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KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

ROSEMARY DRAKE
DEPUTY EDITOR

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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages of IAC are listed in the column headed "Remove Old Pages." New and replacement pages in this Supplement are listed in the column headed "Insert New Pages." It is important to follow instructions in both columns.

Editor's telephone: (515)281-3355 or (515)281-8157
Fax: (515)281-4424

UPDATING INSTRUCTIONS
May 19, 1999, Biweekly Supplement

[Previous Supplement dated 5/5/99]

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 7/27/88, Agriculture Department[30]]
Rules under this Department "umbrella" also include
Agricultural Development Authority[25] and Soil Conservation Division[27]

CHAPTER 44
ON-SITE CONTAINMENT OF PESTICIDES, FERTILIZERS, AND SOIL CONDITIONERS

CHAPTER 45
PESTICIDES

CHAPTER 2
CONTESTED CASE PROCEEDINGS AND PRACTICE

[Prior to 7/27/88, 21—1.8(159) and 21—1.9(159)]

The uniform rules on contested case proceedings published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

21—2.1(17A,159) Scope and applicability. In lieu of the words "(agency name)" insert "the department of agriculture and land stewardship".

21—2.2(17A,159) Definitions. Insert the following definitions in alphabetical order:

"Department" means the department of agriculture and land stewardship.

"Secretary" means the Iowa secretary of agriculture.

In lieu of the words "(designate official)" insert "person designated by the secretary to preside over a contested case including, but not limited to, an administrative law judge with the department of inspections and appeals. In lieu of the words "(agency name)" insert "the department of agriculture and land stewardship".

21—2.3(17A,159) Time requirements.

2.3(2) Delete the words "or by (specify rule number)".

21—2.4(17A,159) Requests for contested case proceeding. In lieu of the first paragraph insert "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 agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest."

21—2.5(17A,159) Notice of hearing.

2.5(1) Delete paragraph *"e."*

21—2.6(17A,159) Presiding officer.

2.6(1) Delete the words "(or such other time period the agency designates)".

2.6(2) Delete the words "(or its designee)". Delete paragraphs *"c"* and *"i"* and reletter the subsequent paragraphs.

2.6(3) Delete the subrule and insert "The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed."

2.6(4) Delete the subrule and renumber the subsequent subrules.

21—2.12(17A,159) Service and filing of pleadings and other papers.

2.12(3) In lieu of the words "(specify office and address)" insert "Secretary's Office, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa." In lieu of the words "(agency name)" insert "department".

2.12(4) In lieu of the words "(designate office)" insert "secretary's office".

21—2.15(17A,159) Motions.

2.15(4) Delete the words "(or other time period designated by the agency)".

2.15(5) In lieu of the words "(45 days)" insert "45 days". In lieu of the words "(15 days)" insert "15 days". In lieu of the words "(20 days)" insert "20 days".

21—2.16(17A,159) Prehearing conference.

2.16(1) Delete the words "(or other time period designated by the agency)". In lieu of the words "(designate office)" insert "presiding officer".

21—2.17(17A,159) Continuances.

2.17(1) Delete the words "(or other time period designated by the agency)".

21—2.22(17A,159) Default.

2.22(5) Delete the words "(or other time specified by the agency)".

21—2.23(17A,159) Ex parte communication.

2.23(8) In lieu of the words "(or disclosed)" insert "or disclosed".

2.23(10) In lieu of the words "(agency to designate person to whom violations should be reported)" insert "the secretary or the secretary's designee".

21—2.24(17A,159) Recording costs. In lieu of the words "(agency name)" insert "department".

21—2.25(17A,159) Interlocutory appeals. In lieu of the words "(board, commission, director)" insert "secretary or the secretary's designee". In lieu of the words "(of the presiding officer)" insert "of the presiding officer". Delete the words "(or other time period designated by the agency)".

21—2.26(17A,159) Final decision.

2.26(1) In lieu of the words "(the agency) (or a quorum of the agency)" insert "the department".

2.26(2) In lieu of the words "(agency name)" insert "department".

21—2.27(17A,159) Appeals and review.

2.27(1) In lieu of the words "(board, commission, director)" insert "secretary or the secretary's designee". Delete the words "(or other time period designated by the agency)".

2.27(2) In lieu of the words "(board, commission, director)" insert "secretary or the secretary's designee". Delete the words "(or other time period designated by the agency)".

2.27(3) In lieu of the words "(agency name)" insert "department".

2.27(4) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "secretary or the secretary's designee".

2.27(5) In lieu of the words "(agency name)" insert "department".

2.27(6) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "secretary or the secretary's designee".

21—2.28(17A,159) Applications for rehearing.

2.28(3) In lieu of the words "(agency name)" insert "department".

2.28(4) In lieu of the words "(agency name)" insert "department".

21—2.29(17A,159) Stays of agency action.

2.29(1) In lieu of the words "(agency name)" insert "department". In lieu of the words "(board, commission, director)" insert "secretary or the secretary's designee".

2.29(2) In lieu of the words "(board, commission, director, as appropriate)" insert "secretary or the secretary's designee".

2.29(3) In lieu of the words "(agency name)" insert "department".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 159.

[Filed 12/8/75, Notice 11/3/75—published 12/29/75, effective 2/2/76]
[Filed 3/30/77, Notice 2/23/77—published 4/20/77, effective 5/26/77]
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[Filed 12/1/95, Notice 8/16/95—published 12/20/95, effective 1/24/96]
[Filed 9/20/96, Notice 5/22/96—published 10/9/96, effective 11/13/96]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 3
PETITIONS FOR RULE MAKING

Insert the petition for rule making segment of the Uniform Administrative Rules which is printed in the first Volume of the Iowa Administrative Code with the addition of a new rule 21—3.5(17A) and the following amendments:

21—3.1(17A) Petition for rule making. In lieu of the words "agency, at (designate office)" insert "Secretary of Agriculture at the Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

BEFORE THE
SECRETARY OF AGRICULTURE
DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

21—3.3(17A) Inquiries. Substitute the following information for the parenthetical statement at the end: "the Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319".

21—3.5(17A) Petitions for related entities. If, pursuant to this chapter, the secretary receives a petition for rule making which is not within the rule-making power of the secretary but which is within the rule-making power of an autonomous or semiautonomous entity within the umbrella of the department of agriculture and land stewardship, the petition will be forwarded to the appropriate entity.

[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]

CHAPTER 4
DECLARATORY ORDERS

The uniform rules on declaratory orders published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

21—4.1(17A,159) Petition for declaratory order. In lieu of the words "(designate agency)" the first time the words are used, insert "department of agriculture and land stewardship (hereinafter referred to as "the department")". In lieu of the words "(designate agency)" the subsequent times the words are used, insert "department". In lieu of the words "(designate office)" insert "Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319." In lieu of the words "(AGENCY NAME)" insert "DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP".

21—4.2(17A,159) Notice of petition. In lieu of the words "___ days (15 or less)" insert "15 days". In lieu of the words "(designate agency)" insert "department".

21—4.3(17A,159) Intervention.

4.3(1) In lieu of the words "____ days" insert "20 days".

4.3(2) In lieu of the words "(designate agency)" insert "the department ".

4.3(3) In lieu of the words "(designate office)" insert "the secretary of agriculture's office". In lieu of the words "(designate agency)" insert "the department". In lieu of the words "(AGENCY NAME)" insert "DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP". Delete paragraph "6" and insert in lieu thereof "6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding."

21—4.4(17A,159) Briefs. In lieu of the words "(designate agency)" insert "department".

21—4.5(17A,159) Inquiries. In lieu of the words "(designate official by full title and address)" insert "the Secretary of Agriculture, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

21—4.6(17A,159) Service and filing of petitions and other papers.

4.6(2) In lieu of the words "(specify office and address)" insert "the Secretary of Agriculture, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319". In lieu of the words "(agency name)" insert "department".

4.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))" insert "rule 2.12(17A,159)".

21—4.7(17A,159) Consideration. In lieu of the words "(designate agency)" insert "department".

21—4.8(17A,159) Action on petition.

4.8(1) In lieu of the words "(designate agency head)" insert "the secretary of agriculture".

4.8(2) In lieu of the words "(contested case uniform rule X.2(17A))" insert "rule 21—2.2(17A, 159)".

21—4.9(17A,159) Refusal to issue order.

4.9(1) In lieu of the words "(designate agency)" insert "department".

21—4.12(17A,159) Effect of a declaratory order. In lieu of the words "(designate agency)" insert "department". Delete the words "(who consent to be bound)".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 159.

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[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 5
AGENCY PROCEDURE FOR RULE MAKING

The uniform rules on agency procedure for rule making published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

21—5.1(17A,159) Applicability. In lieu of the word "agency" insert "the department of agriculture and land stewardship (hereinafter referred to as "the department").

21—5.3(17A,159) Public rule-making docket.
5.3(2) In lieu of the words "(commission, board, council, director)" insert "secretary of agriculture".

21—5.4(17A,159) Notice of proposed rule making.
5.4(3) In lieu of the words "(specify time period)" insert "one year".

21—5.5(17A,159) Public participation.
5.5(1) In lieu of the words "(identify office and address)" insert "the Secretary of Agriculture, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".
5.5(5) In lieu of the words "(designate office and telephone number)" insert "the secretary of agriculture's office at (515)281-5322".

21—5.6(17A,159) Regulatory analysis.
5.6(2) In lieu of the words "(designate office)" insert "the secretary of agriculture's office".

21—5.10(17A,159) Exemptions from public rule-making procedures.
5.10(2) is deleted and subsequent subrules are renumbered.

21—5.11(17A,159) Concise statement of reasons.
5.11(1) In lieu of the words "(specify the office and address)" insert "the Secretary of Agriculture, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

21—5.13(17A,159) Agency rule-making record.
5.13(2) In lieu of the words "(agency head)" insert "secretary of agriculture".
These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 159.

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[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

Former Iowa Family Farm Development Authority[523]. Renamed Agricultural Development Authority[25] under the "umbrella" of Agriculture and Land Stewardship Department [21] by 1986 Iowa Acts, chapter 1245, section 629.

CHAPTER 1
GENERAL

[Prior to 4/22/87, Iowa Family Farm Development Authority [523] Ch 1]

25—1.1(175) Description of agricultural development authority organization. The agricultural development authority consists of nine members. The treasurer of the state or the treasurer's designee and the state secretary of agriculture or the secretary's designee are ex officio nonvoting members. Members are appointed for staggered six-year terms. A chairperson, vice-chairperson and treasurer are elected by the membership. Authority staff consists of an executive director and additional staff as approved by the agricultural development authority.

This rule is intended to implement Iowa Code section 17A.3 and Iowa Code chapter 175.

25—1.2(175) General course and method of operations. The authority usually meets on a monthly basis at a time and place designated by resolution of the authority. If the meeting date coincides with a legal holiday, it shall be held on a date mutually agreed upon by the members. The purpose of the meetings shall be to review progress in implementation and administration of authority programs, to consider and act upon proposals for authority assistance, to establish policy as needed, and take other actions as necessary and appropriate.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

25—1.3(175) Public participation in open meetings. The public shall have an opportunity to present their views at board meetings.

1.3(1) Members of the public who wish to present their views at a board meeting shall contact the executive director in writing. Requests shall outline the subject to be addressed at the meeting.

1.3(2) A presentation shall be placed on the agenda of a board meeting if the request is received by the executive director at least one week prior to that meeting. Requests received by the executive director less than one week prior to a board meeting shall be deferred to the following meeting.

1.3(3) At the board meeting, ten minutes shall generally be scheduled for each presentation. At the discretion of the board, more time may be allowed.

1.3(4) The executive director, or a designee, shall notify the requesting party of the exact time and place for the presentation before the board. This notification shall be by telephone call, and followed up by a confirming letter.

1.3(5) On the date of the board presentation, each person scheduled to make a presentation, or each member of a delegation, shall sign a registration sheet located at the reception desk.

1.3(6) In addition to the above, a 30-minute public forum shall be scheduled on the agenda of each regularly scheduled meeting to allow the public an opportunity to address the board on issues related to the board's responsibility. Time for individual presentations during the public forum may be allocated by the executive director to give all those wishing to speak the opportunity to do so.

This rule is intended to implement Iowa Code sections 17A.3, 21.3, 21.5, 21.7, and 21.8 and Iowa Code chapter 175.

25—1.4(175) Location where public may submit requests for assistance or obtain information. Requests for assistance or information should be directed to the Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322, telephone (515)281-6444. Requests may be made personally, by telephone, mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility to the authority at other times will be provided as needed.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

25—1.5(175) Waiver. The executive director of the authority may in the director's discretion retroactively or prospectively waive or vary particular provisions of these rules as necessary to conform to changes in federal or state law or regulations; to further the legislative purposes of programs of the authority; to bestow additional benefits or privileges on persons eligible to participate in the authority's programs; or to avoid inequitable, harsh or unforeseen results from the application of these rules; provided that the waiver shall be for good cause to avoid irreparable harm or injury to citizens of this state, shall not be unduly prejudicial to any person and shall not be in conflict with the Act.

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CHAPTER 2
BEGINNING FARMER LOAN PROGRAM

[Prior to 4/22/87, Iowa Family Farm Development Authority [523] Ch 2]

Subchapter A—General Provisions
PART I

25—2.1(175) Operational definitions.

"Agricultural improvements" means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements include a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the building.

"Agricultural land" means land suitable for use in farming and which is or will be operated as a farm.

"Application" means a completed instrument with all of the information required by subrule 2.7(4) in the Bond Market Loan Program or rule 2.10(175) in the Individual Agricultural Development Bond Program. The time of application is when a completed application is submitted to the authority.

"Bond purchaser" means any person as defined in Iowa Code section 4.1(13), other than a participating lender, who purchases an authority bond under the Individual Agricultural Development Bond Program.

"Depreciable agricultural property" means personal property suitable for use in farming for which an income tax deduction for depreciation or cost recovery is allowable in computing federal income tax under the Internal Revenue Code and which is qualified for financing with tax-exempt bonds pursuant to section 144 of the Internal Revenue Code.

"Eligible applicant" means an individual who is a beginning farmer, as defined in Iowa Code section 175.12, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

"Farm" means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

"Lender" means a participating lender or a bond purchaser.

"Participating lender" means any bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality or other financial institution or entity authorized and able to make mortgage loans or secured loans in this state.

Total assets shall include but not be limited to the following: Cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

Total liabilities shall include but not be limited to the following: Accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; any other liabilities.

1. Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.
2. Liabilities shall be determined on the basis of generally accepted accounting principles.

PART II

25—2.2(175) General provisions.

2.2(1) *Forms.* The executive director shall prepare and, as needed, revise and amend, with the approval of the authority, forms necessary for administration of authority programs. The number and type of forms shall be sufficient to safeguard the interests of the authority.

