

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

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TITLE I
GENERAL OFFICE PROCEDURES
CHAPTER 1
OFFICE ORGANIZATION

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

The mission of the office is to provide high-quality, customer-focused information technology services and business solutions to government and to the citizens of the state of Iowa.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

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

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

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

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

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

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

1.2(7) The agency services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

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

Specific powers and duties of the office, the CIO, and the office's employees and agents are set forth in Iowa Code chapters 8B and 17A and these administrative rules.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

1.4(1) CIO's office. The CIO is the head of the office. The CIO's central administration area provides support to the CIO and to the governmental and business operations of the office and its enterprises.

The following functions are included in this area: general counsel; strategic, performance and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

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

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

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

“*Custodian*” means the office, the CIO, or another person lawfully delegated authority by the office to act for the office in implementing Iowa Code chapter 22.

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

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

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

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

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

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

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

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

2.3(1) Location of record. A request for access to a record under the jurisdiction of the OCIO shall be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The OCIO shall forward the request appropriately. If a request for access to a record is misdirected, office personnel will forward the request to the appropriate person within the office.

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

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

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

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

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

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

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

2.3(7) Fees.

a. When charged. The office may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

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

c. Supervisory fee. An hourly fee may be charged for actual office expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in the offices of the OCIO the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an office clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee. Upon completion, the actual fee will be calculated and the difference refunded or collected.

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

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

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

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

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

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

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

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

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

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

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

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

129—2.5(8B,17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

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

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

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

2.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the office does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

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

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

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

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

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

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

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

Appearance of counsel before the office on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the office to disclose records about that person to the person's attorney. [ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

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

2.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 129—2.9(8B,17A,22) or in the notice for a particular record system.

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

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

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

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

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

129—2.9(8B,17A,22) Routine use.

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

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

a. Disclosure to those officers, employees, and agents of the office who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.

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

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the office.

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

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

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

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

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

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

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

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

2.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the office may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

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

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

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

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

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

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

d. As otherwise authorized by law.

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

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

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

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

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

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

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

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

d. Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (11—subrule 117.19(3), Iowa Administrative Code)

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

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

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

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

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the office. (Iowa Code sections 17A.2(11)“*f*” and 17A.3(1)“*d*”)

i. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

j. Computer resource security files containing names, identifiers, and passwords of users of computer resources. Such files must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7. (Iowa Code section 22.7(50))

k. Data or information collected for the purpose of assessing, analyzing, measuring, preparing for, or responding to suspected, potential, or actual information security threats. (Iowa Code section 22.7(50))

l. Data or information collected for the purpose of assessing, analyzing, or classifying the severity of, nature of, ability to remediate, or ability to migrate data. (Iowa Code section 22.7(50))

m. Detailed security audit information. Such information includes but is not limited to security assessment reports; information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of the office. (Iowa Code section 22.7(50))

n. Information security data, information security proposals, or information security assessments compiled, prepared, or developed by a governmental body, or compiled, prepared, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.7(50))

o. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.3A(2)“*a*”)

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

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

r. Any other records made confidential by law.

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

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

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

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

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

2.13(3) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

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

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

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

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

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

c. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with Iowa Code chapter 8B, and portions are confidential records under Iowa Code section 22.7.

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

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

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

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

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

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

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

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

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

2.14(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 129—2.5(8B,17A,22) or subrule 2.12(2). These records, collected under the authority of Iowa Code chapter 8B, may contain confidential information about individuals.

2.14(6) Published materials or manuals. The office uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws.

2.14(7) Mailing lists and contact lists. The office maintains lists including names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public. These lists may be used for distribution of informational material, such as newsletters, policy directives, or educational bulletins. These lists are also used to provide contacts for coordination of services or as reference information sources.

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

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

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

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

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

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

- a. Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.
- b. Correspondence: public, interagency, internal.
- c. Policies and procedures.
- d. Organizational charts or tables of authorized positions.
- e. Memberships: professional/technical organizations.

- f.* Budget and financial records.
- g.* Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, office billings.
- h.* Requisitions of equipment and supplies.
- i.* Time sheets.
- j.* Purchasing documents and records.

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

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

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

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

2.14(18) All other records. Records are open if not exempted from disclosure by law.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.15(8B,17A,22) Data processing systems comparison. Some of the data processing systems used by the office permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

1. Require the office to index or retrieve records which contain information about individuals by a person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the office which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the office in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the office.

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

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

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

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

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

CHAPTER 3
PETITIONS FOR RULE MAKING

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

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

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

OFFICE OF THE CHIEF INFORMATION OFFICER
Petition by (Name of Petitioner)
for the (adoption, amendment, or repeal)
of rules relating to (state the subject
matter). } PETITION FOR
RULE MAKING

3.1(3) Content. The petition must provide the following information:

- a. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
b. A citation to any law deemed relevant to the office’s authority to take the action urged or to the desirability of that action.
c. A brief summary of petitioner’s arguments in support of the action urged in the petition.
d. A brief summary of any data supporting the action urged in the petition.
e. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.
f. Any request by the petitioner for a meeting provided for by rule 129—3.4(17A).

3.1(4) Additional requirements. The petition must:

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

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

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

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

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

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

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

129—3.4(17A) Office consideration.

3.4(1) Within 14 days after the filing of a petition, the office must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules

review committee. Upon request by petitioner in the petition, the office must schedule a brief and informal meeting between the petitioner and the office to discuss the petition. The office may request the petitioner to submit additional information or argument concerning the petition. The office may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may also be submitted to the office by any person.

3.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the office must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or granting of the petition on the date when the office mails or delivers the required notification to the petitioner.

3.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the office's rejection of the petition.

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

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

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

CHAPTER 4
DECLARATORY ORDERS

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

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

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

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

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

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

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

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

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

129—4.3(8B,17A) Intervention.

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

4.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the office.

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

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

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

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

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

4.3(6) Additional requirements. The petition must:

- a. Be dated and signed by the intervenor or the intervenor's representative;
 - b. Include the name, mailing address, and telephone number of the intervenor and intervenor's representative; and
 - c. Include a statement indicating the person to whom communications should be directed.
- [ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

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

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

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

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

4.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the office.

