowa Acts, House File 2593, section 3.

DIVISION IV
EMPLOYMENT RESTRICTIONS

351—6.13 Reserved.

351—6.14(68B) *Engaging in services against the interest of the state prohibited.* Except for a member of a board or commission, no official or employee shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state except as set out in Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8, and this rule. This prohibition relates to any case, proceeding, application, or other matter before any federal court, federal bureau, federal agency, federal commission, federal department, any agency of state government, or any court of the state of Iowa.

6.14(1) *Definitions.* For purposes of this rule, the following definitions apply:

“*Board*” means a policy-making body that has the power to hear contested cases or a policy-making body that has powers for both rule making and hearing contested cases.

“*Commission*” means a policy-making body that has rule-making powers.

6.14(2) *Member of board or commission.* No member of a board or commission shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state in relation to any case, proceeding, application, or other matter before the subunit of a state agency in which the member serves or is employed, or with which the member has substantial and regular contact as part of the member’s state duties.

6.14(3) *Exception for attorney general and public defender.* As provided in 2004 Iowa Acts, Senate File 2179, sections 1 and 2, officials and employees carrying out the official duties of the office of the attorney general or the office of the state public defender are not subject to the provisions of Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8, or this rule.

This rule is intended to implement Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8.

351—6.15 Reserved.

DIVISION V
GIFTS AND OFFERS

351—6.16 to 6.18 Reserved.

351—6.19(68B) Prohibition on receipt of an honorarium. Pursuant to Iowa Code section 68B.23, an official or employee shall not accept an honorarium from a restricted donor.

6.19(1) Definitions. For purposes of this rule, the following definitions apply:

“*Honorarium*” means a payment of compensation or the giving of anything of value to an official or employee in relation to a speaking engagement.

“*Restricted donor*” means a person as defined in Iowa Code section 68B.2(24).

6.19(2) Exceptions. An official or employee may receive and accept an honorarium provided that the honorarium consists of:

a. Payment of actual expenses for registration, food, beverages, travel, or lodging paid in return for participation on a panel or for a speaking engagement at a meeting. The expenses shall relate directly to the day or days on which the official or employee has participation or speaking responsibilities.

b. Receipt of a nonmonetary item or a series of nonmonetary items that the official or employee donates within 30 days of receipt to any of the following:

(1) A public body;

(2) A bona fide educational or charitable organization; or

(3) The department of administrative services. Items donated to the department of administrative services shall be disposed of by assignment to state agencies for official use or by public sale.

c. Payment to an official or employee for services rendered as part of a bona fide private business, trade, or profession in which the official or employee is engaged so long as both of the following conditions are met:

(1) The payment is commensurate with the actual services rendered; and

(2) The payment is being made due to a special expertise or other qualification the recipient possesses separate from the recipient’s status as a public official or public employee.

6.19(3) Solicitation prohibited. An official or employee shall not solicit, demand, or otherwise request an honorarium from a restricted donor.

This rule is intended to implement Iowa Code sections 68B.23 and 68B.32A(12).

351—6.20(68B) Loans from executive branch lobbyists prohibited. Pursuant to Iowa Code section 68B.24, officials, employees, and candidates for statewide office shall not directly or indirectly seek or accept a loan from a person who is an executive branch lobbyist.

6.20(1) Definitions. For purposes of this rule, the following definitions apply:

“*Executive branch lobbyist*” means an individual who is registered as a lobbyist with the board or is an “executive branch lobbyist” as defined in rule 351—8.2(68B).

“*Loan*” means a sum of money upon agreement, express or implied, to be repaid with or without interest.

6.20(2) Offer of loan prohibited. An executive branch lobbyist shall not directly or indirectly offer or make a loan to an official, an employee, or a candidate for statewide office as prohibited in Iowa Code section 68B.24(2) and rule 351—8.16(68B).

6.20(3) Exceptions. The prohibitions in Iowa Code section 68B.24 and this rule do not apply to a loan made in either of the following circumstances:

a. A loan made in the ordinary course of business. For purposes of Iowa Code section 68B.24 and this rule, “ordinary course of business” means the loan is made by a person regularly engaged in a business that makes loans to members of the public, and the finance charges and other terms of the loan are the same as or substantially similar to the finance charges and loan terms that are available to members of the public.

b. A loan made to the campaign committee of a candidate for statewide office that is subject to the campaign laws in Iowa Code chapter 68A.

This rule is intended to implement Iowa Code sections 68B.24 and 68B.32A(12).

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[◊] Two or more ARCs

CHAPTER 7
PERSONAL FINANCIAL DISCLOSURE
[Prior to 7/9/03, see 351—Ch 11]

351—7.1(68B) Filing requirements and procedures.

7.1(1) *Time of filing.* All persons who are required to file a personal financial disclosure statement (Form PFD) with the board pursuant to Iowa Code section 68B.35(2) shall file the statements with the board on or before April 30 of each year following a year during which the person holds a designated position, without regard to the length of time the position was occupied by the person. A person who held a designated position who leaves that position or state employment shall have a continuing obligation to file the statement for any year or portion of a year in which the position was held prior to termination.

7.1(2) *Place of filing.* Form PFD shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The form may also be filed by fax at (515)281-3701.

7.1(3) *Persons holding more than one designated position.* A person who is required to file a personal financial disclosure statement for more than one position shall be required to file only one statement for the reporting year. A member of the general assembly who files a form with the secretary of the senate or the chief clerk of the house shall not be required to file the form with the board for any designated position held in the executive branch.

7.1(4) *Physical receipt.* The board must physically receive a filed Form PFD on or before April 30 of each year. If mailed, the form must bear a United States Postal Service postmark dated on or before April 30. Faxed forms must be submitted on or before 11:59 p.m. on the required due date. If the due date falls on a weekend or holiday, the filing deadline shall be extended to the first working day following the deadline.

7.1(5) *Period covered.* Information shall be filed on Form PFD as designated by the board and shall cover the calendar year immediately preceding the year due. However, a statement filed by a person who has left a designated position during the course of a year need only contain information covering the portion of that year that has elapsed prior to the person's leaving the position.

7.1(6) *Public record.* Rescinded IAB 9/15/04, effective 10/20/04.

This rule is intended to implement Iowa Code sections 68B.32A(4), 68B.35 and 68B.35A.

351—7.2(68B) Information disclosed on form.

7.2(1) *Definitions.* For the purpose of completing Form PFD, "income sources" includes those sources which are held jointly with one or more persons and which in total generate more than \$1000 of income. "Jointly" means that the ownership of the income source is undivided among the owners and that all owners have one and the same interest in an undivided possession, each with full rights of use and enjoyment of the total income. Sources of income that are co-owned but with ownership interests that are legally divisible, without full rights of use or enjoyment of the total income, need not be reported unless the person's portion of the income from that source exceeds \$1000.

7.2(2) *Spousal income.* For purposes of completing Form PFD, income earned solely by the spouse of a person subject to reporting is not income to that person and need not be reported as an income source.

This rule is intended to implement Iowa Code section 68B.35.

351—7.3(68B) Procedure for determining persons required to file with the board—distribution of forms.

7.3(1) *Persons required by statute.* In order to determine which persons in the executive branch are required by Iowa Code Supplement section 68B.35(2) as amended by 2004 Iowa Acts, Senate File 2179, section 11, to file Form PFD, the board shall contact each agency on an annual basis and provide notification of the statutory requirement. This notification shall include the name and position title of each person in the agency who filed Form PFD the previous year. Each agency, in consultation with the board, shall then determine which persons are required to file Form PFD for the next filing period and shall provide the board with the appropriate names and position titles. The board shall have the final authority to determine whether a position requires that a Form PFD be filed.

7.3(2) Boards, commissions, or authorities not named in statute. Pursuant to Iowa Code Supplement section 68B.35(2) “e” as amended by 2004 Iowa Acts, Senate File 2179, section 11, on an annual basis the board shall conduct a review to determine if a member of any other board, commission, or authority not specifically named in Iowa Code Supplement section 68B.35(2) “e” as amended by 2004 Iowa Acts, Senate File 2179, section 11, should file Form PFD. If the board determines that Form PFD should be filed, the board shall by rule require a Form PFD to be filed.