The authority shall annually assess the effectiveness of its administrative procedures, including all forms, and make any modifications which, in the judgment of the authority, are necessary or would facilitate efficient authority operations.

2.2(2) *Waiver.* The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a beginning farmer with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with the Act.

25—2.3(175) Recipient eligibility.

2.3(1) *Residence.* The beginning farmer must be a resident of Iowa at the time the bond is issued to finance the loan.

2.3(2) *Training and experience.* The beginning farmer must have documented to the satisfaction of the lender and the authority sufficient education, training, and experience, for the anticipated farm operations.

2.3(3) *Access to capital.* The beginning farmer must, as a condition of loan closing, demonstrate to the satisfaction of the lender and the authority access to the following, as may be needed: Adequate working capital; farm machinery; livestock; agricultural land.

2.3(4) *Unavailability of alternative credit.* The authority may require the beginning farmer at the time of loan application to present to the lender formal evidence satisfactory to the lender that the beginning farmer has been unable to secure credit on terms which the beginning farmer could be reasonably expected to fulfill. The authority may require such additional certifications and evidence from the lender and the beginning farmer as the authority may deem appropriate.

This rule is intended to implement Iowa Code section 175.12.

Subchapter B—Bond Market Loan Program

25—2.4(175) Limitations on agricultural improvements and depreciable property.

2.4(1) Agricultural improvements and agricultural depreciable property which are to become a fixture or an integral part of real estate may be financed by the authority only if the beginning farmer owns the real estate on which they are to be located.

2.4(2) Reserved.

25—2.5(175) Loan eligibility.

2.5(1) Security for loans. The authority may take security for any loan. The form of security may include, but not be limited to a promissory note, security agreement, or first mortgage.

2.5(2) Loan conditions. Fees and interest rates, loan-to-value ratio, maximum loan amount, amortization period, repayment, prepayment, assumption, and assumption terms of a loan shall be determined from time to time by the authority and shall be contained in the security and servicing documents relating to the loan.

2.5(3) A loan may not be assumed or any interest in agricultural land, agricultural improvements or agricultural depreciable property may not be leased, sold, exchanged or used as a trade-in, used on an equipment-for-hire basis or otherwise conveyed without the prior written consent of the authority. The authority shall not consent to an assumption of its loan or the conveyance of such property subject to its mortgage or security agreement unless the purchaser of the property would be an eligible applicant for an authority loan.

2.5(4) Loan delinquency, foreclosure, and repossession provision shall be determined from time to time by the authority and shall be contained in the security and servicing documents relating to the loan.

PART III

25—2.6(175) Procedures for application by participating lenders.

2.6(1) The authority will disseminate a summary of the beginning farmer program to eligible lending institutions located within Iowa. Lenders wishing to secure a commitment of agricultural development authority funds must submit a letter of interest to the agricultural development authority by the initial application deadline set out in the letter of instructions accompanying the program summary.

2.6(2) The agricultural development authority board will review the letters of interest and will determine if the requests would provide opportunity for statewide participation by beginning farmers.

2.6(3) Based on the above determination, the agricultural development authority will send full program information and documents to selected lenders, and will invite full applications in a format prescribed by the agricultural development authority and sent to all lenders initially, with the program summary.

2.6(4) Prospective participating lenders must complete and execute the full application and forward to the agricultural development authority with any commitment fee required on or before the final application deadline set out in the letter of instructions accompanying the program summary.

2.6(5) The full application must be based on the participating lender's estimate of potential for timely loan of the agricultural development authority funds to qualified beginning farmers.

25—2.7(175) Application procedures—beginning farmers.

2.7(1) The agricultural development authority shall give public notice of the application period, application procedures, and participating lenders, as soon as possible after the initial lender application deadline.

2.7(2) Beginning farmers may apply to participating lenders during the application period, defined as the period between the starting and ending dates and times set out in the letter of instructions accompanying the program summary.

All applications will be taken and processed on a first-come, first-served basis. Applications approved for funding, subject to sale of the agricultural development authority bonds, will be given priority by the lender on a first-come, first-served basis.

An application shall expire if it is subsequently denied any applicable guarantee or insurance or is rejected by the lender or the authority as unqualified. An application shall lose its priority if it is not funded by the authority within the number of days following the issuance of the authority's bonds issued to fund the loan determined by the authority as a reasonable period of time to deliver the loans. In any of these events, the participating lender's commitment (to the extent available) shall be allocated to the next qualified applicant of the original applications, if any, and any subsequent applicants, if any, to the extent permitted by law, on a first-come, first-served basis.

The authority may deviate from the first-come, first-served rule to the extent necessary to (a) comply with federal income tax laws and regulations, or (b) fully utilize the proceeds of any series of bonds or allocations of bond proceeds to participating lenders.

2.7(3) Applications will be made on customary and appropriate forms approved by the authority. Each application must include the following: applicant name, address and credit data; description of anticipated use of beginning farmer loan proceeds; amount of loan and applicant down payment (if any); the agricultural development authority net worth compliance; application for FmHA commitment (if applicable); last two years' federal income tax returns.

2.7(4) Each participating lender shall, within one year of the date of issuance of the bonds from which the agricultural development authority loan is made, have originated and disbursed all of the loan proceeds to beginning farmers. Failure to comply will result, at a minimum, in forfeiture of any commitment fees and loss of the unused agricultural development authority commitment.

25—2.8(175) Allocation of bond proceeds among participating lenders.

2.8(1) The authority will aggregate its approved full applications and will base its preliminary offering circular on the aggregate loan amount. Based on the ratio between the amount of bonds actually sold by the agricultural development authority and the aggregate loan application amounts, the agricultural development authority will allocate its bond proceeds to the participating lenders, with those adjustments as the authority deems appropriate.

2.8(2) Participating lenders shall maintain adequate books and records setting forth payments received and disbursements made pursuant to all authority loans. The participating lender's books and records shall be available for examination by the authority or its agent at any time during normal business hours.

Rules 25—2.1(175) to 2.8(175) are intended to implement Iowa Code section 175.12.

Subchapter C—Individual Agricultural Development Bond Program

PART IV

25—2.9(175) Individual agricultural development bond program description. This program is intended to allow beginning farmers to obtain lower interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-exempt bond issued by the authority and purchased by the lender. The authority will enter into a loan agreement with the beginning farmer and assign that loan to the lender. At the same time, the authority will issue a tax-exempt bond in the amount of the loan and the lender will purchase that bond, which is used to fund the loan assigned to the lender. The bond which is issued by the authority and purchased by the lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan.

PART V

25—2.10(175) Definitions. *"Application"* means a completed instrument on a form approved by the authority. Each application must include the following: applicant name, address, and credit data, description of anticipated use of loan proceeds, amount of loan and applicant down payment (if any), and the authority's net worth compliance.

PART VI

25—2.11(175) Application procedures. The beginning farmer may apply (on forms approved by the authority) for an authority loan with any lender. Any loan approved will be assigned to that lender. Authority loan eligibility is determined by the requirements of the Act and the rules of the authority.

If a beginning farmer meets the loan eligibility requirements, the decision on whether to enter into the loan agreement is between the beginning farmer and the lender. They must agree on terms of the loan such as interest rates, length of loan, down payment, service fees, origination charges, and repayment schedule, which may not be any more onerous than those charged to similar customers for similar loans, but taking into account the tax-exempt nature of interest on the loan.

Following completion of the loan application by the beginning farmer and approval by the lender, the loan application must be submitted to the authority for its review and approval. The authority's review will include, but not be limited to, whether (1) the loan applicant is a qualified beginning farmer, (2) the loan proceeds will be used for a qualified purpose by a qualified borrower under the Act, rules of the authority, and the Internal Revenue Code and IRS regulations relating to private activity bonds, (3) the terms of the loan comply with these rules, and (4) the lender meets the definition of a participating lender or bond purchaser. The authority may require that the lender furnish any information which the authority deems necessary to determine whether the lender qualifies as either a participating lender or bond purchaser. If the authority determines that the lender does not qualify as either a participating lender or bond purchaser, it may deny the application. As part of its review, the authority and lender may require the beginning farmer to submit appraisals on part or all of the property being financed by the loan or to submit any or all other documents and information as may be necessary to complete its review of the loan application.

Following approval and issuance of the bond, the authority will enter into a loan agreement with the beginning farmer and then assign the loan without recourse to the lender. The authority may charge fees as needed to defray its costs for processing the loan and bond.

25—2.12(175) Issuance of bond. The authority will not issue a bond for the purpose of financing a project for a specific beginning farmer unless, prior to its issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1986 as amended, and its regulations. Upon receipt of a completed application, in a form prescribed by the authority, the executive director of the authority shall set a date, time and place for the hearing. The hearing shall be preceded by a notice published at least 14 days prior to the date of the hearing in a newspaper of general circulation and available to residents in the county where the project is located. The notice shall include, but not be limited to, the date, time and place of the hearing, the name of the beginning farmer, a general description of the project, and the right of individuals to request a local hearing.

The hearing shall be held in the authority's offices in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled. The executive director of the authority shall set a date, time and place for a local hearing and notice of the hearing in the local area shall be published as stated above. The date, time and place for the local hearing shall be reasonably convenient to persons affected by the project.

Public hearings may be held by a staff member, board member of the authority, an appointee or employee of the authority, or other qualified hearing officer.

The authority will not issue a bond for the purpose of financing a project by a specific beginning farmer unless, prior to the issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of the bond. Following the public hearing, the authority shall prepare and send to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

Following approval of the loan by the authority, and upon completion of a public hearing and approval of the bond issuance by the governor or another elected state official designated by the governor, the authority will issue a bond, to be purchased by the lender, in the amount and fitting the terms of the loan to the beginning farmer. The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the beginning farmer and the underlying collateral or other security furnished by or on behalf of the beginning farmer. The lender shall have no other recourse against the authority. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

25—2.13(175) Participating lenders. Rescinded IAB 2/21/90, effective 3/28/90.

25—2.14(175) Bond purchaser. Any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity, other than a participating lender, may be the purchaser of an authority bond under the Individual Agricultural Development Bond Program in connection with a contract sale or loan to the beginning farmer.

25—2.15(175) Minimum loan. There will be no minimum amount for a loan under this program.

25—2.16(175) Priority of applications. Applications shall be processed by the authority on a first-come, first-served basis, based upon the receipt of all completed documents by the authority.

Subchapter D—Postissuance Procedures

PART VII

25—2.17(175) Procedures following bond issuance. No bond proceeds may be used for a nonqualified purpose or by a nonqualified user. Following disbursement of the bond proceeds, the lender and beginning farmer may be required to certify to the authority that the proceeds were used by the qualified beginning farmer for a qualified purpose.

25—2.18(175) Assignment of loans by participating lenders. A participating lender may assign a loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). Servicing of the loan may also be assigned, but must at all times be with a participating lender as defined in rule 25—2.13(175). The authority must be notified in writing prior to assignment of servicing of the loan.

25—2.19(175) Assignment of loans by bond purchasers. A bond purchaser may assign a loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). The authority must be notified in writing prior to assignment of the loan.

25—2.20(175) Assumption of loans, substitution of collateral and transfer of property. Loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is an eligible applicant for an authority loan. Equipment and other depreciable property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the lender without the prior approval of the authority. The benefits of the loan made at the tax-exempt rate from the proceeds of an authority bond must remain with the qualified beginning farmer, and no person to whom property is traded or otherwise transferred may obtain the benefits of the authority loan.

25—2.21(175) Right to audit. The authority shall have at any time the right to audit the records of the lender and the beginning farmer relating to this loan and bond to ensure that bond proceeds were used for a qualified purpose by a qualified user.

Rules 2.9 to 2.21 are intended to implement Iowa Code sections 175.2, 175.12, 175.19 and 175.33.

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CHAPTER 7
CONTESTED CASES

The uniform rules on contested cases published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

25—7.1(17A,175) Scope and applicability. In lieu of the words "(agency name)" insert "the agricultural development authority".

25—7.2(17A,175) Definitions. Insert the following definitions in alphabetical order:

"Authority" means the agricultural development authority, established pursuant to Iowa Code chapter 175.

"Board" means the board of the authority established in accordance with Iowa Code section 175.3.

In lieu of the words "(designate official)" insert "person designated by the chairperson of the board to preside over a contested case in accordance with the provisions of Iowa Code section 17A.11". In lieu of the words "(agency name)" insert "the authority".

25—7.3(17A,175) Time requirements.

7.3(2) Delete the words "or by (specify rule number)".

25—7.4(17A,175) Requests for contested case proceeding. In lieu of the first paragraph insert "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 agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest."

25—7.5(17A,175) Notice of hearing.

7.5(1) Delete paragraph *"e."*

25—7.6(17A,175) Presiding officer.

7.6(1) Delete the words "(or such other time period the agency designates)".

7.6(2) Delete the words "(or its designee)". Delete paragraphs *"c"* and *"i"* and reletter the subsequent paragraphs.

7.6(3) Delete the subrule and insert "The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed."

7.6(4) Delete the subrule and renumber the subsequent subrules.

25—7.12(17A,175) Service and filing of pleadings and other papers.

7.12(3) In lieu of the words "(specify office and address)" insert "the Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322". In lieu of the words "(agency name)" insert "authority".

7.12(4) In lieu of the words "(designate office)" insert "authority".

25—7.15(17A,175) Motions.

7.15(4) Delete the words "(or other time period designated by the agency)".

7.15(5) In lieu of the words "(45 days)" insert "45 days". In lieu of the words "(15 days)" insert "15 days". In lieu of the words "(20 days)" insert "20 days".

25—7.16(17A,175) Prehearing conference.

7.16(1) Delete the words "(or other time period designated by the agency)". In lieu of the words "(designate office)" insert "presiding officer".

25—7.17(17A,175) Continuances.

7.17(1) Delete the words "(or other time period designated by the agency)".

25—7.22(17A,175) Default.

7.22(5) Delete the words "(or other time specified by the agency)".

25—7.23(17A,175) Ex parte communication.

7.23(8) In lieu of the words "(or disclosed)" insert "or disclosed".

7.23(10) In lieu of the words "(agency to designate person to whom violations should be reported)" insert "the chairperson of the board or the chairperson's designee".

25—7.24(17A,175) Recording costs. In lieu of the words "(agency name)" insert "authority".

25—7.25(17A,175) Interlocutory appeals. In lieu of the words "(board, commission, director)" insert "board or the board's designee". In lieu of the words "(of the presiding officer)" insert "of the presiding officer". Delete the words "(or other time period designated by the agency)".

25—7.26(17A,175) Final decision.

7.26(1) In lieu of the words "(the agency) (or a quorum of the agency)" insert "the authority".