4.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 129—6.14(8B,17A).
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.7(8B,17A) Consideration. Upon request by petitioner, the office shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the office to discuss the questions raised. The office may solicit comments from any person on the questions raised. Additionally, any person may submit comments on the questions raised to the office.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.8(8B,17A) Action on petition.

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

4.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 129—6.2(8B,17A).
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

4.9(1) The office shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially conform to or comply with the requirements set forth in rule 129—4.1(8B,17A) relating to filing, form, content, or additional requirements.

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

c. The office does not have jurisdiction over the questions presented in the petition.

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

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

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

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

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

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

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

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

4.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.10(8B,17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of the petitioner, the name of any intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.11(8B,17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.12(8B,17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the office, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the office. The issuance of a declaratory order constitutes final office action on the petition.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

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

CHAPTER 5
OFFICE PROCEDURE FOR RULE MAKING

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

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

129—5.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the office may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the office by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

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

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

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

5.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of a proposed rule is distributed for internal discussion within the office. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the office for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of office personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the office of that possible rule. The office may also include in the docket other subjects upon which public comment is desired.

5.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule’s becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any office determination with respect thereto;
- h. Any known timetable for office decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

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

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

5.4(1) Contents. At least 35 days before the adoption of a rule, the office shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

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

5.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 5.12(2) of this chapter.

5.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the office a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the office for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. Inquiries regarding the subscription price should be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

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

129—5.5(17A) Public participation.

5.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action.

5.5(2) *Oral proceedings.* The office may, at any time, schedule an oral proceeding on a proposed rule. The office shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the office by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

- a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
- b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
- c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

5.5(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” or this chapter.

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in

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

c. Presiding officer. The CIO, a member of the office, or another person designated by the CIO who will be familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the CIO does not preside, the presiding officer shall prepare a memorandum for consideration by the CIO summarizing the contents of the presentations made at the oral proceeding unless the CIO determines that such a memorandum is unnecessary because the CIO will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the CIO at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the office's decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the office.

(6) The presiding officer may continue the oral proceeding at a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

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

5.5(5) Accessibility. The office shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance to arrange access or other needed services.

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

129—5.6(17A) Regulatory analysis.

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

5.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the office's small business impact list by making a written application addressed to Small Business Registry,

c/o Business Services Division, Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. The address of the small business or organization of small businesses;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

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

5.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business and that was adopted in reliance upon Iowa Code section 17A.4(3), the office shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

5.6(4) *Qualified requesters for regulatory analysis—economic impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "a" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

5.6(5) *Qualified requesters for regulatory analysis—business impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "b" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

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

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

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

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

5.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "a," unless a written request expressly waives one or more of the items listed in the section.

5.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the

administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

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

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

5.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services, shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.5.

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

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

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

5.8(1) *Time of adoption.* The office shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the office shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

5.8(2) *Consideration of public comment.* Before the adoption of a rule, the office shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

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

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

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

5.9(1) The office shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

5.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the office shall consider the following factors:

- a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action;
- c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

5.9(3) The office shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the office finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be

sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

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

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

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

5.10(1) *Omission of notice and comment.* When the statute so provides, or with the approval of the administrative rules review committee, if the committee finds good cause that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the office may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

5.10(3) *Public proceedings on rules adopted without them.* The office may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 5.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the office shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 5.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the office may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 5.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

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

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

5.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the office shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

5.11(2) *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the office's reasons for overruling the arguments made against the rule.

5.11(3) *Time of issuance.* After a proper request, the office shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

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

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

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

- a. The date the office adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons; and
- g. The effective date of the rule.

5.12(2) *Incorporation by reference.* The office may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the office finds that the incorporation of such matter in the office's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the office's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The office may incorporate such matter by reference in a proposed or adopted rule only if the office makes copies of such matter readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the office, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The office shall retain permanently a copy of any materials incorporated by reference in a rule of the office.

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

5.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the office shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the office. The office will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

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

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

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

5.13(1) Requirement. The office shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative Bulletin of a Notice of Intended Action. The rule-making record and materials incorporated by reference must be available for public inspection.

5.13(2) Contents. The office rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

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

c. All written petitions, requests, and submissions received by the office, and all other written materials of a factual nature and distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the office and considered by the CIO, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the office is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the office shall identify in the record the particular materials deleted and state the reasons for that deletion;

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

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

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

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

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6), and any office response to that objection;

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

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

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

5.13(4) Maintenance of record. The office shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 5.13(2) "g," "h," "i," or "j."

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

129—5.14(17A) Filing of rules. The office shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the office shall use the standard form prescribed by the administrative rules coordinator.

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

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

5.15(1) Grounds. The office may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the

effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.15(2) *Special notice.* When the office makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b,” the office shall employ all reasonable efforts to make the rule’s contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the office to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the office of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notices or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b” shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 5.15(2).

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

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

5.16(1) *Compilation, indexing, public inspection.* The office shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated and indexed and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

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

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

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

5.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the office to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the office shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or whether the rule should be amended or repealed. The office may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

5.17(2) In conducting the formal review, the office shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the office’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the office or granted by the office. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the office’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

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

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

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

CHAPTER 6 CONTESTED CASES

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

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

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

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

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

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

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

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

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

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

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

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

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

129—6.3(8B,17A) Time requirements.

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

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as otherwise precluded by rule or law. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

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

129—6.4(8B,17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the office action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specific office action which is disputed; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute. If the office denies the request, the office shall issue a written order specifying the basis for the denial.

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

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

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

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

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

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

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

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

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

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

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

- a. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the office or the state and of parties' counsel where known;
- b. Reference to the procedural rules governing conduct of the contested case proceeding;
- c. Reference to the procedural rules governing informal settlement;
- d. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., an administrative law judge from the department of inspections and appeals or the CIO);
- e. Information on who to contact if auxiliary aids or services are needed to participate in the matter because of a disability; and
- f. The mailing address and e-mail address for filing with the division or office, whichever is applicable, and notice of the option of e-mail service as provided in paragraph 6.14(2) "b."

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

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

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

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

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

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

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

case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14. The cost of any such representation shall be borne by the represented party.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.8(8B,17A) Presiding officer.