7.3(3) Statewide candidates. A person who is a candidate for statewide office shall file Form PFD with the board no later than 30 days after the date on which a person is required to file nomination papers for state office under Iowa Code section 43.11. Once nomination papers or an affidavit of candidacy is filed, the board shall notify the person of the requirement to file Form PFD. The notification shall be sent by first-class mail and shall include a blank form or information on how to obtain a blank form for filing.

7.3(4) Statewide candidates in a special election. Pursuant to Iowa Code Supplement section 68B.35(5) a person who is a candidate for statewide office in a special election shall file Form PFD with the board within seven days after the certification of the candidate’s name as the nominee under Iowa Code section 43.88.

7.3(5) Distribution of forms. The board shall provide each agency with blank forms for distribution to the designated persons and shall make blank forms available via the board’s Web site at www.iowa.gov/ethics.

This rule is intended to implement Iowa Code Supplement section 68B.32A(4) and Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11.

351—7.4(68B) Delinquent forms. Rescinded IAB 9/15/04, effective 10/20/04.

351—7.5(68B) Penalties.

7.5(1) Penalties for late personal financial disclosure statements. An individual holding a designated position in the executive branch who fails to timely file Form PFD shall be subject to an automatic civil penalty according to the following schedule:

<u>Days Delinquent</u>	<u>Penalty Amount</u>
1 to 14	\$25
15 to 30	\$50
31 and over	\$100

7.5(2) Additional penalty. If an individual holding a designated position in the executive branch fails to file a personal financial disclosure statement within 45 days of the required filing date, a contested case proceeding may be held to determine whether or not a violation has occurred. If after a contested case proceeding it is determined that a violation occurred, the board may impose any of the actions under Iowa Code section 68B.32D. Any action imposed under Iowa Code section 68B.32D would be in addition to an automatically assessed penalty in subrule 7.5(1).

7.5(3) Failure to file true statement. It shall be considered a violation of Iowa Code section 68B.35 for an individual holding a designated position in the executive branch to file a disclosure statement containing false or fraudulent information. Complaints concerning the filing of a false or fraudulent disclosure statement shall be handled by the procedures in Iowa Code section 68B.32B. If it is determined after a contested case proceeding that a false or fraudulent disclosure statement was filed, the board may impose any of the actions under Iowa Code section 68B.32D.

This rule is intended to implement Iowa Code sections 68B.32A(8) and 68B.35.

351—7.6(68B) Requests for waiver of penalties. If an individual holding a designated position in the executive branch believes that mitigating circumstances prevented the timely filing of Form PFD, the individual may make a written request to the board for waiver of the penalty. The request for waiver must be received by the board within 30 days of notification to the individual of the civil penalty assessment. Waivers may be granted only under exceptional or very unusual circumstances. The board will review

the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty may be waived based on the circumstances.

This rule is intended to implement Iowa Code section 68B.32A(8).

351—7.7(68B) Contested case challenge.

7.7(1) Request. If the individual accepts administrative resolution concerning a late-filed Form PFD through the payment of the assessed penalty, the matter shall be closed. If the individual chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the individual shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

7.7(2) Procedure. Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The contested case shall be conducted in accordance with the provisions of 351—Chapter 11. The burden shall be on the board's legal counsel to prove that a violation occurred.

7.7(3) Failure to request proceeding. The failure to request a contested case proceeding to contest the board's decision on a waiver request is a failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 68B.32A(8) and 68B.33.

351—7.8(68B) Payment of penalty. The remittance shall be made payable to the "State of Iowa General Fund" and forwarded to Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The remittance shall be deposited in the general fund of the state of Iowa.

This rule is intended to implement Iowa Code section 68B.32A(8).

351—7.9(68B) Retention and availability of filed forms.

7.9(1) Public record. Forms filed with the board are a public record and shall be available for inspection and copying.

7.9(2) Internet access. Pursuant to Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12, the board shall record a filed Form PFD on the board's Web site at www.iowa.gov/ethics. Filed forms shall be accessible via the board's Web site for a period of at least five years from the reporting due date.

This rule is intended to implement Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11, and Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12.

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[◇] Two or more ARCs

CHAPTER 8
EXECUTIVE BRANCH LOBBYING

[Prior to 11/26/03, see 351—Ch 13]

351—8.1(68B) Executive branch lobbying defined. “Executive branch lobbying” means acting directly to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by a state agency or any statewide elected official. For purposes of this chapter, “state agency” does not include the legislative branch of state government.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.2(68B) Executive branch lobbyist defined. “Executive branch lobbyist” means an individual who by acting directly does at least one of the following:

1. Receives compensation for engaging in executive branch lobbying.
2. Is a designated representative of an organization that has as one of its purposes engaging in executive branch lobbying.
3. Represents the position of a federal, state, or local agency in which the person serves or is employed as the representative designated to engage in executive branch lobbying.
4. Makes expenditures of more than \$1,000 in a calendar year to communicate in person for the purpose of engaging in executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.3(68B) Individuals not considered executive branch lobbyists. The following individuals are not considered to be executive branch lobbyists:

1. Officials and employees of a political party that is organized in the state of Iowa and that meets the requirements of Iowa Code section 43.2, when the officials and employees represent the political party in an official capacity.
2. Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.
3. All federal, state, and local elected officials, while performing the duties and responsibilities of office.
4. Individuals whose activities are limited to appearances to give testimony or provide information or assistance at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.
5. Members of the staff of the United States Congress or the Iowa general assembly.
6. Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency within which an official’s or employee’s agency is involved in a collaborative project.
7. An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization and who is not paid compensation or is not specifically designated as an executive branch lobbyist.
8. Individuals whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under Iowa Code section 17A.4(1).
9. Individuals whose activities are limited to monitoring or following the progress of legislation, a rule, or an executive order, but who do not engage in executive branch lobbying.
10. Individuals who represent a client in responding to a request for proposal or otherwise receiving a contract or grant from a state agency.
11. Individuals who represent a client involved in a legal dispute with the state, including a contested case proceeding.
12. Individuals advocating for or against the appointment of a particular individual to a board or commission of the state.

Individuals who are uncertain as to whether or not they are considered executive branch lobbyists should contact the board for guidance prior to engaging in any executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.4(68B) Executive branch lobbyist client defined. “Executive branch lobbyist client” means a private person or a federal, state, or local governmental entity that pays compensation to or designates an individual to be a lobbyist before the executive branch.

This rule is intended to implement Iowa Code section 68B.2(6).

351—8.5(68B) Lobbyist compensation defined; contingency fee lobbying prohibited.

8.5(1) Lobbyist compensation defined. “Lobbyist compensation” means any money, thing of value, or financial benefit conferred in return for engaging in executive branch lobbying.

8.5(2) Contingency fee lobbying prohibited. No person shall offer, nor shall any person accept, compensation contingent upon the outcome of executive branch lobbying services rendered or to be rendered. Complaints or information alleging a violation of this subrule shall be filed with the board and governed by Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.2(7).

351—8.6(68B) Executive branch lobbying expenditures. This rule is intended to aid executive branch lobbyists in reporting expenditures as required by Iowa Code section 68B.37 that are made by lobbyists for executive branch lobbying purposes. The provisions of this rule are intended to serve as a general guideline to obtain uniform reporting.

8.6(1) Expenditures defined. The following are defined as executive branch lobbying expenditures:

a. Direct communication expenses such as telephone calls, letters, faxes, printing, and postage for purposes of engaging in executive branch lobbying.

b. Other tangible costs directly associated with engaging in executive branch lobbying as defined in rule 351—8.1(68B).

8.6(2) Lobbyist client expenses. For purposes of this rule, any of the expenses set out in subrule 8.6(1) incurred by a lobbyist’s client shall apply to the lobbyist and shall be a reportable expense by the lobbyist. However, an expenditure made by any organization for publishing a newsletter or other informational release for its members is not a reportable expenditure.