7.26(2) In lieu of the words "(agency name)" insert "authority".

25—7.27(17A,175) Appeals and review.

7.27(1) In lieu of the words "(board, commission, director)" insert "board or the board's designee". Delete the words "(or other time period designated by the agency)".

7.27(2) In lieu of the words "(board, commission, director)" insert "board or the board's designee". Delete the words "(or other time period designated by the agency)".

7.27(3) In lieu of the words "(agency name)" insert "authority".

7.27(4) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "board or the board's designee".

7.27(5) In lieu of the words "(agency name)" insert "authority".

7.27(6) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "board or the board's designee".

25—7.28(17A,175) Applications for rehearing.

7.28(3) In lieu of the words "(agency name)" insert "authority".

7.28(4) In lieu of the words "(agency name)" insert "authority".

25—7.29(17A,175) Stays of agency action.

7.29(1) In lieu of the words "(agency name)" insert "authority". In lieu of the words "(board, commission, director)" insert "board or the board's designee".

7.29(2) In lieu of the words "(board, commission, director, as appropriate)" insert "the board or the board's designee".

7.29(3) In lieu of the words "(agency name)" insert "authority".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 175.

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CHAPTER 8
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

25—8.1(22) Adoption by reference. The agricultural development authority adopts by reference 21—Chapter 6, Iowa Administrative Code.

25—8.2(22) Custodian of records. The custodian for the records maintained by the agricultural development authority is the executive director.

These rules are intended to implement Iowa Code chapters 17A, 22 and 175.

[Filed 4/28/89, Notice 10/19/88—published 5/17/89, effective 6/21/89]

CHAPTER 9
DECLARATORY ORDERS

The uniform rules on declaratory orders published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

25—9.1(17A,175) Petition for declaratory order. In lieu of the words "(designate agency)" the first time they appear, insert "agricultural development authority (hereinafter referred to as "the authority")", and for each time the words "(designate agency)" appear thereafter, insert "authority". In lieu of the words "(designate office)" insert "505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322". In lieu of the words "(AGENCY NAME)" insert "AGRICULTURAL DEVELOPMENT AUTHORITY".

25—9.2(17A,175) Notice of petition. In lieu of the words and numbers "___ days (15 or less)" insert "15 days". In lieu of the words "(designate agency)" insert "authority".

25—9.3(17A,175) Intervention.

9.3(1) In lieu of the words "____ days" insert "20 days".

9.3(2) In lieu of the words "(designate agency)" insert "the authority".

9.3(3) In lieu of the words "(designate office)" insert "the authority's office". In lieu of the words "(designate agency)" insert "authority". In lieu of the words "(AGENCY NAME)" insert "AGRICULTURAL DEVELOPMENT AUTHORITY".

25—9.4(17A,175) Briefs. In lieu of the words "(designate agency)" insert "authority".

25—9.5(17A,175) Inquiries. In lieu of the words "(designate official by full title and address)" insert "the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322".

25—9.6(17A,175) Service and filing of petitions and other papers.

9.6(2) In lieu of the words "(specify office and address)" insert "the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Des Moines, Iowa 50309-2322". In lieu of the words "(agency name)" insert "authority".

9.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))" insert "rule 7.12(17A,175)".

25—9.7(17A,175) Consideration. In lieu of the words "(designate agency)" insert "authority".

25—9.8(17A,175) Action on petition.

9.8(1) In lieu of the words "(designate agency head)" insert "chairperson of the board".

9.8(2) In lieu of the words "(contested case uniform rule X.2(17A))" insert "contested case uniform rule 7.2(17A,175)".

25—9.9(17A,175) Refusal to issue order.

9.9(1) In lieu of the words "(designate agency)" insert "authority".

25—9.12(17A,175) Effect of a declaratory order. In lieu of the words "(designate agency)" insert "authority". In lieu of the words "(who consent to be bound)" insert "who consent to be bound".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 175.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 10
AGENCY PROCEDURE FOR RULE MAKING

The uniform rules on agency procedure for rule making published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

25—10.1(17A,175) Applicability. In lieu of the word "(agency)" insert "the agricultural development authority (hereinafter referred to as "the authority")".

25—10.3(17A,175) Public rule-making docket.

10.3(2) In lieu of the words "(commission, board, council, director)" insert "board of the authority".

25—10.4(17A,175) Notice of proposed rule making.

10.4(3) In lieu of the words "(specify time period)" insert "one year".

25—10.5(17A,175) Public participation.

10.5(1) In lieu of the words "(identify office and address)" insert "the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322".

10.5(5) In lieu of the words "(designate office and telephone number)" insert "the authority at (515)281-6444".

25—10.6(17A,175) Regulatory analysis.

10.6(2) In lieu of the words "(designate office)" insert "the authority".

25—10.10(17A,175) Exemptions from public rule-making procedures.

10.10(2) is deleted and the subsequent subrules are renumbered.

25—10.11(17A,175) Concise statement of reasons.

10.11(1) In lieu of the words "(specify the office and address)" insert "the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322".

25—10.13(17A,175) Agency rule-making record.

10.13(2) In lieu of the words "(agency head)" insert "executive director".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 175

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CIVIL RIGHTS COMMISSION[161]

CHAPTER 11
PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

CHAPTERS 12 to 14
Reserved

CHAPTER 15
MISCELLANEOUS PROVISIONS

CHAPTER 1
RULES OF PRACTICE
[Prior to 1/13/88, see Civil Rights 240—1.2, Ch 9, Ch 10]

161—1.1(216) Organization and administration.

1.1(1) *Organization.*

a. *Commission.* The Iowa civil rights commission is a seven-member body. Members are appointed by the governor pursuant to Iowa Code section 216.3.

b. *Location.* The Iowa civil rights commission, hereinafter referred to as "commission," is located on the second floor, 211 East Maple Street, Des Moines, Iowa 50309; telephone (515)281-4121; toll-free in Iowa only 1-800-457-4416; facsimile transmission (fax) (515)242-5840; telecommunications device for the deaf (TDD) (515)281-8085. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday.

1.1(2) *Administration.* The executive director is responsible for the day-to-day administration of the commission's activities.

1.1(3) *Telephone meetings of commissioners.*

a. *Making request.* A commissioner may request to attend a meeting of the commission by telephone upon showing of good cause. A request to attend by telephone must be made at least two days before or as soon as possible prior to the meeting. The request may be oral or in writing and must be made to the executive director or the executive director's designee.

b. *Granting request.* The chair of the commission shall as soon as practicable make the decision whether to grant the request to attend by telephone. In the absence of the chair or in the event that the chair is the requester, the decision shall be made by the vice-chair of the commission. If neither is available to make the decision, the decision shall then be made by the secretary to the commission.

c. *Standard.* A request by a commissioner to attend by telephone shall be granted if attendance in person is impossible or impracticable.

d. *Speakerphone required.* If the meeting room where the meeting is scheduled has no facilities for a speakerphone, the request to attend by telephone shall be denied.

161—1.2(216) Commission procedure for rule making.

1.2(1) *Initiation of rule-making procedures.*

a. Any person or state agency may file a petition for rule making with the commission at its location as defined in 161—paragraph 1.1(1)"*b.*" A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the commission's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. 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.

b. The commission shall act upon the request within 60 days after its submission in accordance with Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

c. The commission may initiate rule-making procedures upon its own motion in accordance with Iowa Code section 17A.4.

1.2(2) *Advice on possible rules before notice of proposed rule adoption.* In addition to seeking information by other methods, the commission 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 commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

1.2(3) *Notice of proposed rule making—contents.* At least 35 days before the adoption of a rule, the commission 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 commission 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 agency for the resolution of each of those issues.

1.2(4) *Public participation.*

a. *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 commission at its location as defined in 161—paragraph 1.1(1)*"b,"* or the person designated in the Notice of Intended Action.

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

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing the request.

(3) A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

(1) Applicability. This paragraph 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, or subrule 1.2(5)*"f."*

(2) 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.

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

(4) Conduct of the 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 commission 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 commission 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 commission.

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 questions of 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 adjournment of the oral presentations.

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

e. Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the commission at its location as defined in 161—paragraph 1.1(1)"*b*" in advance to arrange access or other needed services.

1.2(5) *Regulatory analysis.*

a. Definition of small business. A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10.

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

(1) The administrative rules coordinator;

(2) The administrative rules review committee.

c. Qualified requesters for regulatory analysis—business impact. The commission 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:

(1) The administrative rules review committee,

(2) The administrative rules coordinator,

(3) At least 25 or more persons who sign the request provided that each represents a different small business,

(4) An organization representing at least 25 small businesses. That organization shall list the name, address and phone number of not less than 25 small businesses it represents.

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

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

f. 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).

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

h. Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to 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(2*a*), unless a written request expressly waives one or more of the items listed in the section.

i. 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).

1.2(6) *Fiscal impact statement.*

a. A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies or entities which contract with the political subdivisions to provide service 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.

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

1.2(7) *Time and manner of rule adoption.*

a. *Time of adoption.* The commission 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 commission 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.

b. *Consideration of public comment.* Before the adoption of a rule, the commission 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.

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

1.2(8) *Variance between adopted rule and published notice of proposed rule adoption.*

a. The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

(1) 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

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

b. 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 commission shall consider the following factors:

(1) 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;

(2) 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

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

c. The commission shall commence a rule-making proceeding within 60 days of 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 commission 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.

d. Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

1.2(9) *Concise statement of reasons.*

a. *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 commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the commission's office as defined in 161— paragraph 1.1(1)*"b."* 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.

b. *Contents.* The concise statement of reasons shall contain:

(1) The reasons for adopting the rule;

(2) 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;

(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the commission's reasons for overruling the arguments made against the rule.

c. *Time of issuance.* After a proper request, the commission 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.

1.2(10) *Contents, style, and form of rule.*

a. *Contents.* Each adopted rule by the commission shall contain the text of the rule and, in addition:

(1) The date the commission adopted the rule;

(2) A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or the commission in its discretion decides to include such reasons;

(3) A reference to all rules repealed, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

(6) 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(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or the commission in its discretion decides to include such reasons; and

(7) The effective date of the rule.

b. *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 commission 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, may be obtained from the commission. The commission 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 commission shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

c. *Style and form.* In preparing its rules, the commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

1.2(11) *Filing of rules.* The commission 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 agency shall use the standard form prescribed by the administrative rules coordinator.

1.2(12) *Effectiveness of rules prior to publication.*

a. *Grounds.* The commission 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 commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. *Special notice.* When the commission 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 commission 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 commission 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 commission 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, or 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 1.2(12)*"b."*

1.2(13) *Review by commission of rules.*

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

b. In conducting the formal review, the commission 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 commission'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 commission or granted by the commission. 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 commission's report shall be sent to the administrative rules review committee.

161—1.3(216) Procedures for oral or written presentations.

1.3(1) Except where oral or written presentations are deemed unnecessary by the commission in accordance with section 17A.4(2), the commission shall allow for the submission of oral or written presentations, or both, prior to its adoption of any rules.

1.3(2) Interested persons shall have 20 days from the date of publication of notice in the Iowa Administrative Bulletin to submit written requests for oral presentations or to submit with presentations.

1.3(3) Notice of date, time and place of oral presentations by requesting parties will be published by appropriate media at least 20 days in advance with specific notice to requesting parties given by certified mail.

1.3(4) Interested parties may be limited to submitting written presentations at the discretion of the commission except when oral presentations are required by Iowa Code section 17A.4(1)*"b."*

161—1.4(216) Procedure for obtaining declaratory orders.

1.4(1) *Petition for declaratory order.* Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at its location as defined in 161—paragraph 1.1(1)*"b."* A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided by 1.4(7).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

1.4(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to 1.4(6) to whom notice is required by any provision of law. The commission may also give notice to other persons.

1.4(3) *Intervention.*

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. 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 commission.

c. A petition for intervention shall be filed at the commission office. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) 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.

(5) 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.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

1.4(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or from any other person concerning the questions raised.

1.4(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the commission's office.

1.4(6) *Service and filing of petitions and other papers.*

a. *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 their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. 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 commission at its location as defined in 161—paragraph 1.1(1)*"b."* All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa civil rights commission.

c. Method of service, time of filing, and proof of mailing. Method of service shall be by regular mail. Time of filing and proof of mailing shall be as provided by 161—subrule 3.5(8).

1.4(7) *Consideration.* Upon request by petitioner, the commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

1.4(8) *Action on petition.*

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in Iowa Code section 216.17(1).

c. Within 20 days of the issuance of a declaratory order, the petitioner or intervenors may appeal that order to the commissioners. The commissioners will consider the appeal at a subsequent commissioners' meeting and will either affirm, overturn, or remand the order.

1.4(9) *Refusal to issue order.*

a. The commission shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form.

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

(3) The commission does not have jurisdiction over the questions presented in the petition.

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

(5) 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.

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

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

(8) 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 agency decision already made.

(9) 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the commission to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. 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 the refusal to issue an order.

1.4(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

1.4(11) *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.

1.4(12) *Effect of declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors who consent to be bound 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 commission. The issuance of a declaratory order constitutes final agency action on the petition.

161—1.5(216) Forms. Forms are available at the commission office without charge. Commission staff is available to assist the public in all matters relative to the forms.

1.5(1) *"Charge of Discrimination,"* EEOC 5c, for a complaint alleging a discriminatory or unfair practice or act in all jurisdictional areas except housing.

1.5(2) *"Housing Discrimination Complaint,"* HUD 903, for a complaint alleging a discriminatory or unfair practice or act in the jurisdictional area of housing.

1.5(3) *"Authorization Release Form,"* to secure authorization for relevant client information.

1.5(4) *"Administrative Release Form,"* to request a "right to sue" letter.

1.5(5) *"Request for Withdrawal of Charge of Discrimination,"* is used by the complainant to withdraw the charge of discrimination previously filed.

1.5(6) *"Amended complaint,"* to amend the charge of discrimination previously filed.

1.5(7) *"Forms notebook."* Other forms commonly used by the commission or its staff are compiled within a "forms notebook." The notebook is available for inspection by the public at the commission offices. Copies of the forms notebook can be obtained for an appropriate copying charge.

1.5(8) *"Purpose of forms."* The existence of standard forms is for the convenience of the commission, the public, and the parties. The existence of a standard form does not imply that the purpose of the standard form cannot be accomplished through a document in a different form.

161—1.6(216) Referral and deferral agencies.

1.6(1) *Statement of purpose.* It is the purpose of the commission, in adopting these rules to promote the efficient enforcement of the Act. To this end, the commission will use referral and deferral agreements to encourage agencies with similar powers and jurisdiction to:

a. Develop procedures with remedies necessary to ensure the protection of rights secured by the Iowa Civil Rights Act.

b. Increase the efficiency of their operations.

c. Cooperate more fully with the commission in the sharing of data and resources, and

d. Coordinate investigations and conciliations with the commission in order to eliminate needless duplication.

