

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

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

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

"Agency" means a regulatory agency.

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

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

"Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

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

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

b. The request shall include all of the following:

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

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

(3) A description of the goods or services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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