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

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

- a. Neither the office nor any officer of the office under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. An administrative law judge with the qualifications identified in subrule 6.8(3) is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g. The request was not timely filed.
- h. The request is not consistent with a specified statute.

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

- a. A license to practice law in the state of Iowa;
- b. Three years' experience as an administrative law judge;
- c. For a hearing related to procurement, knowledge of contract law;
- d. For a hearing in which the underlying dispute or subject matter is related to information technology, and to the extent an administrative law judge with a background in information technology is available, a background in information technology.

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

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

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

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

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

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

means unless any law, rule, or order of the presiding officer requires disclosure sooner. Objections, if any, shall be filed and served on all parties at least three business days in advance of hearing.

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

129—6.11(8B,17A) Disqualification.

6.11(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.11(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other office functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.11(3) and 6.25(9).

6.11(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

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

6.11(5) If, during the course of the hearing, a party becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

6.11(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 129—6.27(8B,17A) and seek a stay under rule 129—6.31(8B,17A).

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

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

6.12(1) Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.12(2) Severance. The presiding officer may, upon motion by any party or the presiding officer's own motion, for good cause shown, order any contested case proceedings or portions thereof severed. [ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.13(8B,17A) Pleadings.

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

6.13(2) Petition.

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

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

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

6.13(3) Answer.

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

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

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

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

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

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

6.13(4) Amendment. Any notice of hearing or petition may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer. The presiding officer may impose terms as a condition of allowing such amendments or grant a continuance. [ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

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

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

a. Service may be made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

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

6.14(3) Filing—when required.

a. After a matter has been assigned to the division, and until a proposed decision is issued, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the division, rather than the office. All pleadings, motions, documents or other papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

b. After the notice of hearing, when a matter has not been assigned to the division for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the office.

6.14(4) Filing—how and when made.

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

- (1) Delivered to the division pursuant to paragraph 6.14(3) "a" or to the office pursuant to paragraph 6.14(3) "b," and date-stamped received;
- (2) Delivered to an established courier service for immediate delivery to the proper entity;
- (3) Mailed by first-class mail or by state interoffice mail to the proper entity, so long as there is adequate proof of mailing; or
- (4) Transmitted by electronic mail (e-mail) or by other electronic means to the proper entity as provided in paragraph 6.14(4) "b."

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

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

- a.* A legible United States Postal Service postmark on the envelope;
- b.* A certificate of service;
- c.* A notarized affidavit; or
- d.* A certification in substantially the following form(s):
 - (1) After a matter has been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE) (DATE)

(2) When a matter has not been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE) (DATE)

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

129—6.15(8B,17A) Discovery.

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

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

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

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

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

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

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

6.15(4) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the presiding officer may order the parties to comply with these procedures unless doing so

would unreasonably complicate the proceedings or impose an undue hardship. As a practical matter the purpose of the disclosure requirements and discovery conference is served by the office's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 129—6.16(8B,17A).

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

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

6.15(7) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the division or office, whichever is applicable, relating to discovery shall allege that the moving party previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

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

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

129—6.16(8B,17A) Subpoenas.

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

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

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

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

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

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

6.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the division or office, whichever is applicable, a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then move the presiding officer to issue an order compelling production.

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

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

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

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

129—6.17(8B,17A) Motions.

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

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

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

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

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

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer.

A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 129—6.30(8B,17A) and appeal pursuant to rule 129—6.29(8B,17A).
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

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

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

- a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

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

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

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

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

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

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

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

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

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

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

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

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

- a. Any prior continuances;

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

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

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

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

129—6.20(8B,17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with office rules. Requests for withdrawal may be oral or written. If the request is oral, the presiding officer may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

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

129—6.21(8B,17A) Intervention.

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

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

6.21(3) Grounds for intervention. In order to be entitled to intervene, the movant must demonstrate that:

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

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

c. The interests of the movant are not adequately represented by existing parties.

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

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

129—6.22(8B,17A) Hearing procedures.

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

a. Issue such orders and rulings as will ensure the orderly conduct of the proceedings;

b. Rule on motions and objections;

c. Administer oaths to witnesses;

d. Admit or exclude testimony or other evidence;

- e. Require that the parties submit briefs; and
- f. Issue a proposed decision.

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

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

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

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

6.22(6) *Examination of witnesses.* All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning consistent with Iowa Code section 17A.14 and other applicable law.

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

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

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

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

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

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

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

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

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

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

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

129—6.23(8B,17A) Evidence.

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

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

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

6.23(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The way in which the parties shall mark exhibits shall be determined at the prehearing conference, if any. If there is no prehearing conference, the way in which the parties shall mark exhibits shall be determined by mutual agreement between the parties prior to hearing.

6.23(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such objection shall be timely, and the objecting party shall briefly state the grounds for the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

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

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

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

129—6.24(8B,17A) Default.

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

6.24(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

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

6.24(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.24(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.24(6) “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

6.24(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 129—6.27(8B,17A).

6.24(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

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

6.24(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 129—6.31(8B,17A).

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

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

6.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the office or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

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

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

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

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

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

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

6.25(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding

officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

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

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

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

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

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

129—6.27(8B,17A) Interlocutory appeals. Upon written request of a party or on the CIO's own motion, the CIO may review an interlocutory order of the presiding officer. In determining whether to do so, the CIO shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which such review of that interlocutory order by the office at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is earlier.

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

129—6.28(8B,17A) Final decision.

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

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

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

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

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

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

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

129—6.29(8B,17A) Appeals and review.

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

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

6.29(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

6.29(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The CIO may remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

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

6.29(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The CIO may resolve the appeal on the briefs or provide an opportunity for oral argument. The CIO may shorten or extend the briefing period as appropriate.

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

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

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

6.30(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the office decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.29(4), the applicant requests an opportunity to submit additional evidence.

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

6.30(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the office shall serve copies on all parties.

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

6.30(6) *Proceedings.* If the CIO grants an application for rehearing, the CIO may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will be received, the CIO may remand the case to the presiding officer for further hearing or may preside at the taking of additional evidence. If additional evidence will not be received, the CIO may issue a ruling without oral argument or hearing. The CIO may, on the request of a party or on the CIO's own motion, order or permit the parties to provide written argument on one or more designated issues. The CIO may be assisted by an administrative law judge in all proceedings related to an application for rehearing. [ARC 2542C, IAB 5/25/16, effective 6/29/16]

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

6.31(1) *When available.*

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

b. Any party to a contested case proceeding may petition the office for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the office is required to exhaust administrative remedies prior to seeking a stay from the district court.