1.6(2) *Definitions.*

a. *"Agency"* refers to any agency of municipal government established by ordinance for the purpose of eliminating discrimination on any basis protected by the Act or any state or federal governmental unit with jurisdiction over allegations of discrimination that is capable of obtaining remedies similar to those obtainable by the commission.

b. *"Referral"* means the process by which the commission cross-files a charge of discrimination with a referral agency, which extinguishes the legal ability of the commission to process the charge; provided, however, that the referral agency accepts the referred charge and that the commission has the reciprocal right to accept or reject charges cross-filed by the referral agency.

c. *"Referral agency"* means any agency of local government that has been awarded that status by contract with the commission.

d. *"Deferral"* refers to the process whereby the commission notifies an agency of local, state, or federal government that a complaint has been filed with the commission and that the commission will postpone its investigative activities for a period of 60 days while the deferral agency investigates and attempts to resolve the matter. Extensions of this time period may be granted by the commission or the executive director when just cause is shown by the agency for the time extension requested.

e. *"Deferral agency"* means any agency so designated by contract pursuant to these rules.

1.6(3) *Procedure for obtaining referral status.*

a. *Guidelines for designation.* The executive director will evaluate the applications of agencies and may designate agencies as referral agencies where they conform to the following guidelines:

(1) The agency should have professional staff to enable it to comprehensively investigate complaints and to ensure the processing of the charges expeditiously.

(2) The ordinance or enabling legislation under which the agency is established must provide at a minimum the same rights and remedies to discrimination as available under the Act, and

(3) The enabling legislation of the agency shall provide, at a minimum, that the agency may hold public hearings, issue cease and desist orders, and award damages to injured parties which shall include, but are not limited to, actual damages.

b. *Application.* Any agency desiring to be designated as a referral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling ordinance, a list of its investigatory personnel, the average number of hours worked by each per week, and a report for the previous 12-month period detailing the following:

(1) The number of cases filed with the agency,

(2) The number of probable cause and no probable cause findings,

(3) The number of cases successfully conciliated,

(4) The number of cases taken to public hearing,

(5) The average length of time spent investigating each case,

(6) The cumulative remedies obtained for the previous 12-month period and average remedy obtained per case,

(7) An assessment of the quality of the agency's investigation,

(8) The agency's standards to preserve quality investigations, and

(9) The status of the agency's caseload.

c. *Rejection of application.* Where the executive director determines that an agency does not qualify as a referral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a referral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. *Designation and contract.* Where the executive director determines that an agency is qualified as a referral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be referred. Upon execution of the contract, the executive director will designate the agency as a referral agency.

e. Terms of the referral contract. The referral contract shall be negotiated with the referral agency, but shall include the following:

(1) Terms prohibiting a complainant who has filed with the commission from cross-filing with a referral agency and vice versa,

(2) Terms permitting the commission to refer complaints filed with it to a referral agency for processing and vice versa,

(3) Terms prohibiting the commission from processing a charge referred to and accepted by the referral agency and vice versa,

(4) Terms permitting the commission or a referral agency to reject a charge referred to it for processing,

(5) Terms ending the contract after two years, subject to renegotiation, and

(6) Any other terms mutually agreed upon.

1.6(4) *Procedure for obtaining deferral status.*

a. Application. Any agency desiring to be designated as a deferral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling legislation or grant of jurisdiction, a list of its personnel and statement indicating their permanent or part-time status, their functions, and a summary of the agency's prior efforts at preventing and eliminating discrimination. The application must also explain how the agency is capable of obtaining remedies substantially similar to those available under the Act.

b. Guidelines for designation. The executive director will evaluate the applications of all agencies and may designate deferral agencies where the agencies conform to the following guidelines:

(1) The agency should have available resources to enable it to investigate complaints to ensure processing within a reasonable period of time,

(2) The agency's enabling legislation or grant of jurisdiction must permit it to obtain substantially the same remedies as are available under the Act,

(3) The agency must be able to make a diligent effort to investigate and resolve the complaints filed with it, and

(4) The agency is capable of obtaining remedies substantially similar to those available under the Act by informal means.

c. Rejection of application. Where the executive director determines that an agency does not qualify as a deferral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a deferral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. Designation and contract. Where the executive director determines that an agency is qualified as a deferral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be deferred. After execution of the contract, the executive director will designate the agency as a deferral agency.

e. Terms of the deferral contract. The deferral contract shall include, subject to negotiations with the agency, the following:

(1) The commission will agree to notify the deferral agency of all complaints filed with the commission which are within the deferral agency's jurisdiction, except where a complainant requests in written form that the deferral agency not be notified.

(2) The deferral agency will agree to aid all complainants whose complaints come within the commission's jurisdiction in completing the commission's complaint forms as well as notarizing them and forwarding the fully executed forms to the commission where the necessity to file a formal complaint exists. If, however, a matter may be resolved informally more expeditiously the deferral agency will simply notify the commission by letter of the complaint and resolution obtained. "Informally resolved complaints" shall refer to complaints that can be resolved within ten days.

(3) The commission will agree to postpone its investigation for at least 60 days of any complaint filed with a deferral agency unless otherwise agreed to by both parties. These waiver agreements will be made on an individual case basis.

(4) The agency will agree not to disclose the filing of a complaint or confidential information pertaining to a complaint until the complaint has been officially set for public hearing.

(5) The commission and the deferral agency shall share copies of all findings, case summaries, and conciliation agreements.

(6) Where a complaint is on file with a deferral agency, the commission will allow the deferral agency access to the contents of the complainant's file provided that the deferral agency allows the commission like privileges and has not previously disclosed confidential information prior to public hearing.

(7) Photocopying of materials from commission files for use by a deferral agency is solely at the discretion of the commission staff, but will not be unreasonably denied. When the commission copies from the agency's file, the agency shall be reasonably compensated for copying costs.

(8) The commission will give substantial weight to the findings of a deferral agency where pertinent and relevant factual evidence exists to support those findings.

(9) The commission will not necessarily be bound by the agency's conclusions of law.

(10) Where a deferral agency reaches a finding of probable cause to support an allegation of discrimination the contract may permit the agency to pursue conciliation, or to refer the case back to the commission for conciliation. The contract may also permit an agency that has attempted conciliation to refer that case back to the commission for public hearing. In no case where a case has been referred back to the commission will it be referred back to the agency. Where a case is conciliated or a hearing is held by the agency or the commission, both will be bound by the final determination.

(11) The period for which the contract will be in effect shall not exceed two years, subject to renegotiation.

(12) The contract may contain other terms agreed to by the parties.

These rules are intended to implement Iowa Code chapter 216.

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CHAPTER 4
CONTESTED CASES

[Prior to 1/13/88, see Civil Rights 240—1.5(2), 1.5(3), 1.8 to 1.15, 1.18]

161—4.1(17A) General provisions.

4.1(1) *Scope and applicability.* This chapter applies to contested case proceedings conducted by the Iowa civil rights commission.

4.1(2) *Prosecutory representative of commission.* The commission's case in support of the complaint shall be presented by the attorney or agent of the commission. An assistant attorney general may represent the Iowa civil rights commission at a contested case proceeding.

4.1(3) *Time.* Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.1(4) *Modification of time limits.* For good cause shown, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

4.1(5) *Extension of time for service by mail.* Whenever a party has the right or is required by this chapter to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon that party and the notice or paper is served upon that party by mail, three days shall be added to the prescribed period. Such additional time shall not be applicable where the presiding officer has prescribed the method of service of notice and the number of days to be given. This rule has no effect on actions which must be taken within a prescribed period after the issuance of a proposed decision or final order.

161—4.2(17A) Notice of hearing and answer.

4.2(1) *Statement of charges.*

a. Where conciliation efforts fail and it is determined that the record justifies proceeding to hearing, the commission's attorney or the executive director shall prepare a written statement of charges in support of the complaint and forward it to the presiding officer together with a request for a hearing date.

b. The statement of charges shall contain:

(1) An allegation that the respondent is a proper respondent within the meaning of and subject to provisions of the Iowa civil rights Act.

(2) A factual allegation or allegations of an unfair or discriminatory practice or practices, substantially as uncovered in the investigation, stated in the complaint (including amendments thereto), stated in the order of probable cause, or stated in the investigative summary.

c. A statement of charges is sufficient if it:

(1) Names the respondents and complainants;

(2) States the section(s) of the statute alleged to be violated; and

(3) Incorporates by reference the complaint and any amendments to the complaint.

d. The statement of charges shall also specifically identify all allegations, if any, in the complaint, as amended, which:

(1) Have been closed by other than a probable cause finding, or

(2) The commission has elected not to prosecute despite a probable cause finding.

e. None of the allegations identified pursuant to paragraph 4.2(1)*"d"* shall be considered as a claim of discrimination in the contested case proceeding, but evidence on such allegations may be considered when relevant to other allegations of discrimination or as background evidence.

4.2(2) *Scheduling conference.*

a. The presiding officer may set the matter for a scheduling conference in order that the parties, including the commission, and the presiding officer may arrive at a mutually agreed date for the public hearing. If practicable, the scheduling conference should be set for no sooner than 7 and no later than 30 days after the presiding officer receives the statement of charges. The parties may be notified by regular mail of the date of the scheduling conference. The scheduling conference may be conducted in whole or in part by telephone.

b. If no date can be agreed upon, the date of the public hearing may be set according to the presiding officer's discretion.

c. A public hearing should be scheduled for as early a date as practicable. In setting the date of hearing the availability of the presiding officer, the parties, the attorneys involved, likely witnesses, and any special circumstances shall be considered.

d. In setting the place of hearing, the location of the presiding officer, the parties, the attorneys involved, likely witnesses, and any special circumstances shall be considered.

4.2(3) *Notice of hearing.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery shall be executed by any of the following means: certified mail with return receipt requested, personal service as provided in the Iowa Rules of Civil Procedure, first-class mail, or publication as provided by the Iowa Rules of Civil Procedure to all interested parties or their attorneys at least 30 days before the date of the hearing. Certified mail return receipts, returns of service, or similar evidence of service shall be filed with the presiding officer. The notice shall include:

a. The time and place of hearing;

b. The nature of the hearing, the legal authority and jurisdiction under which the hearing is being held;

c. A short and plain statement of the matters asserted. This requirement may be satisfied by a statement of the issues as described by the statement of charges or an incorporation of the attached statement of charges;

d. The reference to the sections of the statute and rules involved;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Identification of the presiding officer, if known.

4.2(4) *Answer to notice of hearing.* The respondent is encouraged to file an answer to the allegations contained within the notice of hearing within 20 days of the service of the notice of hearing. Answers are encouraged as a means of sharpening the issues and preserving claimed error.

a. If an answer is filed, it should show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations contained within the notice of hearing. The answer should also state any facts alleged to show an affirmative defense and contain as many additional defenses as the respondent may claim.

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

c. Failure to file an answer or failure to follow the guidelines of this rule does not by itself constitute a waiver of any argument nor an admission of any issue. The optional nature of the answer, however, does not affect the respondent's obligations to raise issues in a timely fashion, to reply to discovery, or to fulfill any other obligation which is imposed upon respondent by law.

4.2(5) *Presiding officer.*

a. The presiding officer assigned to render a proposed decision shall be an administrative law judge employed by the department of inspections and appeals.

b. As used in these rules the term "presiding officer" shall mean the administrative law judge employed by the department of inspections and appeals assigned to render a proposed decision in the contested case.

c. As used in rules 4.13(17A) and 4.14(17A) the term "presiding officer" shall include the commissioners of the Iowa civil rights commission as well as the administrative law judge assigned to render a proposed decision in the contested case.

161—4.3(17A) Amendment.

4.3(1) Any notice of hearing, petition, statement of charges, or other charging document 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 who may impose terms or grant a continuance. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

4.3(2) Amendment to conform to proof. When issues not raised by the notice of hearing or the answer are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after the final decision; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the presiding officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would prejudice that party in maintaining the action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

161—4.4(17A) Default.

4.4(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.

4.4(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.

4.4(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 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 4.23(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

4.4(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.

4.4(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.

4.4(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 236.

4.4(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 4.25(17A).

4.4(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.

4.4(9) A default decision may award any relief consistent with the notice of hearing and the commission's remedial authority under the Iowa civil rights Act.

4.4(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.

161—4.5(17A) Consolidation and severance.

4.5(1) *Grounds for consolidation.* The presiding officer may, upon 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.

4.5(2) *Effect of consolidation.* Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may be considered as introduced in the other, and a separate or joint decision shall be made at the discretion of the presiding officer.

4.5(3) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

161—4.6(17A) Filing and service of documents.

4.6(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 other 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 commission, 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.

4.6(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivering, mailing, or transmitting by fax (facsimile) a copy to the attorney or to the party at the attorney's or party's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

4.6(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers shall be filed with the presiding officer at the following address: Civil Rights Administrative Law Judge (or the name of the presiding officer), Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319. Except as provided by these rules, the Iowa Rules of Civil Procedure pertaining to discovery, or other law, all pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

4.6(4) *Filing—how and when made.* In a contested case before the commission a document is filed by any of the methods described in 481—subrule 10.12(3). The date a document is deemed to be filed in a contested case before the commission is determined according to 481—subrule 10.12(3).

4.6(5) *Proof of mailing.*

a. In a contested case before the commission proof of mailing is made according to 481—subrule 10.12(4).

b. Conflict among proofs of mailing. The date of mailing is the date shown by the legible United States Postal Service postmark and, only in the absence of a legible postmark, the date of mailing is the date shown by the affidavit, certificate, or certification of mailing.

161—4.7(17A) Discovery.

4.7(1) *Civil procedure rules govern discovery.* Discovery procedures applicable in civil actions, as set forth in the Iowa Rules of Civil Procedure, are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.7(2) *Motions relating to discovery.* Any motion relating to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.7(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.7(3) *Use at hearing.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

4.7(4) *Sanctions available.* The Iowa Rules of Civil Procedure govern what sanctions may be imposed by the presiding officer for the failure to comply with a discovery order, the failure to respond to discovery, or failing to otherwise comply with the rules of discovery.

4.7(5) *Discovery on commission and complainant.* When discovery of information from the complainant is sought, discovery should be made upon the complainant with a copy thereof provided to the commission's representative. When discovery of information from the commission is sought, discovery should be made upon the commission with a copy thereof provided to the complainant or the complainant's representative. Discovery of the commission's investigative file may be made pursuant to Iowa Code section 17A.13(2).