This rule is intended to implement Iowa Code section 68B.37.

351—8.7(68B) Lobbyist registration required.

8.7(1) Time of filing. Any individual engaging in executive branch lobbying activity shall register by filing an executive branch lobbyist registration statement with the board on or before the day the lobbying activity begins. Registration expires upon the commencement of a new calendar year. Persons wishing to register for a new calendar year may do so on or after December 1 of the previous year.

8.7(2) Place of filing. Executive branch lobbyist registration statements shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Registration statements may also be filed by fax at (515)281-3701 or electronically through the board’s Web site at www.iowa.gov/ethics.

8.7(3) Information required. The following information shall be disclosed on the executive branch lobbyist registration statement:

a. The lobbyist’s name and business address. The lobbyist’s residential address and E-mail address are optional. The lobbyist shall indicate whether mail should be sent to the lobbyist’s office or residence.

b. A general description of the issues or interests that the lobbyist might follow and a list of agencies or offices that may be lobbied.

c. Whether or not the lobbyist is a governmental official representing the official position of the lobbyist’s department, agency, or governmental entity.

d. Each of the lobbyist’s clients, including the name and address of the client, a contact person and job title, and the contact person’s telephone number. An E-mail address is optional.

e. The lobbyist's signature and date of filing. Registration statements filed electronically through the board's Web site are deemed signed and dated when filed.

8.7(4) *Government employee authorization letter.* As required by Iowa Code section 68B.36(5), all federal, state, and local officials or employees representing the official positions of their departments, commissions, boards, or agencies shall submit with their registration statements letters of authorization from their department or agency heads. Federal, state, and local officials who wish to lobby in opposition to the official position of their departments, commissions, boards, or agencies shall disclose this fact on their lobbyist registration statements.

8.7(5) *Amendment to registration.* Any change or addition to the information in an executive branch lobbyist's registration statement shall be filed with the board within ten days after the change or addition is made known to the lobbyist. The lobbyist may file changes or additions by submitting an amended registration statement or by letter. If the lobbyist submits the changes or additions by letter, the letter shall contain sufficient information to notify the public and the board of the change or addition.

8.7(6) *Cancellation.* If a lobbyist's service on behalf of a client is concluded prior to the end of the calendar year, the lobbyist or client may cancel the registration and terminate the reporting requirements of Iowa Code section 68B.37 and rule 351—8.8(68B) so long as compliance with subrule 8.8(4) is achieved. Cancellation may be completed by the filing of an executive branch lobbyist termination statement or by letter.

8.7(7) *Failure to timely file registration.* An individual who fails to file an executive branch lobbyist registration statement before engaging in executive branch lobbying is in violation of Iowa Code section 68B.36 and is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code section 68B.36.

351—8.8(68B) Executive branch periodic lobbyist reports.

8.8(1) Every executive branch lobbyist, unless an exemption is granted pursuant to subrule 8.8(5), shall file periodic reports disclosing all of the following:

- a. The lobbyist's name and address.
- b. The reporting period covered by the filed report, including disclosing whether the report is an original or amended report.
- c. The lobbyist's clients.
- d. The recipient and amount of campaign contributions made by the lobbyist to candidates for state office. Campaign contributions shall not be made to state officers during the time period described in Iowa Code Supplement section 68A.504 and rule 351—8.15(68A).
- e. Expenditures made by the lobbyist for executive branch lobbying purposes.
- f. The lobbyist's signature and the date filed. Reports filed electronically through the board's Web site are deemed signed and dated when filed.

8.8(2) *Place of filing.* Executive branch periodic lobbyist reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

8.8(3) *Time of filing.* An executive branch periodic lobbyist report shall be filed on or before April 30, July 31, October 31, and January 31, for the preceding calendar quarter or parts thereof during which the lobbyist was engaged in executive branch lobbying. The report must be physically received by the board on or before the report due date. If mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

8.8(4) *Cancellation.* If the lobbyist cancels registration on behalf of a client under rule 351—8.7(68B), the lobbyist shall file a final executive branch periodic lobbyist report on the next required due date or within 15 days of the cancellation, whichever is earlier. As required by Iowa Code section 68B.37(3), the final report shall include cumulative year-to-date information.

8.8(5) *Exemption.* As provided in Iowa Code section 68B.37(3), if the lobbyist is designated to represent an organization other than a governmental entity and is not paid compensation or does not

expend more than \$1,000 to lobby, the lobbyist may file an Application for Lobbyist Quarterly Reporting Exemption form and one Executive Branch Periodic Lobbyist Report disclosing anticipated expenditures for the year in lieu of filing the quarterly reports. The exemption form and cumulative report shall be filed at the same time the lobbyist registration statement is filed.

8.8(6) *Attorney-client privilege not applicable.* Attorneys who engage in executive branch lobbying shall comply with the requirements of Iowa Code section 68B.37 and shall not avoid public disclosure of executive branch lobbying expenditures by asserting attorney-client privilege.

This rule is intended to implement Iowa Code section 68B.37.

351—8.9(68B) Executive branch lobbyist client reporting.

8.9(1) Every executive branch lobbyist client shall file reports that contain the following information:

- a. The name and address of the client, including a contact person.
- b. The name of the client's lobbyists.
- c. The amount of all salaries, fees, retainers, and reimbursements paid or anticipated to be paid by the client to each lobbyist for engaging in executive branch lobbying activities for the period commencing on July 1 of the previous year through June 30 of the current year. A report shall be filed even if the client did not pay any compensation to the client's lobbyist. If no compensation was paid, the client shall disclose on the report \$0.00 as compensation paid. In the case of a salaried position when executive branch lobbying is part of the individual's duties, the reportable salary shall be based on a pro-rata basis of time spent engaging in executive branch lobbying.

d. The signature of the client's contact person and the date signed. Lobbyist client reports filed electronically through the board's Web site are deemed signed and dated when filed.

8.9(2) Place of filing. Executive branch lobbyist client reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

8.9(3) Time of filing. An executive branch lobbyist client report shall be filed on or before July 31. The report must be physically received by the board on or before the report due date. If mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

This rule is intended to implement Iowa Code section 68B.38 as amended by 2004 Iowa Acts, Senate File 2179, section 13.

351—8.10(68B) Reception reporting form. Rescinded IAB 12/21/05, effective 1/25/06.

351—8.11(68B) Penalties for delinquent reports.

8.11(1) *Late lobbyist report.* An executive branch lobbyist who fails to timely file an executive branch periodic lobbyist report shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	1st Delinquency	2nd Delinquency	Subsequent Delinquencies
1 to 14	\$25	\$50	\$100
15 to 30	\$50	\$100	\$200
31 and over	\$100	\$200	\$400

For purposes of this subrule, second and subsequent delinquencies apply to a report that covers any quarter of the year for which the lobbyist is registered to lobby the executive branch.

8.11(2) *Late client report.* An executive branch lobbyist client who fails to file an executive branch lobbyist client report on or before the required due date shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	Amount
1 to 14	\$25
15 to 30	\$50
31 and over	\$100

8.11(3) *Additional penalty.* If an executive branch lobbyist or an executive branch lobbyist client fails to file a required report within 45 days of the report due date, or fails to file a complete report, a contested case proceeding may be held to determine whether a violation has occurred. If, after a contested case proceeding, it is determined that a violation occurred, the board may impose any of the actions under Iowa Code section 68B.32D. Any action so imposed would be in addition to the automatically assessed penalty in this rule.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.12(68B) Request for waiver of penalty. An executive branch lobbyist or an executive branch lobbyist client that believes there are mitigating circumstances that prevented the timely filing of a report may make a written request to the board for waiver of the penalty. The board must receive the request for waiver within 30 days of the lobbyist's or lobbyist client's being notified of the civil penalty assessment. Waivers will be granted only for exceptional or very unusual circumstances.

The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or request a contested case proceeding pursuant to rule 351—8.13(68B) to appeal the board's decision.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.13(68B) Contested case proceeding.

