

CHAPTER 19
PROCEDURE FOR RULE MAKING

681—19.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board of regents are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

681—19.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board of regents 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 board of regents by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

681—19.3(17A) Public rule-making docket.

19.3(1) Docket maintained. The board of regents shall maintain a current public rule-making docket. The board of regents designates its director of legal affairs, human resources and information technology as its agency rules coordinator. Persons interested in information about rules being considered by the board of regents should contact the following office:

Board of Regents
Legal Affairs
100 Court Avenue
Des Moines, IA 50319

Persons interested in information about rules being considered at each regent institution should contact the following offices:

University of Iowa
Office of University Relations
5 Old Capitol
Iowa City, IA 52242

Iowa State University
University Legal Services
305 Beardshear Hall
Ames, IA 50010

University of Northern Iowa
Office of the Operations Auditor
242 Gilchrist Hall
Cedar Falls, IA 50614

Iowa School for the Deaf
Superintendent
1600 S. Highway 275
Council Bluffs, IA 51503

Iowa Braille and Sight Saving School
Superintendent
1002 G Avenue
Vinton, IA 52349

19.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the board of regents between the board of regents and one or more regent institutions. 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 board of regents for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of board of regents personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of regents of that possible rule. The board of regents may also include in the docket other subjects upon which public comment is desired.

19.3(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 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 board of regents determinations with respect thereto;
- h. Any known timetable for board of regents 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.

681—19.4(17A) Notice of proposed rule making.

19.4(1) *Contents.* At least 35 days before the adoption of a rule the board of regents shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

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

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

19.4(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 19.12(2) of this chapter.

19.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file, with the board of regents, a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board of regents shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board of regents 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.

681—19.5(17A) Public participation.

19.5(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 office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

19.5(2) *Oral proceedings.* The board of regents may, at any time, schedule an oral proceeding on a proposed rule. The board of regents 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 board of regents 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.

19.5(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” as amended by 1998 Iowa Acts, chapter 1202, section 8, 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 board of regents, a member of the board of regents, or another person designated by the board of regents who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board of regents does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding. The board delegates to its executive director authority to conduct oral proceedings. The executive director may delegate to regent institution officials the responsibility to conduct proceedings relating to rules of that regent institution.

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 board of regents at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall

indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board of regents 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 board of regents.

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

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. 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.

19.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board of regents may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

19.5(5) Accessibility. The board of regents shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, telephone (515)281-3934, in advance to arrange access or other needed services.

681—19.6(17A) Regulatory analysis.

19.6(1) Definition of small business. A “small business” is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

19.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the board of regents small business impact list by making a written application addressed to the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. The application for registration shall state:

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

The board of regents may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board of regents 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.

19.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board of regents shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board of regents 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.

19.6(4) *Qualified requesters for regulatory analysis—economic impact.* The board of regents shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

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

19.6(5) *Qualified requesters for regulatory analysis—business impact.* The board of regents shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business; or
- 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.

19.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the board of regents shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

19.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board of regents. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

19.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

19.6(9) *Publication of a concise summary.* The board of regents shall make available to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

19.6(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 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

19.6(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 1998 Iowa Acts, chapter 1202, section 10(2b).

681—19.7(17A,25B) Fiscal impact statement.

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

19.7(2) If the board of regents determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board of regents shall, at the same time, issue a corrected

fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

681—19.8(17A) Time and manner of rule adoption.

19.8(1) *Time of adoption.* The board of regents shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board of regents 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.

19.8(2) *Consideration of public comment.* Before the adoption of a rule, the board of regents 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.

19.8(3) *Reliance on board of regents expertise.* Except as otherwise provided by law, the board of regents may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

681—19.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

19.9(1) The board of regents 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.

19.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board of regents shall consider the following factors:

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

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

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

19.9(3) The board of regents 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 board of regents finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

19.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board of regents to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

681—19.10(17A) Exemptions from public rule-making procedures.