4.7(6) *Discovery materials not filed.* Unless otherwise ordered by the presiding officer, no deposition, notice of deposition, interrogatory, request for production of documents, request for admission, or response, document or thing produced, or objection thereto shall be filed. Any motion attacking the sufficiency of a response to a discovery request must have a copy of the request and response attached or the motion may be denied. This rule does not apply to depositions to perpetuate testimony.

4.7(7) *Discovery conference.* A discovery conference may be ordered, requested, and held in the same manner and upon the same terms as are provided for in Iowa Rule of Civil Procedure 124.2.

4.7(8) *Duplication of civil procedure rules.* The duplication in these rules of provisions contained within the Iowa Rules of Civil Procedure relating to discovery does not imply that other portions of the civil procedure rules do not govern discovery in contested cases before the commission.

161—4.8(17A) Subpoenas.

4.8(1) *Issuance of subpoenas.*

a. A commission subpoena shall be issued to a party upon request. Such a request should be in writing, but oral requests may be honored by the presiding officer. The request shall include the name, address, and telephone number of the requesting party. The presiding officer may issue a subpoena, or a subpoena for the production of documentary evidence, signed but otherwise in blank to a party requesting it, who shall fill it in before service.

b. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.8(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

161—4.9(17A) Motions.

4.9(1) *Form.* No technical form for motions is required. However prehearing motions must be in writing, state the grounds for relief, and state the relief sought. Any motion for summary judgment shall comply with the Iowa Rules of Civil Procedure. Motions made during the hearing may be stated orally upon the record.

4.9(2) *Response.* Any party may file a written response to a motion within 14 days after the motion is served, unless the time period is extended or shortened by the rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.9(3) *Oral argument.*

a. The presiding officer may schedule oral argument on any motion.

b. Oral arguments on motions shall be held in Des Moines or by telephone conference call, unless the presiding officer orders otherwise.

c. A record of arguments will be made at the discretion of the presiding officer. A record may be made by tape recording or by certified shorthand reporter.

d. The expense of transcribing a record of the oral argument or any part thereof shall be charged to the requesting party.

4.9(4) *Motions regarding hearing.*

a. 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 agency or an order of the presiding officer.

b. Motions regarding sequestration of witnesses need not be made ten days prior to the hearing.

4.9(5) *Motions for summary judgment.* Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 45 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 20 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 4.30(17A) and appeal pursuant to rule 4.23(17A).

161—4.10(17A) Prehearing conferences.

4.10(1) Subject matter of conference. Upon the presiding officer's own motion or the motion of the parties, the presiding officer may direct the parties or their counsel to meet with the presiding officer for a conference to consider:

a. Simplification of the issues;

b. Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

c. Stipulations, admissions of fact and of contents and authenticity of documents;

d. Limitation of number of witnesses;

e. Scheduling dates for the exchange of witness lists and proposed exhibits;

f. Identifying matters which the parties intend to request be officially noticed;

g. Such other matters, including discovery matters, as may tend to expedite the disposition of the proceedings.

4.10(2) Prehearing conferences shall be conducted by telephone unless otherwise ordered. A record of the conference will be kept unless otherwise ordered by the presiding officer. A record of the conference may be by tape recording or by certified shorthand reporter. A party may request a copy of the tape recording or transcript of the conference, if it was recorded; or a transcript of the conference, if it was reported, and the requesting party will bear the cost of the recording or transcription.

4.10(3) Effect of conference. The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

161—4.11(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.11(1) Written or oral motions for continuance. A written motion for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

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

4.11(2) Factors to consider. In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirement;

g. The existence of a conflict in the schedules of counsel, parties, and witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

4.11(3) The presiding officer may require documentation of any grounds for continuance.

4.11(4) Failure of a party to timely obtain counsel, after clear and adequate notice of the right to be represented by an attorney, will not be considered grounds for a continuance in order to allow time to obtain counsel.

161—4.12(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties or by order of the presiding officer. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

161—4.13(17A) Disqualification.

4.13(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.

4.13(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 agency 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 1998 Iowa Acts, chapter 1202, section 19(3), and subrules 4.13(3) and 4.14(8).

4.13(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.

4.13(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.13(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.25(17A).

4.13(5) Remittal of disqualification. A presiding officer disqualified by the terms of 4.13(1) *"e"* or *"f"* may, instead of withdrawing from the proceeding, disclose, either in writing or orally, on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the administrative adjudicator's participation, all agree in writing that the adjudicator's relationship is immaterial or that the adjudicator's financial interest is insubstantial, the adjudicator is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

4.13(6) Partial disqualification of commission. The disqualification of one or more members of the commission who are considering adoption of a proposed decision of the presiding officer shall not prevent the remaining commissioners from considering the proposed decision.

161—4.14(17A) Ex parte communication.

4.14(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 to render a proposed or final decision or to make findings of fact or conclusions of law in the contested case from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency 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 4.13(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.

4.14(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.

4.14(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.14(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 4.6(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.14(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.

4.14(6) 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 4.11(17A).

4.14(7) 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.

4.14(8) 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.

4.14(9) 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 agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

161—4.15(17A) Powers of presiding officer. The presiding officer who presides at the hearing shall have all powers necessary to the conduct of a fair and impartial hearing including, but not limited to, the power to:

1. Conduct formal hearings in accordance with the provisions of this chapter;
2. Administer oaths and examine witnesses;
3. Compel the production of documents and appearance of witnesses in control of the parties;
4. Issue subpoenas;
5. Issue decisions and orders;
6. Rule on motions, and other procedural items or matters pending before the presiding officer;
7. Require the submission of briefs;
8. Issue such orders and rulings as will ensure the orderly conduct of the proceedings;
9. Receive, rule on, exclude or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
10. Maintain the decorum of the hearing including the power to refuse to admit or to expel anyone whose conduct is disorderly;
11. Take any action authorized by these rules;
12. Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

- Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;
- Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party, if any, having control over the witness; and
- Expelling any party or person from further participation in the hearing.

161—4.16(17A) Hearing procedures.

4.16(1) Objections. All objections shall be timely made and stated in the record. Any objection not duly made before the presiding officer shall be deemed waived.

4.16(2) Representation of parties. Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.16(3) Rights of parties. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.16(4) Sequestration of witnesses. At the request of a party, a presiding officer may order witnesses sequestered so they cannot hear the testimony of other witnesses, and the judge may make the order sua sponte. This rule does not authorize sequestration of (a) a party who is a natural person, or (b) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (c) a person whose presence is shown by a party to be essential to the presentation of the cause.

4.16(5) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceeding;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

4.16(6) Marking of exhibits. Exhibits entered into evidence which are offered by the commission or the complainant shall be numbered serially, i.e., 1, 2, 3, etc.; whereas those offered by the respondent shall be lettered serially, i.e., A, B, C, ... AA, BB, etc.; and those offered jointly shall be designated by "joint exhibit" and numbered serially.

4.16(7) Contents of record. The record in a contested case before the presiding officer shall include:

a. All pleadings, motions, and rulings;

b. All evidence received or considered and all other submissions;

c. A statement of matters officially noticed;

d. All questions and offers of proof, objections, and rulings thereon;

e. All proposed findings and exceptions;

f. Any decision, opinion or report by the officer presiding at the hearing.

The term "all other submissions" as used in this rule includes, but is not limited to, all written arguments filed with the presiding officer or the commission plus any attachments to such arguments.

Deliberations of the commission when deciding whether to adopt a proposed decision are not part of the record unless expressly made part of the record by order of the commission or the presiding officer.

4.16(8) Standards of conduct.

a. All persons appearing in proceedings before the presiding officer are expected to act with integrity, and in an ethical manner.

b. The presiding officer may exclude from proceedings parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The presiding officer shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The presiding officer may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative. In accordance with Rule 1.2 of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association, the presiding officer may also file a complaint with the committee if the judge believes that there has been a violation by an attorney of the Iowa Code of Professional Responsibility for Lawyers.

c. An order barring an individual from participation in a proceeding should be made only in exceptional circumstances.

161—4.17(17A) Evidence.

4.17(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.17(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts. Stipulated facts are binding on the presiding officer and the commission when it has not been proven that the stipulation was the result of fraud, wrongdoing, misrepresentation, or was not in accord with the intent of the parties.

4.17(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 by express or implied waiver, or the presiding officer determines that good cause justifies their expansion. If the presiding officer decides to admit evidence on issues outside the scope of notice over the objection of a party who did not have actual notice of those issues, that party, upon timely motion, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue. The scope of the issues at public hearing may include the facts as uncovered in the investigation and need not be limited to the allegations as stated in the original complaint.

4.17(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 should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.17(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve ruling until the written decision. Evidentiary objections, other than those based on relevancy, materiality, unduly repetitious evidence, privilege, discovery rules, or scope of examination, or any ground for which a ruling is compulsory as a matter of law, shall be simply noted in the record by the presiding officer.

4.17(6) Whenever evidence is ruled inadmissible, the party offering that exhibit 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 of exhibit, it shall be marked as part of an offer of proof and inserted in the record.

4.17(7) Although the rules of evidence do not apply in a contested case hearing, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The commission shall give effect to the rules of privilege recognized by law.

4.17(8) The authenticity of all documents submitted as proposed exhibits at the prehearing conference shall be deemed admitted unless objection is made at the prehearing conference or a written objection to authenticity of a document is filed at least ten days prior to the hearing. A party will be permitted to challenge authenticity at a later time upon a clear showing of good cause for failure to have made the objection earlier. A party's objection to authenticity is that party's refusal to admit the fact of authenticity and need not be ruled upon to be effective. If authenticity is not admitted under this rule it may be proved at hearing by any means permitted by law.

4.17(9) No evidence shall be received at any hearing concerning offers or counter-offers of adjustment during efforts to conciliate or settle an alleged unfair or discriminatory practice.

161—4.18(17A) Evidence of past sexual practices.

4.18(1) Discovery regarding past sexual practices. In a contested case alleging conduct which constitutes sexual harassment, a party seeking discovery of information concerning the complainant's sexual conduct with persons other than the person who committed the alleged act of sexual harassment, must establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action, and reasonably calculated to lead to the discovery of admissible evidence.

4.18(2) Evidence of past sexual practices inadmissible. In a contested case against a respondent who is accused of sexual harassment, or whose agent or employee is accused of sexual harassment, evidence concerning the past sexual behavior of the alleged victim is not admissible.

161—4.19(17A) Cost of copies of record. Upon request the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record shall be paid by the requesting party.

161—4.20(17A) Posthearing briefs.

4.20(1) In general. The presiding officer may fix times for submission of posthearing briefs. Unless otherwise ordered by the presiding officer, such briefs shall be filed simultaneously by all parties and there shall be no page limit nor any other formal requirements.

4.20(2) Reply briefs. If simultaneous briefs are filed then any party may file a reply brief within 10 days after service of the brief to which the reply is made.

4.20(3) Supplemental briefs. Posthearing briefs in addition to those ordered by the presiding officer under subrule 4.20(1) or those allowed by subrule 4.20(2) may be filed only upon application to the presiding officer.

4.20(4) Extensions. A motion for an extension of the time to file a brief shall be made no later than the day before the brief is due. A motion for an extension to file a brief may be oral and may be granted ex parte where the movant represents either (*a*) that the other parties who are filing briefs have been notified and that the motion is unopposed or (*b*) that there is an emergency which justifies such a request. An order granting an extension shall be in writing.

4.20(5) Late filing. Upon motion and within the discretion of the presiding officer a brief which is filed late may be struck.

4.20(6) Failure in a party's briefs to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue by that party before the presiding officer.

161—4.21(17A) Requests to present additional evidence.

4.21(1) *In general.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence.

4.21(2) *After proposed decision issued.* If a request to present additional evidence is made after the issuance of the proposed decision by the presiding officer then the request must be filed with the appeal or, by a nonappealing party, within 14 days after the service of the appeal. If the commission grants the motion to present additional evidence, the commission shall remand the case to the presiding officer for the taking of the additional evidence and any appropriate modification of the proposed order.

161—4.22(17A) Proposed decision.

4.22(1) *Written decision.* After a review of the transcript, the evidence, and the briefs, the presiding officer shall set forth, in writing, findings of fact, conclusions of law, and a proposed decision and order. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the Iowa civil rights commission within the time provided in rule 4.23(17A).

4.22(2) *Notification.* Upon receipt of the presiding officer's proposed decision, the commission shall forward a copy of the proposed decision to each of the parties by certified mail. A copy shall also be sent to counsel and to each commissioner.

161—4.23(17A) Review of proposed decision on appeal to the commission.

4.23(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

4.23(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 60 days following the issuance of such a decision.

4.23(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Iowa civil rights commission. 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;

e. The grounds for relief.

4.23(4) If an appeal or motion for review is filed, the executive director shall set a review date. The parties shall be notified of this date by certified mail. Copies of this notification shall also be sent to counsel and the commissioners.

4.23(5) An appeal is filed with the commission by delivering the notice of appeal to the commission at its offices in Des Moines. All appeals and briefs shall be sent to the executive director of the Iowa civil rights commission in care of the commission at its Des Moines address. An appeal may be filed by any of the methods described in 161—subrules 3.5(1) to 3.5(4). Regardless of the method used to file an appeal, the date an appeal is filed is the date it is actually received by the commission in Des Moines.

4.23(6) Oral argument. All parties or their attorneys shall be allowed ten minutes to present oral argument to the commission whenever the commission reviews a proposed decision pursuant to this rule. The commission may, in its discretion, allow oral argument to continue longer.

4.23(7) 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 20 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. The commission may shorten or extend the briefing period as appropriate. When filing a brief the party shall file an original and nine copies.

161—4.24(17A) Scope of review by commission.

4.24(1) *In general.* Whenever the commission reviews a proposed decision, it has all the power it would have in initially making the final decision. The commission may adopt, modify or reject the presiding officer's proposed decision or it may remand the case to the presiding officer for the taking of additional evidence and the making of any further proposed findings of fact, conclusions of law, or decision and order the commission deems necessary.

4.24(2) *Limitation of issues.* Whenever the commission reviews a proposed decision it shall consider only those issues actually presented to the presiding officer unless the issue was one which either:

a. Was raised prior to the proposed decision by a party, but not ruled upon, or

b. Was discussed in the proposed decision, but not argued on brief by the parties.

This rule does not affect a party's right to seek disqualification of a commissioner under rule 4.13(17A) or 4.14(17A).

161—4.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request or motion for interlocutory review must be filed within seven days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

161—4.26(17A) Intervention.

4.26(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.

4.26(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. 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 ordinarily be denied.

4.26(3) *Grounds for intervention.* The movant shall demonstrate that: (*a*) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (*b*) the movant is likely to 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.

4.26(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

161—4.27(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.