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

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

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

129—6.32(8B,17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

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

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

6.33(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and consistent with the Constitution and other provisions of law, the office may issue a written order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the office by emergency adjudicative order. Before issuing an emergency adjudicative order, the office shall consider factors including, but not limited to, the following:

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

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

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

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

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

6.33(2) *Issuance of order.*

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

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

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

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

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

6.33(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the office shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

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

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

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

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

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

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

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

CHAPTERS 7 to 19
Reserved

TITLE II
BROADBAND

CHAPTER 20

BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

129—20.1(8B,427) Definitions. The definitions in Iowa Code section 8B.1 as amended by 2019 Iowa Acts, House File 772, shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply.

“*As of date*” means the as of date of the broadband availability maps and corresponding data sources utilized by the office in determining whether a communications service provider offers or facilitates broadband service in a particular census block at or above the download and upload speeds specified in the definition of targeted service area and underlying the statewide map published and then in effect in accordance with rules 129—20.3(8B,427) and 129—20.4(8B,427). For example, until the office publishes an updated version of the statewide map in accordance with rules 129—20.3(8B,427) and 129—20.4(8B,427), the as of date remains July 1, 2015, which is the as of date of the first statewide map.

“*Census block*” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.

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

“*Installation of the broadband infrastructure*” means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—20.2(8B,427) Scope. This chapter interprets relevant provisions of Iowa Code sections 8B.1, 8B.10, and 8B.11 as amended by 2019 Iowa Acts, House File 772; implements Iowa Code section 427.1(40) as amended by 2019 Iowa Acts, House File 772; and applies to the office’s determinations of whether a census block is a targeted service area and to persons who wish to challenge the office’s finding on whether a census block is a targeted service area.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—20.3(8B,427) Broadband availability maps and data sources. To determine whether a communications service provider offers or facilitates broadband service in a particular census block at or above the download and upload speeds specified in the definition of targeted service area as of the as of date, the office utilizes fixed broadband availability maps and corresponding data sources made available by the Federal Communications Commission (FCC) online, which as of September 18, 2019, was available at www.fcc.gov/general/broadband-deployment-data-fcc-form-477. Such maps and data sources are widely accepted for accuracy and made available for public review and comment. By selecting these maps and data sources, the office has satisfied its obligation to reference broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment as required by Iowa Code section 8B.10(1).

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—20.4(8B,427) Targeted service area determination.

20.4(1) The office will create a statewide map divided into census blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate census blocks within which, as of the as of date, no communications service provider offered or facilitated broadband service to the public at or above the download and upload speeds specified in the definition of targeted service area. This statewide map shall be published online at ocio.iowa.gov/broadband.

20.4(2) In accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, the office shall periodically make renewed determinations of whether a communications service provider offers or facilitates broadband service at or above the download or upload speeds specified in the definition of targeted service area by publishing an updated version of the statewide map. Such updates shall be made, to the extent updated maps and data sources are available at the time, no less frequently than prior to each round of grant applications solicited by the office pursuant to Iowa Code section 8B.11 as amended by 2019 Iowa Acts, House File 772.

20.4(3) As of the date of the office's publication of each version of the statewide map online at ocio.iowa.gov/broadband, targeted service area designations as shown on the statewide map shall be considered the office's final determination and finding of whether a particular census block constitutes a targeted service area, unless a person or party successfully challenges the office's determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office's determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office's determination and finding with respect to that particular census block final and no longer subject to challenge. A party's failure to challenge the office's determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.

20.4(4) Until the office publishes an updated version of the statewide map in accordance with this rule, the as of date for purposes of determining whether any communications service provider offered and facilitated broadband service to the public at or above the download and upload speeds specified in the definition of targeted service area in accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, and rule 129—20.3(8B,427) and this rule shall remain July 1, 2015, which is the as of date of the first statewide map. Thereafter, the as of date shall be the same as the as of date of the maps and corresponding data sources utilized by the office each time the office makes its renewed determination in accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, and rule 129—20.3(8B,427) and this rule.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—20.5(8B,427) Appeals.

20.5(1) Notice of appeal. Within 20 days after the office makes its final determination of whether a particular census block constitutes a targeted service area pursuant to rule 129—20.4(8B,427), any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

a. The notice of appeal shall set forth:

(1) The name, address, telephone number, and email address of the person or party;

(2) The particular census block designation the person or party is challenging by stating:

1. The census block number as provided on the statewide map referenced in rule 129—20.4(8B,427);

2. The county in which the census block is located as provided on the statewide map referenced in rule 129—20.4(8B,427);

(3) The manner in which the person or party is aggrieved or adversely affected by the office's determination; and

(4) The grounds upon which the appeal is based.

b. Accompanying the notice of appeal, the person or party shall provide the office with all evidence and information necessary to support the appeal.

20.5(2) Filing. Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by email at cio@iowa.gov. To the extent electronic filing is not feasible, the notice of appeal and all corresponding evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If the notice of appeal and corresponding evidence and information

are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

20.5(3) Notification of and input from affected persons or parties. Within ten calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at ocio.iowa.gov/broadband. From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by email to cio@iowa.gov. To the extent electronic submission is not feasible, such evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

20.5(4) Internal review. At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same census block and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office.

20.5(5) Final agency decision. Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the census block(s) in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online at ocio.iowa.gov/broadband. The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

20.5(6) Time of filing. In determining the date on which an appeal or request for a contested case proceeding is filed with the office, the following shall apply: an appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt.