8.13(1) *Request.* If an executive branch lobbyist or an executive branch lobbyist client accepts administrative resolution of a matter through the payment of an assessed civil penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny a request or grant a partial waiver of an assessed civil penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

8.13(2) *Procedure.* Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

8.13(3) *Failure to request a contested case proceeding.* The failure to request a contested case proceeding to appeal the board's decision on a waiver request is the failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code sections 68B.32A(4), 68B.32A(8), and 68B.33.

351—8.14(68B) Payment of penalty. An assessed civil penalty shall be paid by check or money order and shall be made payable to the State of Iowa General Fund and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The payment shall be deposited in the general fund of the state of Iowa.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.15(68A) Campaign contributions by lobbyists during the regular legislative session prohibited. Pursuant to Iowa Code Supplement section 68A.504, individuals who are registered in Iowa as either executive branch or legislative branch lobbyists are prohibited from contributing to, acting as an agent or intermediary for contributions to, or arranging for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session.

8.15(1) *Application to governor.* The prohibition on contributions to the governor or a gubernatorial candidate during session extends for an additional 30 days following the adjournment of a regular legislative session allowed for the signing of bills.

8.15(2) *Exceptions.* The prohibition on contributions during the regular legislative session does not apply to any of the following:

a. Contributions to an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office so long as the lobbyist's contribution is placed into the candidate's federal account.

b. Contributions to a candidate for state office who filed nomination papers for a special election called or held during the regular legislative session if the candidate receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. However, elected state officials are prohibited from soliciting lobbyists for contributions to another candidate for state office when a special election is held during the regular legislative session.

c. Contributions made during a special legislative session. In the case of the governor and a gubernatorial candidate, this exception also includes the 30 days following a special legislative session unless that time period falls within 30 days of adjournment of the regular legislative session.

d. Contributions from a lobbyist's personal funds that a lobbyist makes to the lobbyist's own campaign for public office.

8.15(3) *Complaints.* Complaints or information provided to the board alleging a violation of Iowa Code Supplement section 68A.504 involving either executive branch lobbyists or legislative branch lobbyists shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code Supplement section 68A.504.

351—8.16(68B) Lobbyists prohibited from making loans. Pursuant to Iowa Code section 68B.24, an executive branch official, executive branch employee, or a candidate for statewide office shall not directly or indirectly seek or accept a loan from a person who is an executive branch lobbyist.

8.16(1) *Offer of loan prohibited.* An executive branch lobbyist shall not directly or indirectly offer or make a loan to an executive branch official, executive branch employee, or a candidate for statewide office.

8.16(2) *Exception.* The prohibitions in Iowa Code section 68B.24 do not apply to loans made in the ordinary course of business. "Ordinary course of business" means the loan is made by a person who is regularly engaged in a business that makes loans to members of the general public, and the finance charges and other terms of the loan are the same or substantially similar to the finance charges and loan terms that are available to members of the general public.

8.16(3) *Complaints.* Complaints or information provided to the board alleging a violation of Iowa Code section 68B.24 by an executive branch official, executive branch employee, candidate for statewide office, or an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.24.

351—8.17(68B) Ban on certain lobbying activities by government personnel. Executive branch officials and executive branch employees are prohibited by Iowa Code section 68B.5A from engaging in certain types of lobbying activities during the time in which these officials and employees serve or are employed by the state. In addition, Iowa Code section 68B.5A prohibits executive branch officials and executive branch employees from accepting, under certain situations, employment as lobbyists within two years of leaving state government.

8.17(1) A person who serves as a statewide elected official, the executive or administrative head of an agency, or the deputy executive or administrative head of an agency shall not act as a lobbyist during the time in which the person serves or is employed by the state unless the person is designated to

represent the official position of the person's agency. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government.

8.17(2) The head of a major subunit of a department or independent state agency or a full-time employee of an office of a statewide elected official shall not act as a lobbyist during the time in which the person is employed by the state before the agency that the person is employed by or before state agencies, officials, or employees with whom the person has substantial or regular contact as part of the person's duties, unless the person is designated to represent the official position of the person's agency. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying before the agency that the person was employed by or before state agencies, officials, or employees with whom the person had substantial and regular contact as part of the person's former duties.

8.17(3) A state employee who is not included in subrule 8.17(1) or 8.17(2) shall not act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person is directly concerned and personally participates as part of the person's employment, unless the person is designated to represent the official position of the person's agency. Persons subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying in relation to any particular case, proceeding, or application with respect to which the person was directly concerned and personally participated as part of the person's employment.

8.17(4) Exception. As provided in Iowa Code section 68B.5A(7), the prohibition on accepting employment as a lobbyist does not apply to a person who, within two years of leaving state service or employment, is elected to, appointed to, or employed by another office of the state, an office of a political subdivision of the state, or the federal government and represents the position of the new office or employment.

8.17(5) Complaints. Complaints or information provided to the board alleging a violation of Iowa Code section 68B.5A by an executive branch official or an executive branch employee shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.5A.

351—8.18(68B) False communications prohibited.

8.18(1) *False material fact.* An executive branch lobbyist shall not intentionally deceive or attempt to deceive any executive branch official or any executive branch employee in regard to a material fact pertinent to an administrative rule, legislation, or an executive order.

8.18(2) *False communication.* An executive branch lobbyist shall not cause a communication to be sent to an executive branch official or an executive branch employee in the name of either of the following:

- a. A fictitious person; or
- b. A real person except with the consent of that person.

8.18(3) *Complaints.* Complaints or information provided to the board alleging a violation of this rule by an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.32A(12).

351—8.19(68B) Advisory opinions. Any person under the board's jurisdiction that is affected by Iowa Code chapter 68B or 351—Chapter 8 may seek an advisory opinion from the board pursuant to rules 351—1.2(68B) and 1.3(68B). The purpose of a board opinion is to apply a statute or rule to a particular factual situation. Advice contained in a board opinion, if followed, constitutes a defense to a subsequently filed complaint.

This rule is intended to implement Iowa Code section 68B.32A(11).

351—8.20(68) Retention and availability of filed forms.

8.20(1) *Public record.* All forms filed under this chapter are public records and shall be available in the board office for inspection and copying. A filed form shall be retained by the board for a period of at least five years from the date the form was filed.

8.20(2) *Internet access.* Forms filed under this chapter shall be accessible for viewing via the board's Web site at www.iowa.gov/ethics as follows:

a. A list of registered executive branch lobbyists and executive branch lobbyist clients for the current calendar year and the two previous calendar years.

b. An executive branch periodic lobbyist report for a period of at least three years from the report due date.

c. An executive branch lobbyist client report for a period of at least three years from the report due date.

d. A reception reporting form for a period of at least three years from the date the form was filed.

This rule is intended to implement Iowa Code Supplement section 68B.32A(4).

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[◇] Two or more ARCs

CHAPTER 9
COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURES

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 1]

[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 1]

[Prior to 8/21/02, see 351—Ch 1]

[Prior to 9/17/03, see 351—Ch 5]

351—9.1(68B) Complaints.

9.1(1) Form. A complaint shall be on forms provided by the board and shall be certified under penalty of perjury. The complaint shall contain all information required by Iowa Code section 68B.32B(1).

9.1(2) Board acceptance. A complaint shall not be deemed accepted by the board until completion of the legal review required by Iowa Code section 68B.32B(4). If the board's legal counsel opines that the complaint contains a legally sufficient allegation, the complaint is deemed accepted. If the board's legal counsel opines that the complaint does not contain a legally sufficient allegation and the board, upon review, makes a determination that the complaint does contain a legally sufficient allegation, the complaint is then deemed accepted. If both the board's legal counsel and the board opine that the complaint does not contain a legally sufficient allegation, the complaint shall be dismissed.

9.1(3) Notice. Notice to the subject of a complaint is made only when a complaint is accepted, subject to the conditions of Iowa Code section 68B.32B(3). A complaint is a public record, subject to the conditions of Iowa Code section 68B.32B(11).

9.1(4) Board review. The board's review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint.

9.1(5) Information provided to board. The board may, on its own motion and without the filing of a complaint, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. As provided in Iowa Code section 68B.32B(7), persons may provide information to the board for possible board-initiated investigation instead of filing a complaint.