19.10(1) *Omission of notice and comment.* To the extent the board of regents for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board of regents may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral

public submissions prior to its adoption. The board of regents shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

19.10(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:

a. Rules relating to the care of patients or animals at medical or veterinary facilities operated by a regent institution, including rules regarding visitation and conduct of visitors at such facilities;

b. Rules relating to safety as applied to visitors in research laboratories, research farms and other research facilities;

c. Rules relating to the provision of educational services to persons not usually considered students, but who receive services like those available to students, such as conference attendees, persons receiving outreach and extension services, athletic camp attendees, persons taking academic tests or receiving academic evaluation, and persons attending special academic programs tailored to persons not enrolled as students;

d. Specific rules relating to safety or crowd management at ceremonial, celebratory, athletic, artistic, musical and similar events at a regent institution as long as the institution has adopted by formal rule making the general rules of conduct at such events; and

e. Rules relating to the use by the general public of the regent institutions' computing equipment, networks, software, electronic information resources, databases and the like.

19.10(3) *Public proceedings on rules adopted without them.* The board of regents 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 19.10(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 board of regents shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 19.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board of regents may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 19.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

681—19.11(17A) Concise statement of reasons.

19.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board of regents shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the office of the Board of Regents, 100 Court Avenue, 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.

19.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

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

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board of regents' reasons for overruling the arguments made against the rule.

19.11(3) *Time of issuance.* After a proper request, the board of regents 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.

681—19.12(17A) Contents, style, and form of rule.

19.12(1) *Contents.* Each rule adopted by the board of regents shall contain the text of the rule and, in addition:

- a. The date the board of regents adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the board of regents 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 1998 Iowa Acts, chapter 1202, section 8, or the board of regents in its discretion decides to include such reasons; and
- g. The effective date of the rule.

19.12(2) *Incorporation by reference.* The board of regents may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board of regents finds that the incorporation of its text in the board of regents proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board of regents proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board of regents may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the board of regents, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The board of regents shall retain permanently a copy of any materials incorporated by reference in a rule of the board of regents.

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

19.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board of regents shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board of regents. The board will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

19.12(4) *Style and form.* In preparing its rules, the board of regents shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

681—19.13(17A) Board of regents rule-making record.

19.13(1) *Requirement.* The board of regents shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or

adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

19.13(2) Contents. The board of regents rule-making record shall contain:

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

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

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

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

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

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

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

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

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

19.13(3) Effect of record. Except as otherwise required by a provision of law, the board of regents rule-making record required by this rule need not constitute the exclusive basis for board of regents action on that rule.

19.13(4) Maintenance of record. The board of regents 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 19.13(2) “g,” “h,” “i,” or “j.”

681—19.14(17A) Filing of rules. The board of regents shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board of regents shall use the standard form prescribed by the administrative rules coordinator.

681—19.15(17A) Effectiveness of rules prior to publication.

19.15(1) Grounds. The board of regents may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a

statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board of regents shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

19.15(2) *Special notice.* When the board of regents makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board of regents to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of regents of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

681—19.16(17A) General statements of policy.

19.16(1) *Compilation, indexing, public inspection.* The board of regents 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(10)“a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

19.16(2) *Compilation at each regent institution.* Each regent institution 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(10)“a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

19.16(3) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subrule shall not be relied on by the board of regents to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 19.16(2) or, with respect to a general statement of policy adopted by a regent institution, until the requirements of subrule 19.16(2) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

681—19.17(17A) Review of rules by board of regents.

19.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board of regents to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board of regents shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The board of regents 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.

19.17(2) In conducting the formal review, the board of regents 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 board of regents' 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 board of regents or granted by the board of regents. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board of regents' report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

681—19.18(17A) Waiver or variance from rule.