20.5(7) Public records. The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Persons are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting evidence or information to the office as part of the appeals and contested case process outlined in this chapter. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all evidence and information submitted by persons or parties as public, nonconfidential records unless a person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. A person or party requesting confidential treatment of evidence or information submitted must:

- (1) Fully complete and submit to the office Form 22 (available online at ocio.iowa.gov/broadband);
- (2) Identify the request in the notice of appeal or, if evidence or information is submitted pursuant to subrule 20.5(3), identify the request in the transmittal email or the written explanation of why electronic filing was not feasible;
- (3) Conspicuously mark the outside of any submission as containing confidential evidence or information;
- (4) Mark each page upon which confidential evidence or information appears; and
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential evidence and information must be excised in such a way as to allow the public to determine the general nature of the evidence and information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each confidentiality request, the person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific evidence or information as confidential;
- (2) Justifies why the specific evidence or information should be maintained in confidence;
- (3) Explains why disclosure of the specific evidence or information would not be in the best interest of the public; and
- (4) Sets forth the name, address, telephone number, and email address of the individual authorized by the person or party submitting such evidence and information to respond to inquiries from the office concerning the confidential status of such evidence and information.

c. Failure to request that evidence or information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Persons may not request confidential treatment with respect to a notice of appeal or other similar documents. Blanket requests to maintain all evidence and information submitted as confidential will be categorically rejected.

20.5(8) Probative evidence and information. Examples of evidence and information the office would consider particularly probative of broadband service at or above the download and upload speeds specified in the definition of targeted service area as of the as of date for purposes of adjudicating an appeal of the office's determination of whether a particular census block constitutes a targeted service area include:

a. Signed attestations submitted to the office under penalty of perjury on forms provided by the office that the applicable census block(s) was or was not served as of the as of date with broadband service at or above the download and upload speeds specified in the definition of targeted service area.

b. Bills or invoices provided to or received by customers in the applicable census block(s) which identify the specific download and upload speeds provided or received as of the as of date.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—20.6(8B,427) Contested cases. A contested case initiated pursuant to this chapter shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's rules governing contested case proceedings (129—Chapter 6) unless the provisions of this rule provide otherwise. The definitions in rule 129—6.2(8B,17A) shall also apply to this rule.

20.6(1) Notice of hearing. Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the census block forming the basis of the contested case, or appealed the office's determination of the census block forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence or information to the office pursuant to subrule 20.5(3) directly related to the census block forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

20.6(2) Consolidation. In the event any contested cases concerning the same census block are initiated separately, such matters shall be consolidated.

20.6(3) Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

20.6(4) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet, either in person, by telephone, or by electronic means, prior to the hearing regarding the evidence to be presented.

20.6(5) Telephone hearing. If the hearing is conducted by telephone or other electronic means, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted. Telephone hearings shall be strongly encouraged.

[ARC 2782C, IAB 10/26/16, effective 11/30/16]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

CHAPTER 21
BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

129—21.1(8B,427) Definitions. The definitions in rule 129—20.1(8B,427) shall apply to this chapter.
[ARC 2782C, IAB 10/26/16, effective 11/30/16]

129—21.2(8B,427) Scope. This chapter applies to communications service providers who request certification pursuant to Iowa Code section 427.1(40) from the office that an installation of the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area.
[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—21.3(8B,427) Application for certification. Applications for certification shall be completed and submitted by the means specified online at ocio.iowa.gov/broadband. In order to receive certification from the office, applications must be filled out in their entirety. Communications service providers making application to the office will be required to certify that all of the information contained in the application is accurate. If it is later determined that any of the information contained in the application is inaccurate, the office may revoke the certification, in whole or in part. An application for certification shall include without limitation the following information:

1. The communications service provider's legal and business name(s) and address(es) and the name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application for certification;

2. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application (i.e., the targeted service area(s) in which the installation of the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area);

3. A description and overview of the specific technologies to be deployed (e.g., fixed wireless) that will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area;

4. Attestation that the broadband infrastructure installed in the targeted service area(s) will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area; and

5. Any other information as requested in the application.
[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—21.4(8B,427) Time of filing. Applications for certification must be received by the office at least ten days prior to the closure of the next applicable assessment deadline to be considered by the office for purposes of that reporting cycle. If the office does not receive an application within that time frame, the office may deny the application or consider the application as part of the next assessment cycle. Except as otherwise authorized by the office, an application for certification shall be deemed filed on the date of its actual receipt by the office. Notwithstanding the foregoing, except as otherwise authorized by the office, when an application for certification is filed during an open 20-day appeal period specified in 129—subrule 20.5(1) following the publication of an updated statewide map in accordance with rule 129—20.4(8B,427), an application for certification will not be deemed filed prior to the expiration of the 20-day appeal period.
[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—21.5(8B,427) Notice of decision and issuance of certificate. Following the timely filing of an application for certification and before the closure of the next assessment cycle, the office shall notify the communications service provider by electronic means of its decision regarding the application for certification. If the decision is to deny the application or part of the application, such notice shall include a concise statement of the office's reasons for such denial, in whole or in part. A determination by the office to deny an application for certification, in whole or in part, may be appealed pursuant to 129—Chapter 6.
[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—21.6(8B,427) Contents of certification. The certification shall state the communications service provider for which the certification is being issued, the census block number(s) (as provided on the map referenced in rule 129—21.4(8B,427)) of the targeted service area(s) for which the certification is being issued and county(s) in which such targeted service area(s) resides, that the office has determined the census block(s) in which the installation will facilitate broadband service are targeted service area(s), that the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area, and the date on which the certification is issued by the office. Such certification shall be signed by the CIO.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—21.7(8B,427) Targeted service areas subject to challenge. To the extent an application for certification satisfies all other requirements of this chapter, if at the time such application is filed the office's determination of whether a particular census block forming the basis of such application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the judicial review and appeal procedures outlined in Iowa Code sections 17A.19 and 17A.20, the office will issue a certification. Notwithstanding the foregoing, the aspect(s) of the office's certification concerning census blocks forming the basis of the application for certification that is currently subject to such challenge shall be purely contingent and valid only to the extent the office's original determination is ultimately upheld at the end of the entire appeals process once final, including judicial review and any subsequent appeal. For purely administrative purposes, if a portion of an application for certification is later deemed invalid by operation of this rule, the office may require the communications service provider to file a new application pursuant to rule 129—21.3(8B,427).