351—9.2(68B) Investigations—board action.

9.2(1) Referral to staff. Upon a determination that a complaint contains a legally sufficient allegation, the board shall refer the complaint to staff for investigation.

9.2(2) Board-initiated investigation. On its own motion the board may refer to staff for investigation matters that the board believes may be subject to the board's jurisdiction, including matters brought to the board's attention by members of the public.

9.2(3) Subpoenas. Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, and other real evidence, as well as requiring the attendance and testimony of witnesses.

9.2(4) Completion. Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

9.2(5) Board action. Upon receipt and review of the staff investigative report and any recommendations, the board may:

- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Dismiss the matter without a determination regarding probable cause as an exercise of administrative discretion;
- d. Make a determination that probable cause exists to believe a violation has occurred and direct administrative resolution of the matter as provided in subrule 9.4(2); or
- e. Make a determination that probable cause exists to believe a violation has occurred and direct the issuance of a statement of charges to initiate a contested case proceeding.

351—9.3(68B) Grounds for disciplinary action. The board may impose discipline against a person subject to the board's jurisdiction who commits a violation of Iowa Code chapter 68A, Iowa Code chapter 68B, Iowa Code Supplement section 8.7, or rules adopted by the board.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

351—9.4(68B) Disciplinary remedies; administrative resolution of enforcement matters.

9.4(1) Action after hearing. If it is determined after a contested case proceeding that a violation of statute or rule under the board's jurisdiction has occurred, the board may impose any of the actions set out in Iowa Code section 68B.32D.

9.4(2) Administrative resolution. Violations may be handled by administrative resolution rather than through the full investigative and contested case proceeding process. The board may order administrative resolution by directing that the person take specified remedial action. The board may also order administrative resolution by issuing a letter of reprimand.

9.4(3) Response to administrative resolution. A person subject to board discipline may accept administrative resolution, but is not required to do so. If the person accepts the administrative resolution by complying with the directed remedial action or accepting a letter of reprimand, the matter shall be closed. If the person wishes to appeal the administrative resolution, the person shall make a written request for a contested case proceeding and shall submit the request within 30 days of the date of the correspondence informing the person of the board's decision.

9.4(4) Statement of charges. The board shall issue a statement of charges upon timely receipt of a request for a contested case proceeding to appeal the administrative resolution. The contested case shall be conducted in accordance with the provisions in 351—Chapter 11. The board's legal counsel shall have the burden of proving the violation. Failure to challenge the administrative resolution through a request for a contested case proceeding is a failure to exhaust administrative remedies for purposes of seeking judicial review.

9.4(5) Automatic civil penalties. The board may administratively resolve late-filed reports by the assessment of automatic civil penalties, subject to the civil penalty waiver process, as set out by board rule. The board may retain two dollars of any civil penalty that is ultimately not waived by the board or by a court of law as return receipts covering incidental costs such as printing and postage. The remainder of the civil penalty shall be deposited in the state general fund.

9.4(6) Admonishment. The board may admonish any person who it believes has committed a minor violation to exercise care. An admonishment is not discipline and is not subject to a contested case proceeding appeal.

351—9.5(68B) Settlements. Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the board's legal counsel and any person subject to the investigation or contested case proceeding. A settlement shall be in writing and is subject to approval of a majority of the board. If the board declines to approve a proposed settlement, the settlement shall be of no force or effect.

351—9.6(68B) Whistle-blower protection. A person who discharges or discriminates against an employee because the employee filed a complaint, provided information to the board for a possible board-initiated investigation, or provided information during the course of a board investigation shall be subject to the board's complaint process if the employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this rule, "good faith" means that any statements or materials in a complaint, in information provided to the board for a possible board-initiated investigation, or provided in information

during the course of a board investigation were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code sections 68B.32A(13) and 68B.32B.

These rules are intended to implement Iowa Code section 68B.32B.

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CHAPTER 10
CIVIL PENALTIES FOR LATE CAMPAIGN REPORTS
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 6]
[Prior to 8/20/03, see 351—Ch 6]
Rescinded IAB 9/15/04, effective 10/20/04

CHAPTER 11
CONTESTED CASE PROCEDURES

[Prior to 7/9/03, see 351—Ch 7]

351—11.1(17A,68B) Scope and applicability. This chapter applies to contested case proceedings conducted by the Iowa ethics and campaign disclosure board.

351—11.2(17A,68B) Definitions. Except where otherwise specifically defined by law:

“*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.

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

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the board member designated to be the presiding officer or the administrative law judge assigned by the department of inspections and appeals division of administrative hearings. However, with regard to substantive or dispositive motions, “presiding officer” means all participating members of the board.

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

351—11.3(17A,68B) Time requirements. Time shall be computed as provided in Iowa Code subsection 4.1(34). For good cause, the presiding officer may extend or shorten the time to take any action except as precluded by statute or by rule. 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.

351—11.4(17A,68B) Requests for contested case proceeding.

11.4(1) *Who may file request.* Any person claiming an entitlement to a contested case proceeding may 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 board action in question. Upon petition by any party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

11.4(2) *Form of request.* The request for a contested case proceeding shall state the name and address of the requester, identify the specific board action that is disputed, and, when 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.

351—11.5(17A,68B) Notice of hearing.

11.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

11.5(2) *Contents.* The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;

- e.* Identification of all parties including the name, address and telephone number of the person who will serve as the board's counsel during the proceeding;
- f.* Reference to the procedural rules governing conduct of the contested case proceeding;
- g.* Reference to the procedural rules governing informal settlement;
- h.* Identification of the presiding officer; and
- i.* Notification of the time period in which a party may request, pursuant to subrule 11.8(3), that the presiding officer be an administrative law judge.

11.5(3) Time. The notice of hearing shall be served upon all parties at least 30 days before the scheduled hearing date.

351—11.6(17A,68B) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

351—11.7(17A,68B) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer shall determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when location is chosen.

351—11.8(17A,68B) Disqualification; request for administrative law judge.

11.8(1) Withdrawal. 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 prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or 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 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 personally investigated the pending contested case. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. It does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are 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 board 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;
- e.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- f.* 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;
- g.* 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
- h.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

In a situation where a presiding officer or other person knows of information that 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 inappropriate.

11.8(2) Motion for disqualification. If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(4). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If during the course of the hearing a party becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record. If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 351—11.24(17A,68B) and seek a stay under rule 351—11.28(17A,68B).

11.8(3) Request for administrative law judge. A party may, within ten days of delivery of a notice of hearing under subrule 11.5(1), request that the presiding officer be an administrative law judge assigned by the department of inspections and appeals division of administrative hearings. This request shall be sent to the board's legal counsel who shall then notify the board. Except as otherwise provided by statute, the board shall grant such a request unless the board finds, and states the reasons for such finding, that any of the following conditions exist:

- a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare;
- b. A qualified administrative law judge is unavailable to hear the case within a reasonable time;
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented;
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues;
- e. Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal;
- f. The request was not timely filed; or
- g. The request is not consistent with a specified statute.

11.8(4) Ruling on request. The board shall issue a written ruling specifying the grounds for the decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least ten days prior to hearing if an administrative law judge will not be available.

11.8(5) Appeals. All rulings by an administrative law judge acting as presiding officer are subject to appeal to the board pursuant to rules 351—11.24(17A,68B) and 11.25(17A,68B). A party must seek intra-agency appeal in order to exhaust administrative remedies.

11.8(6) Board review. Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of, and shall comply with, the provisions of this chapter that apply to presiding officers.

351—11.9(17A,68B) Consolidation—severance.

11.9(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings when:

- 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.

11.9(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

351—11.10(17A,68B) Pleadings.

11.10(1) *When required.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

11.10(2) *Statement of charges.* The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the person is charged and shall be of sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify all statutes and rules that are alleged to have been violated and may also include additional information that the board deems appropriate to the proceeding. The statement of charges shall be consolidated with the notice of hearing described in rule 351—11.5(17A,68B).