161—4.28(17A) Awards of attorney's fees.

4.28(1) *Retention of jurisdiction.* In any final decision in which it is determined that the complainant is entitled to an award of attorney's fees, but the actual amount has not yet been determined, there is, by operation of this rule, an express retention of jurisdiction of the case by the commission in order to determine the actual amount of attorney's fees to which the party is entitled and to enter a subsequent order awarding those fees, regardless of whether or not such retention of jurisdiction is expressed in the final decision. In such case, the decision is final in all other respects except the determination of the amount of the attorney's fees.

4.28(2) *Stipulation.* A final decision, in which it is determined that the complainant is entitled to an award of attorney's fees, may provide for an opportunity for the parties to file a written stipulation concerning the amount of the fees to be awarded. Any such stipulation entered into by the complainant(s) and respondent(s) is binding on the commission in the absence of evidence of fraud, wrongdoing, misrepresentation, or evidence that the stipulation is not in accord with the intent of the parties.

4.28(3) *Hearing.* If the amount of attorney's fees is not stipulated to by the parties, the presiding officer shall schedule a hearing on the issue of the amount of the attorney's fees. The hearing shall be governed by the same procedures as a hearing on the merits of a complaint except where otherwise ordered by the presiding officer. The parties may elect, by written stipulation, to utilize some method, such as stipulation of facts or submission of a documentary record, other than or complementary to a hearing, in order to make a record on attorney's fees which may then be reviewed by the presiding officer. By operation of this rule, the commission expresses its consent to such stipulations if agreed to by the parties seeking and contesting attorney's fees. The record of the original hearing is part of the record on the attorney's fee issue. Regardless of the method by which the record is made, the complainant has the burden of persuasion in proving attorney's fees.

161—4.29(17A) Waiver, modification of rules.

4.29(1) *By presiding officer.* Upon notice to all parties, the presiding officer may, with respect to matters pending before the presiding officer, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served.

4.29(2) *By parties.* Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the presiding officer, in the discretion of the presiding officer, may refuse to give effect to such a waiver when the presiding officer deems the waiver to be inconsistent with the public interest.

161—4.30(17A) Application for rehearing.

4.30(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.30(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in rule 4.21(17A), the applicant requests an opportunity to submit additional evidence.

4.30(3) *Time of filing.* The application shall be filed with the commission at its offices in Des Moines within 20 days after the issuance of the final decision.

4.30(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 commission shall serve copies on all parties.

4.30(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

161—4.31(17A) Hearing—other reasons. At any other time, the commission, executive director, or designee may, in its discretion, convene a hearing: whenever a problem of discrimination arises; in order to expedite the disposition of preliminary matters in any action before it; or when in the judgment of the commission, executive director or designee, the circumstances warrant.

161—4.32(216) Assessment of costs of hearing.

4.32(1) *General rule.* If the complainant or the commission prevails in the hearing, the respondent shall pay the "contested case costs" incurred by the commission. If the respondent prevails in the hearing, the commission shall itself bear the "contested case costs" incurred by the commission.

4.32(2) *Mixed results.* Where the complainant or commission is successful as to part of the remedies sought at the hearing and unsuccessful as to part of the remedies, the administrative law judge may recommend an equitable apportionment of "contested case costs" between the commission and the respondent.

4.32(3) *Costs allowable.* The following "contested case costs" and no others will be assessed or apportioned as provided in subrule 4.32(1) or 4.32(2):

a. The daily charge of the court reporter for attending and transcribing the hearing.

b. All mileage charges of the court reporter for traveling to and from the hearing.

c. All travel time charges of the court reporter for traveling to and from the hearing.

d. The cost of the original of the transcripts of the hearing.

e. Postage incurred by the administrative law judge in sending by mail (regular or certified) any papers which are made part of the record.

4.32(4) *Remedial orders.* This rule does not affect those costs which may be recoverable under Iowa Code section 216.15(8)*"a"*(8).

161—4.33(216) Appeals to the district court. Appeals to the district courts from the decision of the commission shall be perfected pursuant to the provisions of Iowa Code section 216.17 and Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 216.

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CHAPTER 5
DISCRIMINATION IN AIDING/ABETTING AND RETALIATION
Reserved

*The Administrative Rules Review Committee at its May 21, 1979, meeting delayed the effective date of 240—subrules 1.1(7) to 1.1(9), 1.3(1), 1.8(2) and rules 1.16 and 1.17 70 days.

ALCOHOLIC BEVERAGES DIVISION[185]

Created within the Department of Commerce by 1986 Iowa Acts, Senate File 2175.
Formerly Beer and Liquor Control Department[150]

CHAPTER 1
ORGANIZATION AND OPERATION
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—1.1(123,17A) Purpose. This chapter describes the organization and operation of the alcoholic beverages division, including the offices where and the means by which any interested person may obtain information and make submittals or requests.

185—1.2(123,17A) Scope and rules. Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. No rule shall in any way relieve a wholesaler, manufacturer, vintner, rectifier, licensee or permittee, or an agent or employee thereof from any duty under the laws of this state. All rules relating to the operation of state liquor stores promulgated hereunder shall remain in effect until July 1, 1987.

This rule is intended to implement Iowa Code section 123.4.

185—1.3(123,17A) Waiver. The purpose of these rules is to facilitate the business before the division and to promote a just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless provided otherwise by law, may be waived by the division to prevent undue hardship to any party transacting business with the division or to a proceeding. Reasons for granting the waiver shall be in writing and be made part of the record in the proceeding or part of the file in other matters.

185—1.4(123,17A) Duties of the division. The alcoholic beverages division administers the laws of this state concerning beer, alcoholic liquor, and wine. The division is vested with the sole and exclusive control within the state of Iowa both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported therein, except beer and wine, except as otherwise provided by law.

185—1.5(123,17A) Organization—commission. The alcoholic beverages division consists of five commission members appointed by the governor and confirmed by the senate. The commission acts as a policy-making body and serves in an advisory capacity to the administrator. The commission meets statutorily on the first of July of each year and thereafter as scheduled by the chairperson. A quorum shall consist of at least three commission members.

1.5(1) *Administrator.* Subject to senate confirmation, the governor appoints an administrator who conducts the daily operations of the division. These operations consist of but are not limited to:

a. Purchases of alcoholic liquor and wine for resale by the division.

b. The granting, refusing, suspension, or revoking of liquor control licenses, beer permits, wine permits, and special licenses.

c. The establishment of wholesale and retail prices for alcoholic beverages sold by the division.

d. The establishment or discontinuance of state liquor stores.

1.5(2) *Hearing board.* Rescinded IAB 8/18/93, effective 7/29/93.

This rule is intended to implement Iowa Code sections 123.5 and 123.9.

185—1.6(123,17A) Central offices. The central office is located at 1918 S.E. Hulsizer, Ankeny, Iowa 50021, (515)964-6800. The central office consists of the office of the administrator of the division, the office of the deputy administrator, the bureaus of store operations, products management, licensing and operations control. The central office is responsible for the operational support of the division including such functions as purchasing, store operations policy and control, products management, licensing, supply and other administrative duties. The central office is the principal custodian of all divisional orders, statements of law or policy issued by the division, legal documents concerning properties, and other public documents on file with the division.

This rule is intended to implement Iowa Code section 123.4.

185—1.7(123,17A) Matters applicable to all proceedings.

1.7(1) *Communications.* All communications to the division shall be addressed to the Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, unless otherwise specifically directed. Bids, complaints, pleadings, or other papers required to be filed with the division, shall be filed in the office of the secretary to the administrator within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the division.

1.7(2) *Office hours.* Office hours are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

1.7(3) *Public information.* Any interested person may examine all public records of the division including the decisions, orders, rules, opinions, and other statements of law or policy issued by the division in the discharge of its function. These documents may be examined in the offices of the division during regular business hours. Unless otherwise provided by law, all information contained therein shall be made available for public inspection.

These rules are intended to implement Iowa Code sections 123.4, 123.5, 123.6, 123.9, 123.10, 123.21(10), and 17A.3.

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*Two ARCs. See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING

[Ch 2, IAC 7/1/75 rescinded 3/7/79; see Ch 4]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—2.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

185—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency 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 agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

185—2.3(17A) Public rule-making docket.

2.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

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

2.3(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 agency determinations with respect thereto;

h. Any known timetable for agency 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.

185—2.4(17A) Notice of proposed rule making.

2.4(1) *Contents.* At least 35 days before the adoption of a rule the agency 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 agency 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 agency for the resolution of each of those issues.

2.4(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 2.12(2) of this chapter.

2.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency 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 agency 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 agency 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.

185—2.5(17A) Public participation.

2.5(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 Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941, or the person designated in the Notice of Intended Action.

2.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency 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 agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

2.5(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 agency, a member of the agency, or another person designated by the agency who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency 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 agency 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) Procedure. 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 agency 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) Oral presentation. Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

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

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

(5) Submissions. 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 agency.

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

(7) Questions. 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 rulemaking proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) Rebuttal statements. 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.

2.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

2.5(5) *Accessibility.* The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the alcoholic beverages division at (515)281-7430 in advance to arrange access or other needed services.

185—2.6(17A) Regulatory analysis.

2.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

2.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. 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 agency 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 agency 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.

2.6(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 agency 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 agency 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.

2.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency 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;

b. The administrative rules review committee.

2.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency 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;

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.

2.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

2.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

2.6(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).

2.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

2.6(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.

2.6(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).

185—2.7(17A,25B) Fiscal impact statement.

2.7(1) *Fiscal impact statement.* 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.

2.7(2) *Corrected fiscal impact statement.* If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

185—2.8(17A) Time and manner of rule adoption.

2.8(1) *Time of adoption.* The agency 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 agency 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.

2.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency 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.

2.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

185—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) *Rule different from proposed Notice of Intended Action.* The agency 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.

2.9(2) *Determining fair warning.* 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 agency 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.

2.9(3) *Commencement of rule-making proceeding.* The agency 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 agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

2.9(4) *Concurrent rule-making proceedings.* Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

185—2.10(17A) Exemptions from public rule-making procedures.

2.10(1) *Omission of notice and comment.* To the extent the agency 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 agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.10(2) *Public proceedings on rules adopted without them.* The agency 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 2.10(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 agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(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 agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

185—2.11(17A) Concise statement of reasons.

2.11(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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. 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.

2.11(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 agency's reasons for overruling the arguments made against the rule.

2.11(3) *Time of issuance.* After a proper request, the agency 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.

185—2.12(17A) Contents, style, and form of rule.

2.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency 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 agency 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 agency in its discretion decides to include such reasons; and

g. The effective date of the rule.

2.12(2) *Incorporation by reference.* The agency 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 agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency 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 agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, 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 agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency 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.

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

2.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

185—2.13(17A) Agency rule-making record.

2.13(1) *Requirement.* The agency 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.

2.13(2) *Contents.* The agency 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 agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency'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 agency, 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 agency and considered by the administrator, 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 agency 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 agency 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 agency 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.

2.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

2.13(4) *Maintenance of record.* The agency 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 2.13(2)*"g," "h," "i,"* or *"j."*

185—2.14(17A) Filing of rules. The agency 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 agency shall use the standard form prescribed by the administrative rules coordinator.

185—2.15(17A) Effectiveness of rules prior to publication.

2.15(1) *Grounds.* The agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.15(2) *Special notice.* When the agency 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 agency 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 agency 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 agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 2.15(2).

185—2.16(17A) General statements of policy.

2.16(1) *Compilation, indexing, public inspection.* The agency 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," "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.

2.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

185—2.17(17A) Review by agency of rules.

2.17(1) *Written request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency 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.

2.17(2) *Formal review process.* In conducting the formal review, the agency 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 agency'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 agency or granted by the agency. 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 agency'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.

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

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*See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 3
DECLARATORY ORDERS

[Ch 3, IAC 7/1/75 rescinded 3/7/79; see Ch 4]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—3.1(17A) Petition for declaratory order. Any person may file a petition with the alcoholic beverages division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division, at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

185—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the alcoholic beverages division shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

185—3.3(17A) Intervention.

3.3(1) *Qualified persons.* Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under rule 3.2(17A) and before 30-day time for agency action under 3.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) *Agency discretion.* 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 division.

3.3(3) *Filing of petition.* A petition for intervention shall be filed at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

185—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

185—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941.

185—3.6(17A) Service and filing of petitions and other papers.

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

3.6(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 Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

3.6(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 contested case rule 185—10.13(17A).

185—3.7(17A) Consideration. Upon request by petitioner, the alcoholic beverages division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division, a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

185—3.8(17A) Action on petition.

3.8(1) *Agency action.* Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) *Issuance of order.* The date of issuance of an order or of a refusal to issue an order is as defined in contested case rule 185—10.2(17A).

185—3.9(17A) Refusal to issue order.

3.9(1) *Refusal to issue order.* The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. 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 agency decision already made.

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the division to determine whether a statute is unconstitutional on its face.

3.9(2) *Grounds for refusal.* A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) *Filing of new petition.* 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 the refusal to issue an order.

185—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

185—3.11(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.

185—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound 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 division. The issuance of a declaratory order constitutes final agency action on the petition.

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

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*See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 4
LIQUOR LICENSES—BEER PERMITS—WINE PERMITS

[Ch 4, IAC 7/1/75 rescinded 3/7/79; see Chs 4,5]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—4.1(123) Definitions.

4.1(1) *"Act"* means the alcoholic beverage control Act.

4.1(2) *"Division"* means the alcoholic beverages division of the department of commerce.

4.1(3) to 4.1(5) Rescinded IAB 5/15/91, effective 6/19/91.

4.1(6) *"Administrator"* means the chief administrative officer of the alcoholic beverages division or a designee.

4.1(7) *"Beverages"* as used in Iowa Code section 123.129 does not include alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(5), 123.3(7), and 123.3(37).

This rule is intended to implement Iowa Code sections 123.3 and 123.4.

185—4.2(123) General requirements. All applicants for liquor control licenses, wine permits, or beer permits shall comply with the following requirements, where applicable, prior to receiving a liquor license, wine permit, or beer permit.

4.2(1) *Cleanliness of premises.* The interior and exterior of all licensed premises shall be kept clean, free of litter or rubbish, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments and the Iowa department of inspections and appeals.

4.2(2) *Toilet facilities.* All licensees and permittees who mix, serve, or sell alcoholic liquor, wine, or beer for consumption on the licensed premises shall provide for their patrons adequate, conveniently located separate indoor or outdoor toilet facilities for men and women, which shall conform to county, city, and department of inspections and appeals' rules and regulations. In case of outdoor facilities, they shall be approved by the department of inspections and appeals and the local approving authority where the licensed premises is located.