[ARC 2782C, IAB 10/26/16, effective 11/30/16]

129—21.8(8B,427) Certification of completion and field testing. To the extent applicable, after an installation of broadband infrastructure certified by the office is fully installed in a targeted service area, the communications service provider for which a certification was issued must certify to the office that such installation facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code section 427.1(40) "b" at any time after broadband service is available in a targeted service area. Such field tests may include but not be limited to speed tests from any location in a targeted service area in which the project was deployed or, in the case of wireline installations, the communications service provider's network operation center or central office. As applicable, noncompliance may be reported to the attorney general, the department of revenue, or applicable county board of supervisors.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

These rules are intended to implement Iowa Code sections 8B.1 and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

CHAPTER 22
BROADBAND GRANTS PROGRAM

129—22.1(8B) Definitions. The definitions in Iowa Code section 8B.1 as amended by 2019 Iowa Acts, House File 772, and rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply:

“*Grantee*” means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

“*Project*” means an installation of broadband infrastructure by a communications service provider that facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area in one or more targeted service areas.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—22.2(8B) Purpose and scope. This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. As authorized by Iowa Code section 8B.11(8), this chapter interprets relevant provisions of Iowa Code sections 8B.1 and 8B.11 as amended by 2019 Iowa Acts, House File 772, and establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate unserved and underserved areas in the state, leveraging federal funds and public and private partnerships where possible, by awarding grants to communications service providers that reduce or eliminate targeted service areas by installing broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in the definition of targeted service area in accordance with Iowa Code section 8B.11 as amended by 2019 Iowa Acts, House File 772, and with this chapter.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—22.3(8B) Notice accepting grant funds.

22.3(1) The office shall provide notice to communications service providers when grant funds become available for distribution by the office by posting a “Notice of Funding Availability” (NOFA) online at iowagrants.gov and ocio.iowa.gov/broadband.

22.3(2) Such NOFA shall:

- a. Generally describe the application process.
- b. State the date, time, and manner by which applications for such grant funds must be submitted to the office in order to be eligible for consideration by the office for an award of grant funds.
- c. State the total amount of grant funds available for distribution under the applicable NOFA and provide an estimate of the date by which the office anticipates it will issue award(s).
- d. Describe the factors the office will consider in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- e. Set forth any measurement, technical, scoring, or other similar standards, formulas, or criteria the office will utilize in applying any factors considered by the office in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- f. Identify allowable and not disallowed expenditures which may be included in an applicant’s total project costs and set forth what constitutes sufficient and appropriate documentation for purposes of substantiating subsequent requests for reimbursement for allowable and not disallowed expenditures.
- g. State any other terms, conditions, requirements, or processes applicable to communications service providers submitting applications for grant funds, including but not limited to any grant agreement the office may require a grantee to enter into as a condition of receiving grant funds pursuant to subrule 22.6(1).

[ARC 4098C, IAB 10/24/18, effective 11/28/18]

129—22.4(8B) Applications for grant funds.

22.4(1) Application process. Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure

that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in the definition of targeted service area. Applications shall be made and submitted in accordance with the terms of these rules and the NOFA.

22.4(2) Contents of application. In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

- a. The communications service provider's legal and business name(s) and address(es);
- b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;
- c. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area);
- d. Attestation that the broadband infrastructure installed will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area;
- e. Unless a specific cost allocation methodology is identified or required by the office as set forth in the NOFA, the specific methods or formulas the communications service provider will utilize in allocating the costs of and for broadband infrastructure for which reimbursement may be sought in proportion to such infrastructure's actual facilitation of broadband service at or above the download and upload speeds specified in the definition of targeted service area in the targeted service areas forming the basis of the project;
- f. An anticipated project completion date, which shall not exceed five years from the date the NOFA is issued. An applicant's anticipated project completion date shall be used to determine whether a grantee's failure to complete a project in a timely manner warrants a finding of noncompliance for purposes of subparagraph 22.6(4) "b"(2).

22.4(3) Deadlines. The office will only consider applications received on or before the applicable deadline as stated in the NOFA, unless the office, in its sole discretion, establishes a different deadline for the submission of applications. The office may establish a different deadline for all applicants, but will not change the deadline for or at the request of any individual applicant.

22.4(4) Confidentiality of contents of applications. The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Applicants or other persons or parties submitting information to the office are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting applications or other information to the office. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all information submitted by applicants or other persons or parties as public, nonconfidential records unless an applicant or other person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. In addition to any other administrative requirements established by the NOFA, an applicant or other person or party requesting confidential treatment of portions of an application or other information submitted to the office must:

- (1) Fully complete and submit to the office Form 22 as provided by the office.
- (2) Identify the request in the NOFA, or if other information is submitted to the office, identify the request in the transmittal email or cover letter for the written correspondence.
- (3) Conspicuously mark the outside of any submission as containing confidential information.
- (4) Mark each page upon which confidential evidence or information appears.
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each request for confidential treatment, the applicant or other person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential.
- (2) Justifies why the specific information should be maintained in confidence.
- (3) Explains why disclosure of the specific information would not be in the best interest of the public.
- (4) Sets forth the name, address, telephone number, and email address of the individual authorized by the applicant or other person or party submitting such information to respond to inquiries from the office concerning the confidential status of such information.

c. Failure to request that information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Applicants or other persons or parties may not request confidential treatment with respect to information specifically identified by the office in the NOFA as being subject to public disclosure. Blanket requests to maintain an entire application or all information otherwise submitted to the office as confidential will be categorically rejected.

22.4(5) *Limited exception for broadband infrastructure installed outside of targeted service areas.* Rescinded IAB 8/14/19, effective 9/18/19.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—22.5(8B) Application review process and award of grant funds.

22.5(1) *Period for public comment and validation process.*

a. Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office will open a period for public comment as it relates to such applications. Any member of the public will be permitted to submit comments regarding applications received by the office through the means specified in the NOFA.

b. As required by Iowa Code section 8B.11(3) as amended by 2019 Iowa Acts, House File 772, the period for public comment will include the opportunity for the public to submit factual information as part of a validation process to address claims that a targeted service area forming the basis of an application received by the office is currently served with broadband service at or above the download and upload speeds specified in the definition of targeted service area. Examples of such factual information the office would consider particularly probative of current service include:

- (1) Signed attestations submitted to the office under penalty of perjury on forms provided by the office that such targeted service areas are currently served with broadband service at or above the download and upload speeds specified in the definition of targeted service area.
- (2) Bills or invoices provided to or received by customers in such targeted service areas which identify current broadband service at or above the download and upload speeds specified in the definition of targeted service area.