11.10(3) *Answer.* A respondent is not required to file an answer in response to a statement of charges.

11.10(4) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

351—11.11(17A,68B) Service and filing of pleadings and other papers.

11.11(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 simultaneously with their filing. The party filing a document is responsible for service on all parties.

11.11(2) *Service.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.11(3) *When filed.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the office of the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, or mailed with proof of mailing.

11.11(4) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form: "I certify under penalty of perjury that on (date of mailing), I mailed copies of (describe document) addressed to the (board office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail)."

(Date)

(Signature)

351—11.12(17A,68B) Discovery.

11.12(1) *Applicable procedure.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

11.12(2) *Motion for discovery.* Any motion relating to discovery shall allege that the moving party has 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 shortened as provided in subrule 11.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.12(3) *Use of evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

351—11.13(17A,68B) Subpoenas.**11.13(1) Issuance.**

a. A board subpoena shall be issued to a party upon written request. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

11.13(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

351—11.14(17A,68B) Motions.

11.14(1) Form. No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.14(2) Who may file. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

11.14(3) Oral argument. The presiding officer may schedule oral argument on any motion.

11.14(4) Time. 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 board or by the presiding officer.

11.14(5) Motions for summary judgment. 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 15 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 10 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 appeal and rehearing pursuant to rules 351—11.26(17A,68B) and 11.27(17A,68B).

351—11.15(17A,68B) Prehearing conference.

11.15(1) Procedure. Any party may request a prehearing conference. 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 seven 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.

11.15(2) Required subject matter. Each party shall bring 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 that 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.

11.15(3) Additional issues. In addition to the requirements of subrule 11.15(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters that the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters that will expedite the hearing.

11.15(4) Telephone conference. Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

351—11.16(17A,68B) Continuances. Unless otherwise provided, applications for continuances shall be made by the presiding officer.

11.16(1) Form. 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 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 when notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

11.16(2) Considerations for granting continuance. In determining whether to grant a continuance, the presiding officer shall consider:

- a. Prior continuances;
- b. The interest of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- 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; and
- i. Other relevant factors.

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

351—11.17(17A,68B) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

351—11.18(17A,68B) Intervention.

11.18(1) Motion. A motion 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.

11.18(2) When filed. A motion 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. Any later motion must contain a statement of good cause for the failure to file in a timely manner. An intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case unless the agreement, arrangement, or other matter previously raised

in the case is inequitable or unjust. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

11.18(3) *Grounds for intervention.* The intervenor shall demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The intervenor is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the intervenor are not adequately represented by existing parties.

11.18(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 actively in the proceedings. A person permitted 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 proceedings.

351—11.19(17A,68B) Hearing procedures.

11.19(1) *Role of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

11.19(2) *Objections.* All objections shall be timely made and stated on the record.

11.19(3) *Representation.* Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

11.19(4) *Procedural rights.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present 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. Witnesses may be sequestered during the hearing.

11.19(5) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.19(6) *Hearing process.* The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

11.19(7) *Proposed order.* Within seven days after the closing of the hearing, either party may file a proposed order for the consideration of the presiding officer, who may adopt all or part of any proposed order. Copies of a proposed order shall be provided to the opposing party.

351—11.20(17A,68B) Evidence.

11.20(1) *Admissibility.* The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.20(2) *Stipulation of facts.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.20(3) *Limitation of evidence.* 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 that 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 who

did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issues.

11.20(4) Exhibits. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.20(5) Objections. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. 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.

11.20(6) Offer of proof. 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.

351—11.21(17A,68B) Default.

11.21(1) Failure to appear. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.21(2) Motion for default. 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.

11.21(3) Procedure. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 14 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 351—11.26(17A,68B). 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.

11.21(4) Time. 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.

11.21(5) Motion to vacate. 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. If a request to do so is filed in a response, 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.

11.21(6) Good cause. "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.

11.21(7) Appeal. 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 351—11.24(17A,68B).

11.21(8) Hearing reopened. 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.

11.21(9) Relief granted. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

11.21(10) *Timing of stay.* 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.

351—11.22(17A,68B) Ex parte communication.

11.22(1) *Prohibited communications.* Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or make findings of fact or conclusions of law 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 persons assigned to render a proposed or final decision in a contested case or to make findings of fact or conclusions of law in such a case from seeking the advice or help of persons other than those with personal interest in, or those engaged in personally investigating as defined in subrule 11.8(1), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as that advice or help does not violate Iowa Code subsection 17A.12(8).

11.22(2) *Disclosure of prohibited communications.* Any person who receives a communication prohibited by subrule 11.22(1) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication. If the effect of an ex parte communication is so prejudicial that it cannot be cured by disclosure and rebuttal, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

11.22(3) *Sanctions.* The board and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law. The presiding officer or the board may impose appropriate sanctions for violations of this rule. Possible sanctions include a decision against the offending party; censure, suspension, or revocation of the privilege to practice before the board; and censure, suspension, dismissal, or other disciplinary action against board personnel.

11.22(4) *Affidavit.* A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this rule. The board shall determine the matter as part of the record in the case. When the board makes such a determination with respect to a board member or board employee, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

351—11.23(17A,68B) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record 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.

351—11.24(17A,68B) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

351—11.25(17A,68B) Final decision. The board shall automatically conduct a review of all proposed decisions that are issued by a presiding officer. The proposed decision becomes the final decision of

the board without further proceedings unless there is a proper application for rehearing under rule 351—11.27(17A,68B).

351—11.26(17A,68B) Board review.

11.26(1) *Statement of exceptions.* Within 14 days after issuance of a proposed decision, any party may serve a statement of exceptions taken with the proposed decision, if any, together with a brief and argument, if any, by delivery of the original and five copies of each document to the board's legal counsel, and shall also serve copies to the opposing party. This time requirement may be extended by stipulation of the parties and approval by the presiding officer.

11.26(2) *Request for oral argument.* At the time designated for filing briefs and arguments, either party may request oral argument. The board may complete its review on the briefs or may grant an opportunity for oral argument. If a request for oral argument is granted or such is required by the board on its own motion, the board's legal counsel shall notify all parties of the date, time, and place. The chairperson or the chairperson's designee shall preside at the oral argument and determine the procedural order of the proceedings.

11.26(3) *Record on review.* The record on review shall be the entire record made before the hearing panel or presiding officer.

11.26(4) *Additional evidence.* A written request to present additional evidence must be filed within 14 days of issuance of the proposed decision. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

11.26(5) *Final decision.* The board's decision on review of a proposed decision is a final decision.

351—11.27(17A,68B) Application for rehearing.

11.27(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

11.27(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. The application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.26(4), the applicant requests an opportunity to submit additional evidence.

11.27(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

11.27(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 board shall serve copies on all parties.

11.27(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

351—11.28(17A,68B) Stay of agency actions.

11.28(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding pending review by the board. The petition for a stay shall be filed with the statement of exceptions and shall state the reasons justifying a stay. The board may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the board for a stay pending judicial review of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay.

11.28(2) *When granted.* In determining whether to grant a stay, the presiding officer or board, as appropriate, shall consider whether substantial questions exist as to the propriety of the order for which a stay is requested, whether the party will suffer substantial and irreparable injury without the stay, and whether the interests of the public and other persons will be adversely affected by such a stay.

11.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

351—11.29(17A,68B) 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 shall 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.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code sections 68B.32A and 68B.32C.

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CHAPTER 12
DECLARATORY ORDERS

[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 9]

[Prior to 9/17/03, see 351—Ch 9]

351—12.1(17A,68B) Petition for declaratory order.

12.1(1) *Who may file.* Any person may file a petition with the board for a declaratory order concerning the applicability of any statute, rule, policy, decision, or order within the primary jurisdiction of the board.

12.1(2) *Place of filing.* A petition for a declaratory order shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. A petition may also be filed by fax at (515)281-3701. A copy of the petition and any supporting documents shall be filed with any party of record to the declaratory order proceeding.