4.2(3) *Water.* All licensed establishments shall be equipped with hot and cold running water from a source approved by an authorized health department.

4.2(4) *Financial standing and reputation.* A local authority or the administrator may consider an applicant's financial standing and good reputation in addition to the other requirements and conditions for obtaining a liquor control license, wine or beer permit, or certificate of compliance, and the local authority or the administrator shall disapprove or deny an application for a liquor control license, wine or beer permit, or certificate of compliance if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit or certificate of compliance.

a. In evaluating an applicant's "financial standing," the local authority or the administrator may consider the following: An applicant's "financial standing" may include, but is not limited to, verified source(s) of financial support and adequate operating capital for the applicant's proposed establishment, a record of prompt payment of local or state taxes due, a record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment, and a record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

b. In evaluating an applicant's "good reputation," the local authority or the administrator may consider such factors as, but not limited to, the following: pattern or practice of sales of alcoholic beverages to 19- and 20-year-old persons for which the licensee or permittee, the licensee's or permittee's agents or employees, have pled or have been found guilty, pattern and practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued, sales to intoxicated persons, licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol, the recency of convictions under laws relating to operating a motor vehicle while under the influence of drugs or alcohol, licensee or permittee misdemeanor convictions, the recency of the misdemeanor convictions.

This rule is intended to implement Iowa Code sections 123.3(11), 123.21(11) and 123.30.

185—4.3(123) Local ordinances permitted. The foregoing rules shall in no way be construed as to prevent any county, city or town from adopting ordinances or regulations, which are more restrictive, governing licensed establishments within their jurisdiction.

This rule is intended to implement Iowa Code section 123.39.

185—4.4(123) Licensed premises. The following criteria must be met before a "place" (as used in Iowa Code section 123.3(20)) may be licensed as a "place susceptible of precise description satisfactory to the administrator."

4.4(1) The "place" must be owned by or under the control of the prospective licensee.

4.4(2) The "place" must be solely within the jurisdiction of one local approving authority.

4.4(3) The "place" must be described by a sketch of the "premise" as defined in Iowa Code section 123.3(20) and showing the boundaries of the proposed "place"; showing the locations of selling/serving areas within the confines of the "place"; all entrances and exits; and indicating the measurements of the "place," and distances between selling/serving areas.

4.4(4) The "place" must satisfy the health, safety, fire and seating requirements of the division, local authorities and Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code sections 123.3(20) and 123.4.

185—4.5(123) Sunday sales permit—fifty percent requirement. Rescinded IAB 5/15/91, effective 6/19/91.

185—4.6(123) Gross receipts from goods and services. Rescinded IAB 5/15/91, effective 6/19/91.

185—4.7(123) Improper conduct.

4.7(1) Illegality on premises. No licensee, permittee, their agent or employee, shall engage in any illegal occupation or illegal act on the licensed premise.

4.7(2) Cooperation with law enforcement officers. No licensee, permittee, their agent or employee, shall refuse, fail or neglect to cooperate with any law enforcement officer in the performance of such officer's duties to enforce the provisions of the Act.

4.7(3) Illegal activities. No licensee, permittee, their agent or employee, shall knowingly allow in or upon the licensed premises any conduct as defined in Iowa Code sections 725.1, 725.2, 725.3, 728.2, 728.3 and 728.5.

4.7(4) Frequenting premises. No licensee, permittee, their agent or employee, shall knowingly permit the licensed premises to be frequented by, or become the meeting place, hangout or rendezvous for known pimps, panhandlers or prostitutes, or those who are known to engage in the use, sale or distribution of narcotics, or in any other illegal occupation or business.

4.7(5) Prohibited interest in business of licensee. Rescinded IAB 5/15/91, effective 6/19/91.

4.7(6) No licensee, permittee, its agents or employees, shall allow any filled, partially filled, or empty liquor glasses or liquor bottles, including miniature liquor bottles during the holiday season, to be taken off the licensed premises. However, unopened and opened containers and glasses of beer may be allowed to be taken off the licensed premises. A Class "E" liquor control licensee, its agents or employees, shall not permit other liquor control licensees or consumers to remove partially filled, empty, open or unsealed containers of alcoholic liquor from the Class "E" licensed premises.

4.7(7) Identifying markers. A licensee shall not keep on the licensed premises nor use for resale alcoholic liquor which does not bear identifying markers as prescribed by the administrator of this division. Identifying markers shall demonstrate that the alcoholic liquor was lawfully purchased from this division.

4.7(8) A licensee or permittee, or an agent or employee of a licensee or permittee, who sells, gives or otherwise supplies alcoholic liquor, wine or beer to a person 19 or 20 years old does not subject the license or permit to suspension or revocation. The division or the local authority shall not impose any administrative sanction, including license suspension or revocation, upon a licensee or permittee who is convicted of a violation of Iowa Code section 123.47A, nor shall administrative proceedings pursuant to Iowa Code chapter 17A and Iowa Code section 123.39 be commenced against a licensee or permittee for a violation of Iowa Code section 123.47A.

4.7(9) The holder of a Class "E" liquor control license shall sell alcoholic liquor in original, sealed and unopened containers only for off-premises consumption.

This rule is intended to implement Iowa Code subsection 123.49(2).

185—4.8(123) Violation by agent, servant or employee. Any violation of the Act or the rules of the division by any employee, agent or servant of a licensee or permittee shall be deemed to be the act of the licensee or permittee and shall subject the license or permit of said licensee or permittee to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49(2).

185—4.9(123) Gambling evidence. The intentional possession or willful keeping of any gambling device, machine or apparatus as defined in Iowa Code section 99A.1 upon the premises of any establishment licensed by the division shall be prima facie evidence of a violation of Iowa Code section 123.49(2)*"a"* and subject the license of said licensee or permittee to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49.

185—4.10(123) Suppliers interest. Rescinded IAB 5/15/91, effective 6/19/91.

185—4.11 Reserved.

185—4.12(123) Display of license, permit, or signs. All licenses, permits or signs issued by the division shall be prominently displayed in full view on the licensed premises.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

185—4.13(123) Outdoor service. Any licensee or permittee having an outdoor, contiguous, discernible area on the same property on which their licensed establishment is located may serve the type of alcoholic liquor or beer permitted by the license or permit in the outdoor area. After a licensee or permittee satisfies the requirements of this rule, they may serve and sell beer or liquor in both their indoor licensed establishment and in their outdoor area at the same time because an outdoor area is merely an extension of their licensed premise and is not a transfer of their license. A licensee or permittee, prior to serving in the outdoor area, must file with this division:

1. A new diagram showing the discernible outdoor area.
2. A letter from licensee or permittee telling what dates the outdoor area will be used.
3. A letter from local authority approving the outdoor area.
4. A letter from the insurance and bonding companies acknowledging that the outdoor area is covered by the dramshop insurance policy and the bond.

This rule is intended to implement Iowa Code sections 123.3(20), 123.4 and 123.38.

185—4.14(123) Revocation or suspension by local authority. When the local authority revokes or suspends a beer permit, wine permit, or liquor control license, they shall notify the division in written form stating the reasons for the revocation or suspension and in the case of a suspension, the length of time of the suspension.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

185—4.15(123) Suspension of liquor control license, wine permit, or beer permit. At the time of the suspension of any license, wine permit, or beer permit by the division, there shall be placed, in a conspicuous place in the front door or window of the licensed establishment, a placard furnished by the division showing that the license or permit of that establishment has been suspended by the division and such placard shall also show the number of days and reason for the suspension. No licensee or permittee shall remove, alter, obscure or destroy said placard without the express written approval of the division.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

185—4.16(123) Cancellation of beer permits—refunds. A beer permittee, or the executor or administrator, may voluntarily surrender such permit to the division or to the local authority. When so surrendered to the division, the division will notify the local authority; state whether there is a complaint on file in the division office; and inquire if there are any complaints filed locally charging such permittee with violation of the laws that would make the permittee ineligible for a refund. When the permit is surrendered to the local authority, the local authority shall notify the division and inquire if there is a complaint on file with the division that would make the permittee ineligible for a refund. The local authority by itself, in the case of retail beer permits, shall make the refund on a quarterly use basis starting from the effective date of the permit. The local authority will complete, and send to the division, a cancellation certificate. The certificate is to be furnished by the division. The permit is to be attached to the cancellation certificate, if at all possible. The division must have all cancellations reported to them.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

185—4.17(123) Prohibited storage of alcoholic beverages and wine. No licensee shall permit alcoholic beverages and wine, purchased under authority of a retail license or retail permit, to be kept or stored upon any premises other than those licensed. However, under special circumstances, the administrator may authorize the storage of alcoholic beverages and wine on premises other than those covered by the license or permit. The administrator may allow Class "D" liquor control licensees to store alcoholic liquor and wine in a bonded warehouse to be used for consumption in Iowa, under the authority of a Class "D" liquor control license.

This rule is intended to implement Iowa Code sections 123.4 and 123.21(11).

185—4.18(123) Transfer of license or permit to another location. A licensee or permittee cannot transfer to anyone else the right to use the liquor license, wine permit, or beer permit of the licensee or permittee; the right of transfer is merely an opportunity for a licensee or permittee to use the licensee's or permittee's liquor license, wine permit, or beer permit at a different location. A liquor license, wine permit, or a beer permit may only be transferred within the boundaries of the local authority which approved the license or permit.

4.18(1) *Permanent transfers.* A person may obtain an application for a permanent transfer from the local authority or the division. The application must be approved by the local authority and sent to the division prior to the transfer. An endorsement from the insurance company holding the dramshop policy listing the new address must be sent to the division prior to the transfer. When the above requirements are met, the division shall issue an amended license or permit showing the new permanent address.

4.18(2) *Temporary transfers.* If the transfer of a license or permit is for the purpose of accommodating a special event or circumstance temporary in nature, the minimum time of transfer is hereby set at 24 hours and transfer time shall not exceed seven days. A letter from the local authority granting the temporary transfer must be sent to the division. The insurance company holding the dramshop policy must be notified of any change of address.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

185—4.19(123) Execution and levy on alcoholic liquor, wine, and beer. Judgments or orders requiring the payment of money or the delivery of the possession of property may be enforced against liquor control licensees and beer and wine permittees by execution pursuant to the provisions of Iowa Code chapter 626, entitled "Executions."

4.19(1) A secured party as defined in Iowa Code section 554.9105(1)*"m"* may take possession of and dispose of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer in which the secured party has a security interest in such collateral pursuant to the provisions of Iowa Code chapter 554. The secured party may operate under the liquor control license or permit of its debtor as defined in Iowa Code section 554.9105(1)*"d"* for the purpose of disposing of the alcoholic liquor, wine, and beer. However, if the debtor is a Class "E" liquor control licensee, the secured party may not purchase alcoholic liquor from the division to continue to operate its debtor's business. A secured party operating under the liquor control license or permit of its debtor shall dispose of the alcoholic liquor, wine, and beer by sale only to persons authorized under Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the debtor. When a secured party takes possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer, the secured party shall notify the division in writing of such action. A secured party shall further inform the division of the manner in which it intends to dispose of the alcoholic liquor, wine, and beer and shall state the reasonable length of time in which it intends to operate under the liquor control license or permit of its debtor. The secured party shall notify the division in writing when the disposition of its collateral has been completed, and the secured party shall cease operating under the liquor control license or permit of its debtor.

4.19(2) A sheriff or other officer acting pursuant to Iowa Code chapter 626 may take possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer and may dispose of such inventory according to the provisions of Iowa Code chapter 626; however, the sheriff or other officer must sell the alcoholic liquor, wine and beer only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the liquor control licensee whose inventory is subject to the execution and levy. The sheriff or other officer shall notify the division in writing at the time the sheriff or officer takes possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer and shall further notify the division of the time and place of the sale of such property.

This rule is intended to implement Iowa Code sections 123.4, 123.21(3), and 123.38.

185—4.20(123) Liquor store checks accepted. The Iowa state liquor stores and the division may accept checks from holders of a retail liquor control license, including a Class "E" licensee, under the following conditions:

1. The check must be either the personal check of the licensee or the business check of the licensee. The business check must be the named establishment on the license and cannot be a check on another business owned or operated by the licensee.
2. The check must be signed by the licensee. (For all holders of liquor control licenses this is interpreted as those persons whose authorized signatures are on file with the bank for the licensee's account). However, this does not preclude an agent of the licensee from presenting a check signed by the licensee in the normal transaction of buying liquor.
3. Traveler's checks and bank drafts, signed by the licensee, will be accepted.
4. Personal checks or traveler's checks may be accepted as payment for purchases in state liquor stores. Second party checks shall not be accepted as payment for purchases in state liquor stores. Vendors shall follow the policy established by the administrator of the division for accepting personal checks and traveler's checks for the purchase of alcoholic beverages.

4.20(1) If a licensee presents this division with a check which is subsequently dishonored by the licensee's bank, the administrator of this division shall cause a written notice of nonpayment and penalty to be served upon the licensee. If the licensee fails to satisfy the obligation within ten days after service of the notice, the administrator or designee shall hold a hearing as in other contested cases pursuant to Iowa Code chapter 17A to determine whether or not the licensee failed to satisfy the obligation within ten days after service of the notice of nonpayment and penalty. If the administrator determines that the licensee has failed to satisfy the obligation, after notice and an opportunity to be heard, the administrator shall suspend the licensee's liquor control license for a period of not less than 3 and not more than 30 days.

4.20(2) A retail liquor establishment which tenders the division one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for 90 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period. A retail liquor establishment which tenders the division more than one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for 180 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period.

During the period that a licensee may not tender checks to the state liquor stores or this division in payment for alcoholic liquor, state liquor stores and this division may accept from the licensee: cash, money order payable to the division for the amount of the purchase, bank cashier's check signed by a bank official and made payable to the division for the amount of the purchase, or the licensee's personal or business check made payable to the division for the amount of the purchase which has been certified by the bank on which the check is drawn.

4.20(3) The division may collect from the licensee a $10 fee for each dishonored check tendered to the division by a licensee for the purchase of alcoholic beverages.

4.20(4) The division may accept from the general public for alcoholic beverages traveler's checks issued in a foreign country if payment is in U.S. dollars.

4.20(5) The division may require, at the discretion of the administrator, that a licensee submit a letter of credit in a reasonable amount to be determined by the administrator for future purchases of alcoholic liquor from the division, when a licensee tenders to the division a check which is subsequently dishonored by the bank on which the check is drawn if the licensee fails to satisfy the obligation within ten days after service of notice of nonpayment and penalty.

This rule is intended to implement Iowa Code sections 123.4 and 123.24.

185—4.21(123) Where retailers must purchase wine. Retail licensees and retail permittees must purchase their wine from either a wine wholesaler or a wine and beer wholesaler. Retail licensees and retail permittees cannot buy wine from other retailers.