To the extent such factual information is credible and verifiable, the office may consider such factual information in considering the relative need factor set forth in Iowa Code section 8B.11(4) “a” and paragraph 22.5(3) “a” in determining whether, to which projects, and in what amount(s) to award grant funds. In addition, to the extent such factual information is credible and verifiable, such factual information may result in the disqualification of a project where the factual information demonstrates that a material portion of the proposed project is currently served with broadband service at or above the download and upload speeds specified in the definition of targeted service area. Further, to the extent such factual information is credible and verifiable, the office may incorporate such factual information into its next renewed determination of whether a communications service provider offers or facilitates broadband service at or above the download or upload speeds specified in the definition of targeted service area and thereby subsequent iteration of the statewide map, as determined and updated in accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, and rules 129—20.3(8B,427) and 129—20.4(8B,427).

22.5(2) *Review committee.* Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office will supply all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules,

and Iowa Code chapter 8B to a review committee established by the office comprised of representatives selected by the office from schools, communities, agriculture, industry, and other areas. The review committee will review the applications and provide input/make recommendations to the office regarding whether, to which projects, and in what amount(s) to award grant funds, in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B.

22.5(3) Office final decision. Following the office's receipt of the review committee's input or recommendations and the closure of the period for public comment, the office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B; the input/recommendations made by the review committee; and any public comment received, all in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds for the installation of broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in the definition of targeted service area.

a. In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA, affording the greatest weight to the factors in subparagraphs 22.5(3) "a"(1), 22.5(3) "a"(2), and 22.5(3) "a"(3):

(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds, including whether the project serves a rural area(s). Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427), although the office may also take into consideration factual information received through the validation process pursuant to and in accordance with Iowa Code section 8B.11(3) as amended by 2019 Iowa Acts, House File 772, and paragraph 22.5(1) "b."

(2) The applicant's total proposed budget for the project, including the amount or percentage of local or federal matching funds, if any, any funding obligations shared between public and private entities, and the percentage of funding provided directly from the applicant.

(3) The relative download and upload speeds of proposed projects for all the applicants.

(4) The specific product attributes resulting from the proposed project, including technologies that provide higher qualities of service, such as service levels, latency, and other service attributes as determined by the office.

(5) The percentage of the homes, schools, and businesses in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above the download and upload speeds specified in the definition of targeted service area as a result of the project. The number of homes, schools, and businesses in a targeted service area may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427). To the extent possible in light of the current unit of measurement incorporated into current maps and data sources relied on by the office (i.e., census blocks), considering this factor is the means by which the office ensures underserved areas within targeted service areas are, to the extent possible, reduced or eliminated.

(6) The geographic diversity of the project areas of all applicants.

(7) The economic impact of the project to the area.

(8) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not:

(1) Base its decision on the office's prior knowledge of any applicant except for information obtained by the office during the application process or period for public comment; or

(2) Make an award that exceeds 15 percent of any communications service provider's total estimated allowable project costs for a proposed installation of broadband infrastructure.

22.5(4) Notice to applicants of decision and right to appeal. The office shall notify each communications service provider awarded a grant by the office of the office's decision(s) in accordance with the terms and conditions of the NOFA. The office will also post such decision(s) online at iowagrants.gov and ocio.iowa.gov/broadband. Unsuccessful applicants are solely responsible for reviewing such websites to determine their award status. Such agency decision(s) shall become final

unless, within ten days of such email transmission or posting, an applicant which was adversely affected by a decision of the office files a request for a contested case proceeding pursuant to 129—Chapter 6. Failure to challenge the office's decision under this rule by filing a request for a contested case within the ten-day period shall waive any claims an applicant may have related to the office's administration of the process and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—22.6(8B) Administration of award.

22.6(1) Grant agreement required. The office may require a grantee to enter into a grant agreement with the office in accordance with the terms, conditions, and requirements of the NOFA. Such grant agreement may include, but not be limited to, the total amount of the grant funds awarded to the grantee; a description of the project to be completed by the grantee and specifications related thereto; a description of allowable expenditures; conditions related to the disbursement of grant funds; default and termination procedures; performance, certification, and verification requirements/criteria necessary to confirm project success/completion; and repayment requirements in the event the grantee does not fulfill its obligations under the agreement, these rules, or Iowa Code chapter 8B. In addition to any terms, conditions, or requirements specifically set forth in such agreement, any and all requirements established by Iowa Code chapter 8B, these rules, other applicable law, rule, or regulation, or the NOFA shall be deemed incorporated by reference into such grant agreement as if fully set forth therein.

22.6(2) Mapping data required. Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form mutually acceptable to both the office and grantee demonstrating specifically where broadband infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to the office. Such GIS data must enable the office to determine which specific homes, schools, and businesses within each targeted service area forming the basis of the project have access to broadband service at or above the download and upload speeds specified in the definition of targeted service area as a result of the project.

22.6(3) Reimbursements, record keeping/audits, performance/certification, and repayment. In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

a. Reimbursement.

(1) General. A grantee shall only be reimbursed by the office for:

1. Allowable and not disallowed expenditures actually and previously incurred by the grantee. What constitutes allowable or disallowable expenditures shall be further specified in the NOFA or grant agreement;

2. Expenditures for broadband infrastructure solely to the extent such broadband infrastructure facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area within targeted service areas forming the basis of the project; and

3. Expenditures for which the grantee is able to supply sufficient and appropriate documentation. What constitutes sufficient or appropriate documentation shall be further specified in the NOFA or grant agreement.

(2) Timing. Requests for reimbursement may be submitted to the office in accordance with the terms and conditions in the NOFA or grant agreement.

b. Performance/certification. After the completion of a project utilizing, in whole or in part, grant funds, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area in each of the applicable targeted service areas identified in the original application, and identify the total number of homes,

schools, and businesses actually receiving broadband service in each of the targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

c. Field testing. The office may, in its discretion, conduct field tests, on one or multiple occasions, for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) for up to five years after broadband service is certified as complete in accordance with paragraph 22.6(3) “*b.*” The office may exercise this right both before and after reimbursing a grantee for any claimed, allowable expenditures, but if the office elects to do so before reimbursing a grantee for any claimed, allowable expenditures, it will do so within a reasonable time, not to exceed one year, after broadband service is certified as complete in accordance with paragraph 22.6(3) “*b.*” Such field tests may include but not be limited to:

(1) Speed tests anywhere between a grantee’s central office and the demarcation at any customer’s location in a targeted service area or census block in which the project was to be deployed;

(2) In the case of wireless installations, from any location in a targeted service area or census block in which the project was to be deployed; or

(3) In the case where a grantee does not have a customer in a targeted service area being served by the installation, certification obtained by the grantee and supplied to the office from an independent third party who is a properly licensed engineer that the installation facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

d. Disbursement/repayments.