12.1(3) *Petition deemed filed.* A petition is deemed filed when it is received by the board. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

12.1(4) *Form of petition.* The petition shall be typewritten or legibly handwritten in ink and shall provide the following information:

- a. A statement that the document is a petition for a declaratory order.
- b. A clear and concise statement of all relevant facts on which the order is requested.
- c. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
- d. The questions petitioner wants answered, stated clearly and concisely.
- e. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
- f. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
- g. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided, are pending determination, or are under investigation by any governmental entity.
- h. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
- i. Any request by petitioner for a meeting provided for by rule 351—12.6(17A,68B).
- j. The name, mailing address, and telephone number of the petitioner and petitioner's representative if there is a representative.
- k. A statement indicating the person to whom communications concerning the petition should be directed.

12.1(5) *Signature.* The petition shall be dated and signed by the petitioner or the petitioner's representative.

351—12.2(17A,68B) Briefs. The petitioner may attach a brief to the petition in support of the position urged in the petition. The board may request a brief from the petitioner or from any other person concerning the questions raised in the petition. A requested brief shall be filed within ten days of receipt of notice from the board.

351—12.3(17A,68B) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The board may also give notice to any other persons.

351—12.4(17A,68B) Intervention.

12.4(1) *Who may intervene.* Persons who qualify under any applicable provision of law 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.

12.4(2) Board discretion. A person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene at the discretion of the board.

12.4(3) Place of filing. A petition for intervention shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The petition may also be filed by fax at (515)281-3701. The board shall provide the intervenor with a file-stamped copy of the petition for intervention if the intervenor provides an extra copy for this purpose. The intervenor shall also file a copy of the petition for intervention and any supporting documents with the person who filed the petition for a declaratory order.

12.4(4) Form of petition. The petition for intervention shall be typewritten or legibly handwritten in ink and shall provide the following information:

a. A statement that the document is a petition for intervention and a reference to the original petition for a declaratory order.

b. Facts supporting the intervenor's standing and qualifications for intervention.

c. The answers urged by the intervenor to the questions presented and a summary of the reasons urged in support of those answers.

d. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

e. 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, are pending determination, or are under investigation by any governmental entity.

f. 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 proceeding.

g. Whether the intervenor consents to be bound by the determination of the matters presented in the proceeding.

h. The name, mailing address, and telephone number of the intervenor and the intervenor's representative if there is a representative.

i. A statement indicating the person to whom communications concerning the petition for intervention should be directed.

351—12.5(17A,68B) Inquiries. Inquiries concerning the status of a petition for a declaratory order may be made to the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319.

351—12.6(17A,68B) Board consideration. Upon request by petitioner in the petition for a declaratory order, the board shall schedule a brief and informal meeting between the petitioner, all intervenors, and the board's executive director or legal counsel to discuss the petition. The board may solicit comments from any person on the questions presented in the petition. Any person may submit comments to the board on the questions raised in the petition.

351—12.7(17A,68B) Action on petition.

12.7(1) Time. Within 30 days after the filing of the petition, or 5 days following a regular meeting of the board in which the petition has been received and discussed, whichever comes earlier, the board shall issue an order on the petition, set the matter for specified proceedings, agree to issue a declaratory order by a specified time, or decline to issue the order and state the reasons for doing so. If the board does not issue a declaratory order within 60 days after the receipt of a petition for a declaratory order, the petition is deemed denied. The parties may agree to extend the deadlines in this subrule.

12.7(2) Date of issuance. The board is deemed to have issued an order or to have refused to do so on the date the order or refusal is mailed or delivered to the parties of record.

351—12.8(17A,68B) Refusal to issue order.

12.8(1) For good cause. The board shall refuse to issue a declaratory order for good cause. Good cause includes, but is not limited to, the following reasons:

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

- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c.* The board 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 proceeding, or other agency or judicial proceeding that may 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 a board 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 the board to determine whether a statute is unconstitutional on its face.

12.8(2) *Rationale.* A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final agency action on the petition. Once the board declines to issue a declaratory order, or if the petition is deemed denied because an order was not entered within 60 days, a party to the proceeding may either seek judicial review or await further board action with respect to its petition.

12.8(3) *Amended filing.* Refusal to issue a declaratory order does not preclude the filing of a new petition that seeks to eliminate the grounds for the board's refusal to issue an order.

351—12.9(17A,68B) *Contents of declaratory order.* In addition to the order itself, a declaratory order must contain the date of issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

351—12.10(17A,68B) *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.

351—12.11(17A,68B) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. The order is binding on the board, the petitioner, and any intervenors who consented to be bound. An order is applicable only in circumstances when the relevant facts and the laws, rules, policies, decisions, or orders 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 board. The issuance of a declaratory order constitutes final agency action on the petition for a declaratory order. A declaratory order is in effect on the date of issuance.

351—12.12(17A,68B) *Advisory opinion.* In lieu of filing a petition for a declaratory order, any person subject to the board's jurisdiction may request an advisory opinion pursuant to rule 351—1.2(68B). However, as provided in 351—subrule 1.3(6), the board will refuse to issue a declaratory order to a person who has previously received a board opinion on the same question unless the petitioner demonstrates a significant change in circumstances from those in the board opinion.

These rules are intended to implement Iowa Code chapters 17A and 68B.

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CHAPTER 13
PETITIONS FOR RULE MAKING

[Prior to 11/26/03, see 351—Ch 8]

351—13.1(68B) Petition for rule making.

13.1(1) *Who may file.* Any person may file a petition for rule making with the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the board. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink.

13.1(2) *Required information.* The petition must provide the following information:

- a. A statement that the document is a petition for rule making.
- b. 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 to the particular portion or portions of the rule proposed to be amended or repealed, together with a quotation of the relevant language.
- c. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
- d. A brief summary of petitioner's arguments in support of the action urged in the petition.
- e. A brief summary of any data supporting the action urged in the petition.
- f. 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 that is the subject of the petition.
- g. Any request by petitioner for a meeting between the petitioner and the board's executive director.

13.1(3) *Signature.* The petition shall be dated and signed by the petitioner or the petitioner's representative and shall include the name, mailing address, and telephone number of the petitioner and, if applicable, the petitioner's representative. A statement indicating the person to whom communications concerning the petition should be directed shall be included.

13.1(4) *Denial for incompleteness.* The board may deny a petition because it does not substantially comply with the requirements of this rule.

351—13.2(68B) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition, including the board's legal counsel.

351—13.3(68B) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319.

351—13.4(68B) Board consideration.

13.4(1) *Procedure.* Within 30 days after the filing of a petition or within 5 days following a regular meeting of the board at which the petition has been received and discussed, whichever is earlier, the board 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 the petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Any person may submit comments on the substance of the petition.

13.4(2) *Board response.* Within 90 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must either deny the petition or grant the petition. A notice of denial shall contain the specific reasons for the board's decision. Petitioner shall be deemed notified of

the denial or granting of the petition on the date when the board mails or delivers the required notification to petitioner.

13.4(3) Refiling petition. Denial of a petition because it does not substantially provide the required information in rule 351—13.1(68B) does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's denial of the petition.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code section 68B.32A(1).

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CHAPTER 14
BOARD PROCEDURE FOR RULE MAKING

351—14.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

351—14.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board 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 by causing notice to be published in the Iowa Administrative Bulletin. Notice shall include the subject matter and indicate where, when, and how persons may comment.

351—14.3(17A) Public rule-making docket.

14.3(1) Docket maintained. The board shall maintain a current public rule-making docket.

14.3(2) Anticipated rule making. The docket shall list each anticipated rule-making proceeding. A proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for review by the board. The docket shall contain a listing of the precise subject matter that may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of the board’s rules administrator with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects for which public comment is desired.

14.3(3) Pending rule-making proceedings. The docket shall list each pending rule-making proceeding. A proceeding is pending from the time it is commenced by publication in the Iowa Administrative Bulletin of a Notice of Intended Action 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 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 board determinations with respect thereto;
- h. Any known timetable for board 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.

351—14.4(17A) Notice of proposed rule making.

14.4(1) Contents. At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;

- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board 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 board for the resolution of each of those issues.