19.18(1) *Applicability.* Waiver or variance from board of regents rules may be requested but only in the event that:

a. The board of regents has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which waiver or variance is requested; and

b. No federal or state statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

19.18(2) *Authority.* The board of regents, the president or superintendent of a regent institution, or designee, or the presiding officer as part of the decision in a contested case, may grant a waiver of, or variance of, or variance from, all or part of a rule to the extent allowed by these rules.

19.18(3) *Compliance with law.* No waiver or variance may be granted from a requirement that is imposed by state or federal statute. Any waiver or variance must be consistent with state or federal statute.

19.18(4) *Criteria.* A waiver or variance under this chapter may be granted only upon a showing that:

a. The waiver or variance will not harm other persons and will not adversely affect the public interest; and

b. There are exceptional circumstances which justify an exception to the general rule to the extent that the requester is unable to comply with the particular rule without undue hardship or compliance with the particular rule would be unnecessarily and unreasonably costly and serve no public benefit.

19.18(5) *Request.* All requests for waiver or variance must be in writing and shall include the following information:

a. The name, address, and telephone number of the person requesting the waiver or variance and the person's representative, if any;

b. The specific rule from which a waiver or variance is requested;

c. The nature of the waiver or variance requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule;

d. An explanation of the reason for the waiver or variance, including all material facts relevant to the grant of the waiver or variance in question;

e. Any information known to the requester regarding the board of regents, or any regent institution's, treatment of similar cases;

f. The name, address and telephone number of any person(s) with knowledge of the matter with respect to which the waiver or variance is requested; and

g. Any necessary release of information authorizing persons with knowledge to disclose relevant information necessary to a decision.

19.18(6) *With whom filed.* A request for waiver or variance which pertains to a rule applicable to only a specific regent institution shall be submitted to the president or superintendent of that institution. A request for waiver or variance which pertains to a matter involving more than one regent institution, or the board of regents or its staff, shall be submitted to the Executive Director, Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. A request for waiver or variance which pertains to a pending contested case shall be filed in the contested case proceedings.

19.18(7) *Ruling.* Rulings on requests shall be in writing. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the waiver or variance is effective. Rulings on a waiver or variance shall be made in the following manner:

a. Requests submitted to the president or superintendent of a regent institution shall be decided by the president or superintendent, or designee.

b. Requests submitted to the board of regents shall be decided by the board, unless the board determines that the request was inappropriately submitted to it, in which case it shall forward the request to the appropriate decision maker as designated by these rules.

c. Requests submitted in a contested case shall be decided by the presiding officer in the contested case proceeding.

19.18(8) *Public availability.* All final rulings in response to requests for waiver or variances shall be indexed and available to members of the public at the offices listed below:

Board of Regents
Legal Affairs
100 Court Avenue
Des Moines, IA 50319

University of Iowa
Office of University Relations
5 Old Capitol
Iowa City, IA 52242

Iowa State University
University Legal Services
305 Beardshear Hall
Ames, IA 50010

University of Northern Iowa
Office of the Operations Auditor
242 Gilchrist Hall
Cedar Falls, IA 50614

Iowa School for the Deaf
Superintendent
1600 S. Highway 275
Council Bluffs, IA 51503

Iowa Braille and Sight Saving School
Superintendent
1002 G Avenue
Vinton, IA 52349

19.18(9) *Conditions.* The board of regents, or other designated decision maker allowed pursuant to these rules, may condition the grant of a waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

19.18(10) *Voiding or cancellation.* A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The decision maker may at any time cancel a waiver or variance upon appropriate notice and hearing if it is determined that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver or variance approval.

19.18(11) *Violations.* Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

19.18(12) *Appeals.* Any request for an appeal from a decision on a waiver or variance request made by the board of regents, the president or superintendent of a regent institution, or designee, shall be in accordance with the procedures provided in Iowa Code chapter 17A.

Any request for an appeal from a decision by the presiding officer in a contested case proceeding which grants or denies a waiver or variance shall be made pursuant to the procedures provided in rule 681—20.26(17A) or rule 20.27(17A), as applicable.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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