(1) A grantee shall not be entitled to the applicable portion of any grant funds or shall be obligated to repay the office the applicable portion of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds 15 percent of the grantee’s estimated or final total allowable project costs, whichever is less.

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area in a targeted service area identified in the original application;

2. A grantee fails to complete the project as proposed in the original application; or

3. Any representation or warranty made by a grantee in an application for grant funds, a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

e. Notice of default. If the office determines a grantee is not entitled to or is otherwise required to repay the office in accordance with paragraph 22.6(3) “*d.*” the office may issue the grantee a “Notice of Default,” which shall afford the grantee 30 days to cure the default. Whether a grantee has sufficiently cured the default shall be determined in the sole discretion of the office. If a grantee fails to cure the

default within 30 days, the office may issue an order requiring the grantee to reimburse the office for the amount specified in the “Notice of Default.”

22.6(4) Remedies for noncompliance. In addition to issuing a “Notice of Default” and subsequent order requiring the grantee to reimburse the office for failing to cure the default pursuant to paragraph 22.6(3) “e” and any other remedies available to the office pursuant to a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), the office may, for cause, find that a grantee is not in compliance with the requirements of Iowa Code section 8B.11, these rules, or a grant agreement entered into by the office and a grantee pursuant to subrule 22.6(1).

a. At the office’s sole discretion, remedies for noncompliance may include, but are not limited to, the following:

(1) Issuing a warning letter stating that further failure to comply with program requirements within a stated period of time will result in a more serious action.

(2) Conditioning a future grant on compliance with program requirements within a stated period of time.

(3) Disallowing future reimbursements.

(4) Requiring that some or all previously issued grant funds be reimbursed to the office.

b. Reasons for a finding of noncompliance include, but are not limited to, one or more of the following:

(1) A violation of any of the terms or conditions of a grant agreement entered into between the office and a grantee pursuant to subrule 22.6(1);

(2) A grantee’s failure to complete a project in a timely manner;

(3) A grantee’s failure to comply with any applicable state laws, rules, or regulations;

(4) Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

(5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that does not facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area in a targeted service area identified in the original application;

(6) A grantee fails to complete the project as proposed in the original application;

(7) The total claimed expenditures or the amount previously reimbursed by the office exceeds 15 percent of the grantee’s estimated or final total allowable project costs, whichever is less;

(8) Any representation or warranty made by a grantee in an application for grant funds, an agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

22.6(5) Office’s decision and right to appeal.

a. Any decision of the office entitled “proposed decision,” “final decision,” or other like caption as relating to any issues described in subparagraphs 22.6(5) “a”(1) through (5) below shall become final unless, within 30 days of the transmission of such decision by the office by email to the email address of the individual identified in paragraph 22.4(2) “b” or to the email address of a person otherwise identified by the grantee in writing prior to the issuance of such decision as the person authorized by the grantee to respond to inquiries regarding the administration of the grant, a grantee which is adversely affected by the decision files a request for a contested case proceeding pursuant to 129—Chapter 6.

(1) The interpretation, construction, or application of any terms or conditions or resolution of a dispute under a grant agreement entered into between the office and a grantee or under these rules;

(2) Whether or in what amount a grantee is entitled to reimbursement pursuant to a grant agreement entered into between the office and a grantee, or under these rules;

(3) Whether or in what amount a grantee must repay the office pursuant to a grant agreement entered into between the office and a grantee or under these rules;

(4) The imposition of any remedies for noncompliance in accordance with subrule 22.6(4); or

(5) Any other decision of the office that relates to the administration of a grant awarded pursuant to Iowa Code section 8B.11, these rules, or a grant agreement entered into between the office and a grantee.

b. Failure to challenge the office's decision under this rule by filing a request for a contested case within the 30-day period shall waive any claims an applicant may have related to the administration of a grant award and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19]

129—22.7(8B) Reallocation of grant funds. Subject to applicable law, including but not limited to Iowa Code section 8B.11(2) "c," if grant funds that the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, applicable expenditures were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees or open additional rounds for applications. If the office awards additional grant funds to other grantees, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract amendments with the office providing for the expenditure of the additional grant funds and will otherwise be subject to Iowa Code section 8B.11 and these rules.

[ARC 4098C, IAB 10/24/18, effective 11/28/18]

129—22.8(8B,427) Targeted service areas subject to challenge. If at the time a grantee is awarded grant funds the office's determination of whether a particular census block forming the basis of the grantee's application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the office's administration of the award process is subject to challenge pursuant to subrule 22.5(4), including any subsequent judicial review or appeal therefrom as outlined in Iowa Code sections 17A.19 and 17A.20, the office may proceed to enter into a grant agreement with the grantee pursuant to subrule 22.6(1). Notwithstanding the foregoing or any contract executed between the parties to the contrary, the aspect(s) of the office's award(s) that is subject to such challenge at the time of such execution shall be valid and enforceable only to the extent the office's original determination or award process, as applicable, is ultimately upheld at the end of the entire appeals and contested case process once final, including judicial review and any subsequent appeal. If a census block is ultimately determined to not constitute a targeted service area, or a portion of an award is later deemed invalid, in whole or in part: the grantee shall not be entitled to any grant funds or reimbursement to the extent of any such noneligibility or invalidity; the office may require the grantee to amend the grant agreement to reflect such result; and the grantee will be required to reimburse the office for any corresponding funds previously distributed by the office.

[ARC 4606C, IAB 8/14/19, effective 9/18/19]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10(1), and 8B.11 as amended by 2019 Iowa Acts, House File 772.

[Filed ARC 4098C (Notice ARC 3728C, IAB 4/11/18), IAB 10/24/18, effective 11/28/18]

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