14.4(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 that are contained in subrule 14.12(2) of this chapter.

14.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board 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 board 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 board for Notices of Intended Action. The 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.

351—14.5(17A) Public participation.

14.5(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 and should be submitted to the board's rules administrator at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

14.5(2) *Oral proceedings.* The board may schedule an oral proceeding on a proposed rule. The board 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 by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

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

14.5(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. A member of the board or the board's executive director shall preside at the oral proceeding on a proposed rule. The presiding officer and the board's executive director shall jointly prepare a memorandum for consideration by the board summarizing the contents of the presentations

made at the oral proceeding. This memorandum shall not be prepared if the board determines that such a memorandum is unnecessary because the board members 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, including data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board 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 board 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 that have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, when 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 board.

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

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. 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. However, 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.

14.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

14.5(5) Accessibility. The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board's executive director at (515)281-3489 in advance to arrange access or other needed services.

351—14.6(17A) Regulatory analysis.

14.6(1) Definition of small business. A "small business" is defined in Iowa Code section 17A.4A(7).

14.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to the board's executive director. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;

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

The board 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 board 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.

14.6(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 board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board 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.

14.6(4) *Qualified requesters for regulatory analysis—economic impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A after a proper request from:

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

14.6(5) *Qualified requesters for regulatory analysis—business impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A after a proper request from:

- a.* The administrative rules review committee;
- b.* The administrative rules coordinator;
- c.* At least 25 or more persons who each represent 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.

14.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

14.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

14.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4).

14.6(9) *Publication of a concise summary.* The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

14.6(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.

14.6(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*.”

351—14.7(17A,25B) Fiscal impact statement.

14.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities that contract with political subdivisions to provide

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

14.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

351—14.8(17A) Time and manner of rule adoption.

14.8(1) *Time of adoption.* The board 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 board 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.

14.8(2) *Consideration of public comment.* Before the adoption of a rule, the board 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.

14.8(3) *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

351—14.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

14.9(1) The board 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.

14.9(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 board shall consider the following factors:

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

14.9(3) The board shall commence a rule-making proceeding within 60 days of its receipt of a petition seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee within three days of its issuance.

14.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

351—14.10(17A) Exemptions from public rule-making procedures.

14.10(1) *Omission of notice and comment.* To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a rule, the board 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 board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

14.10(2) *Public proceedings on rules adopted without them.* The board 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 14.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 14.10(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 board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 14.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

351—14.11(17A) Concise statement of reasons.

14.11(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 board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the board's agency rules administrator at 510 East 12th Street, Suite 1A, 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.

14.11(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 board's reasons for overruling the arguments made against the rule.

14.11(3) *Time of issuance.* After a proper request, the board 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.

351—14.12(17A) Contents, style, and form of rule.

14.12(1) *Contents.* Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board 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, or the board 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, or the board in its discretion decides to include such reasons; and
- g. The effective date of the rule.

14.12(2) *Incorporation by reference.* The board 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 board finds that the incorporation of its text in the board's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board'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 board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, 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 board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

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

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

14.12(4) *Style and form.* In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

351—14.13(17A) Board rule-making record.

14.13(1) *Requirement.* The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

14.13(2) *Contents.* The board 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 board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the board'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 board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board, 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 board 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 board shall identify in the record the particular materials deleted and state the reasons for that deletion;

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

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

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

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

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

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

14.13(3) *Effect of record.* Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

14.13(4) *Maintenance of record.* The board 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 14.13(2) “g,” “h,” “i,” or “j.”

351—14.14(17A) *Filing of rules.* The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

351—14.15(17A) *Effectiveness of rules prior to publication.*

14.15(1) *Grounds.* The board 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 board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

14.15(2) *Special notice.* When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board 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 board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 14.15(2).

351—14.16(17A) *General statements of policy.*

14.16(1) *Compilation, indexing, public inspection.* The board shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or

deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

14.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 14.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

351—14.17(17A) Review by board of rules.

14.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of the rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the rule within five years prior to the filing of the request.

14.17(2) In conducting the formal review, the board shall prepare a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the board’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also 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 board or granted by the board. 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 board’s report shall be sent to the administrative rules review committee and the administrative rules coordinator and shall be available to the public.

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

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CHAPTER 15
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

351—15.1(17A) Definition. For purposes of this chapter, a “waiver” or “variance” means action by the board that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified individual, business, organization or person on the basis of the particular circumstances of that individual, business, organization or person. For simplicity, the term “waiver” shall include both a waiver and a variance and the term “person” shall include any individual or entity subject to the board’s jurisdiction.

351—15.2(17A,68A,68B) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations when no other more specifically applicable law or rule provides for waivers. To the extent another more specific provision of law or rule governs the issuance of a waiver, the more specific provision shall supersede this chapter with respect to any waiver process. A person seeking a waiver of a civil penalty under rule 351—4.60(68B), 351—7.6(68B), or 351—8.12(68B) for the late filing of a report is not required to follow the process set out in this chapter. The person may instead file the waiver request by submitting a letter that includes any reasons why a waiver should be granted.

351—15.3(17A,68A,68B) Applicability. The board may grant a waiver from a rule only if the board has sole jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions or other provisions of law. The board may not waive requirements created or duties imposed by statute or court order.

351—15.4(17A) Criteria for waiver. In response to a petition completed pursuant to rule 15.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

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

351—15.5(17A,68A,68B) Filing of petition. A petition for a waiver shall be submitted in writing to the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. If the request relates to a pending contested case, a copy of the request shall also be filed in the contested case proceeding addressed to the board’s legal counsel at the above address.

351—15.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the petitioner:

1. The name, address and telephone number of the person for whom a waiver is being requested and the case number of any related contested cases, if applicable.
2. A description and citation of the specific rule from which waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts the petitioner believes would justify a waiver under each of the four criteria described in rule 15.4(17A). This shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons the petitioner believes will justify a waiver.

5. A history of any contacts between the board and the petitioner within the past five years relating to the activity affected by the proposed waiver. This shall include any notices of violation whether resolved through administration resolution or a contested case proceeding within the past five years.

6. Any information known to the petitioner regarding the board's treatment of similar cases.

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

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

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

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

351—15.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board.

351—15.8(17A) Notice. The board shall acknowledge a petition upon receipt. The board 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 board may give notice to other persons. To accomplish this notice provision, the board 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 board attesting that notice has been provided.

351—15.9(17A) Hearing procedures. The provisions of Iowa Code section 17A.10 to 17A.18A regarding contested case proceedings shall apply to any petition for a waiver filed in a contested case. Those provisions shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

351—15.10(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains. The order shall include a statement of the relevant facts and reasons upon which the action is based and a description of the precise scope and duration of the waiver if one is issued.

15.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board upon consideration of all relevant factors. The board shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

15.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

15.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of the rule.

15.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

15.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public interest.

15.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for the waiver continue to exist.

15.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

15.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

15.10(9) *Service of order.* Within seven days of its issuance, any order issued under these rules 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.

351—15.11(17A,22) Public availability. All orders granting or denying a waiver petition shall be indexed, filed and made available for public inspection as provided in Iowa Code section 17A.3. Petitions for waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

351—15.12(17A) Summary reports. The board shall semiannually 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 and a citation to the statutory provisions implemented by the rules. The report shall include a general summary of the reasons justifying the board's actions on waiver requests and, if practicable, shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

351—15.13(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. That 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. That the alternative means of ensuring adequate protection of the public interest after issuance of the waiver order have been demonstrated to be insufficient; or
3. That the subject of the waiver order has failed to comply with all conditions contained in the order.

351—15.14(17A,68A,68B) 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 sanctions as a person who violates the rule at issue.

351—15.15(17A,68A,68B) Defense. After the board issues an order granting a waiver, the order is a defense for the person to whom the order pertains, within the terms and the specified facts indicated therein, in any proceeding in which the rule in question is sought to be invoked.

351—15.16(17A) Appeals. Judicial review of a board decision to grant or deny a waiver petition shall be in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A and 68B and Iowa Code Supplement chapter 68A.

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