This rule is intended to implement Iowa Code subsections 123.30(3) and 123.178(3).

185—4.22(123) Liquor on licensed premises. Holders of liquor control licenses must purchase their liquor supplies from state liquor stores.

4.22(1) *Exception to the above requirement.* "Bona fide conventions or meetings" may bring their own legal liquor onto licensed premises under the following conditions:

a. "Bona fide conventions or meetings" shall be construed to mean an identifiable body of persons gathered together in furtherance of a specific common purpose or cause, whether political, fraternal, or business, including but not limited to structured club meetings and conventions, professional association functions, employer-employee gatherings and political dinners. Neither the mere purchase nor consumption of liquor nor the purchase of an admission ticket shall be deemed to create a specific common purpose or cause.

b. Liquor may be brought onto the licensed premises at a bona fide convention or meeting by either the sponsoring entity or the individuals comprising that entity.

c. Consumption or dispensation of liquor brought onto the licensed premises by a bona fide convention or meeting must be confined to the meeting place or convention rooms within the licensed premises.

d. The liquor must be served to the delegates or guests without cost.

e. At the completion of the convention or meeting, all liquor brought onto the licensed premises by the members of the convention or meeting must be removed from the licensed premises by those members.

f. All other laws and rules governing the license shall apply to dispensing and consumption of liquor at bona fide conventions or meetings, including hours for consumption and Sunday sales.

4.22(2) Reserved.

This rule is intended to implement Iowa Code sections 123.30, 123.46, and 123.95.

185—4.23(123) Liquor on unlicensed places. Liquor may be kept and consumed but not sold on unlicensed places under the following conditions:

4.23(1) Liquor may be kept and consumed in a private home at any time.

4.23(2) Liquor may be kept and consumed, by the guests or residents, in the residential or sleeping quarters of a hotel or motel at any time. This is considered as an extension of the private home.

4.23(3) Liquor may be consumed at a private social gathering in a private place at any time.

4.23(4) A private place is a location which meets all of the following criteria:

a. One to which the general public does not have access at the time the liquor is kept, dispensed or consumed; one at which the attendees are limited to the bona fide social hosts and invited guests.

b. One which is not of a commercial nature at the time the liquor is consumed or dispensed at the location.

c. One where goods or services are neither sold nor purchased at the time the liquor is consumed or dispensed at the location.

d. One where the use of the location was obtained without charges or rent or any other thing of value was exchanged for its use.

e. One which is not a licensed premises.

f. One where admission fees or other kinds of entrance fees, fare, ticket, donation or charges are made or are required of the invited guests to enter the location.

This rule is intended to implement Iowa Code section 123.95.

185—4.24(123) Alcoholic liquor and wine on beer permit premises. Alcoholic liquor and wine may not be kept, consumed, or dispensed for any purpose by any entity or individual on the premises of a Class "B" beer permit holder.

This rule is intended to implement Iowa Code section 123.141.

185—4.25(123) Age requirements. Persons 21 years of age or older may hold a liquor license, wine permit, or beer permit; however, persons who are between the ages of 18 and 21 and hold a liquor license, wine permit, or beer permit before September 1, 1986, are not affected by or subject to this rule, and may hold such license or permit even though the licensee or permittee has not attained the age of 21. Persons 18 years of age and older may be bartenders, waiters, waitresses, and may handle alcoholic beverages, wine, and beer during the course of the person's employment for a licensee or permittee in establishments in which alcoholic beverages, wine, and beer are consumed. Persons 16 years of age and older may sell beer and wine in off-premises beer and wine establishments. Persons must be 18 years of age or older to work in a state liquor store.

This rule is intended to implement Iowa Code sections 123.30, 123.47A and 123.49.

185—4.26(123) Timely filed status.

4.26(1) In addition to the requirements which may be imposed by a local authority upon the holder of an alcoholic beverages license or permit to obtain timely filed status of a renewal application, the division may grant timely filed status if the applicant complies with the following conditions:

a. The applicant files a completed application with the local authority or the division as required by applicable law.

b. The applicant files a current dram shop liability certificate with the local authority or the division if proof of dram shop liability is required as a condition precedent to the issuance of the license or permit.

c. The applicant pays the appropriate license or permit fee in full to the local authority or the division as required by applicable law.

d. The applicant files a bond with the local authority or the division if a bond is required as a condition precedent to the issuance of the license or permit under applicable law.

4.26(2) Timely filed status allows the holder of the license or permit to continue to operate under a license or permit after its expiration and until the local authority and the division have finally determined whether the license or permit should be issued. If the application for the license or permit is denied, timely filed status continues until the last day for seeking judicial review of the division's action.

4.26(3) An applicant for a new alcoholic beverages license or permit may not sell alcoholic liquor, wine or beer in the proposed establishment until a license or permit has been granted by the division.

This rule is intended to implement Iowa Code sections 123.32, 123.35 and 17A.18.

185—4.27(123) Effect of suspension. Subject to the right to convey a suspended establishment under Iowa Code section 123.39, no beer, wine, or liquor can be sold or consumed in an establishment during a suspension period. An establishment may be open during a suspension period to conduct lawful business other than the sale of liquor, wine, and beer as long as no liquor, wine, or beer is sold or consumed during the suspension period.

This rule is intended to implement Iowa Code section 123.39.

185—4.28(123) Use of establishment during hours alcoholic liquor, wine, and beer cannot be consumed. No one, including licensee, permittee, and employees can consume beer, wine, or alcoholic beverages in their licensed establishment during hours which beer, wine, and alcoholic beverages cannot be sold. An establishment covered by a liquor license, wine permit, or beer permit can be used as a restaurant or any other lawful purpose during hours which beer, wine, or alcoholic liquor cannot be sold as long as beer, wine, or alcoholic beverages are not consumed during these hours.

This rule is intended to implement Iowa Code section 123.49.

185—4.29 Rescinded, effective 7/1/85.

185—4.30(123) Persons producing fuel alcohol. Persons producing fuel alcohol for their own use or to be sold commercially do not have to obtain a license or permit from the division.

This rule is intended to implement Iowa Code sections 123.4 and 123.41.

185—4.31(123) Storage of beer. No retail liquor licensee or retail beer permittee shall store beer except on premises licensed for retail sale and then only to the extent that the beer is intended for sale to consumers from the individually licensed premises where stored. The adoption of this rule shall not preclude a retail liquor licensee or a retail beer permittee from picking up beer from Class "A" and "F" beer permittees and directly transporting the beer to the retail establishment where the beer is intended to be sold at retail.

This rule is intended to implement Iowa Code section 123.21.

185—4.32(123) Delivery of alcoholic liquor. Individuals who do not work for this division may operate a delivery service in which they will charge licensees a fee for picking up their alcoholic liquor orders at this division's liquor stores and delivering it to their establishments.

This rule is intended to implement Iowa Code sections 123.4 and 123.21(10).

185—4.33(123) Delivery of beer and wine. Licensees and permittees who hold a license or permit which allows them to sell bottled wine and bottled beer may deliver beer and wine to residences if the customers telephoned and requested that the beer and wine be delivered.

This rule is intended to implement Iowa Code subsection 123.21(10).

185—4.34(123) Determination of population. Decennial Censuses and Special Censuses done by the U.S. Census Bureau are recognized as being the official population of a town for the purpose of deciding the price of licenses and permits in that town, but estimates done by the U.S. Census Bureau cannot be viewed as being the official population when deciding the price of licenses and permits.

This rule is intended to implement Iowa Code subsection 123.21(11).

185—4.35(123) Minors in licensed establishments. Because Iowa law does not prohibit minors from being in licensed establishments, a minor can be in a licensed establishment if local authority does not have a local ordinance prohibiting minors from being in licensed establishments in its jurisdiction.

This rule is intended to implement Iowa Code subsection 123.21(5).

185—4.36(123) Sale of alcoholic liquor and wine stock when licensee or permittee sells business. When a licensee or permittee goes out of business, the licensee or permittee may sell the licensee's or permittee's stock of alcoholic liquor and wine to the person who is going to operate a licensed establishment in the same location.

This rule is intended to implement Iowa Code subsection 123.21(5).

185—4.37(123) Business as usual on election days. Licensees and permittees may sell alcoholic liquor, wine, or beer during regular hours on days local and national elections are held because present Iowa law does not restrict the sale of liquor, wine, and beer on election days.

This rule is intended to implement Iowa Code subsection 123.21(3).

185—4.38(123) Sunday sale of wine. A holder of a Class "B" wine permit or combination retail wine license, excluding any liquor control licensee or beer permittee which does not qualify for Sunday sales under Iowa Code sections 123.36(6) and 123.134(5), respectively, may sell wine for consumption off the premises between the hours of 10 a.m. and 12 midnight on Sundays. No fee shall be imposed for that privilege.

This rule is intended to implement Iowa Code subsection 123.49(2).

185—4.39(123) Intoxication notice. Rescinded IAB 8/18/93, effective 7/29/93.

185—4.40(123) Warehousing of beer and wine. A person holding a Class "A" wine permit or a Class "A" or "F" beer permit shall warehouse their wine or beer inventory within the state of Iowa. Persons issued a Class "A" wine permit or Class "A" or "F" beer permit prior to June 10, 1987, shall comply upon renewal or November 1, 1987, whichever date occurs first. A warehouse of a person holding a Class "A" wine permit or a Class "A" or "F" beer permit shall be considered a licensed premises.

This rule is intended to implement Iowa Code section 123.127.

185—4.41(123) Vending machines to dispense alcoholic beverages prohibited. A liquor control licensee or beer or wine permittee shall not install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing or serving alcoholic beverages. A vending machine is defined as a slug, coin, currency or credit card operated mechanical device used for dispensing merchandise, including single cans of beer or other alcoholic beverages, and includes a mechanical device operated by remote control and used for dispensing single cans of beer or other alcoholic beverages. A vending machine is not a unit installed in individual hotel or motel rooms used for the storage of alcoholic beverages and intended for the personal use of hotel or motel guests within the privacy of the guests' rooms.

This rule is intended to implement Iowa Code sections 123.47, 123.47A, 123.49(1), 123.49(2)*"b,"* 123.49(2)*"h,"* and 123.49(2)*"k."*

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CHAPTER 5
LICENSE AND PERMIT DIVISION

[Ch 5, IAC 7/1/75 renumbered Ch 6, IAC 3/7/79]
[Prior to 10/8/86, Beer and Liquor Control Department [150]]

185—5.1(123) Manufacture and sale of native wine. Manufacturers of native wine from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, may sell, keep or offer for sale and deliver their native wine subject to the following regulations and restrictions.

5.1(1) *Manufacturer of native wine defined.* A manufacturer of native wine is a person in Iowa who processes grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wine.

5.1(2) *Residency requirements.* A manufacturer of native wine who is a sole proprietor must be a resident of Iowa. At least one of the partners of a partnership which is a manufacturer of native wine must be a resident of Iowa. A corporation which is a manufacturer of native wine must be registered to do business in Iowa with the Iowa secretary of state's office in lieu of any other residency requirements.

5.1(3) *Licenses required.*

a. *Class "A" native wine permit.* Before selling its wine to the division, Class "A" wine wholesalers, retail wine permittees, and liquor control licensees, a manufacturer of native wine shall apply for and shall obtain from the division one Class "A" native wine permit and a $5,000 bond for its wineries and for its retail establishments. A Class "A" native wine permit obtained for a native winery and for retail establishments costs $25 a year. A manufacturer of native wine may obtain an application for a Class "A" native wine permit from the division and may submit the completed application and the $25 fee to the division without having to get the application approved by a local authority. Each Class "A" native wine permit is valid for one year from the effective date and must be renewed each year. A manufacturer of native wine must display the original or a copy of its Class "A" native wine permit in each of its native wineries and in each of its retail establishments. The $25 fee paid for a Class "A" native winery is not refundable. A manufacturer of native wine must register its retail establishment on forms provided by the division. The division shall issue a manufacturer of native wine duplicate copies of its Class "A" native wine permit so that a copy of it can be posted in each winery and retail establishment.

b. *Vintner's certificate of compliance.* In order for a manufacturer of native wine to be able to sell its wine to the division, it must obtain an application for a vintner's certificate of compliance from the division and must obtain a vintner's certificate from the division at no expense in addition to obtaining from the division its one Class "A" native wine permit.

c. *Class "B" wine permit.* In order for a manufacturer of native wine to sell wine it did not manufacture, it must obtain a Class "B" wine permit and a $1,000 bond for each native winery or retail establishment.

5.1(4) *Exclusive operation of retail establishments.* No person except a manufacturer of native wine can operate a Class "A" native wine retail establishment.

5.1(5) *Distance a retail establishment must be from a native winery.* A manufacturer of native wine cannot have a retail establishment within five miles of a native winery not operated by the manufacturer of native wine.

5.1(6) *Sale of native wine only.* A manufacturer of native wine may sell wine it did not manufacture only if it obtains an appropriate retail wine permit for each location.

5.1(7) *Hours of sale.* A manufacturer of native wine can sell its native wine in its native winery and in its retail establishments on Mondays through Saturdays between the hours of 9 a.m. and 10 p.m. and on Sundays between the hours of 10 a.m. and 12 midnight.

5.1(8) *Premises, books of account and records available for inspection.* A manufacturer of native wine shall cause the premises, books of account, and records to be accessible and available at all reasonable times for inspection by representatives of the division, the law enforcement division of the Iowa department of public safety, or members of local police authority.

5.1(9) *Delivery of native wine.* A manufacturer of native wine may ship its native wine in closed containers to individual purchasers inside and outside Iowa.

5.1(10) *Reports required.*

a. Monthly combined wine production and wine gallonage tax report. A monthly report is required showing the amount of wine on hand at the beginning of the month, the amount produced, the amount sold, the amount of wine gallonage tax due, and any other information requested. Report forms shall be furnished by the division. A manufacturer of native wine shall submit a report along with any wine gallonage tax payment to the division's licensing division by the tenth of each month for the preceding month's business. Reports and wine gallonage tax payments postmarked by the tenth of each month for the preceding month shall be considered timely. This report must be mailed for each month even if no wine sales were made during the month.

b. Annual report. A manufacturer of native wine shall, in January of each year, deliver to the division a complete report, sworn to under oath by the owner, a partner or corporate officer, showing the number of gallons of wine produced by the winery in the preceding year. Report forms shall be furnished by the division.

5.1(11) *Wine gallonage tax.* A manufacturer of native wine must pay to the division a $1.75 wine gallonage tax on its native wine it sells at wholesale: (1) to retail liquor licensees, (2) to retail beer permittees, (3) to retail wine permittees, and (4) to the division. A manufacturer of native wine does not pay the $1.75 wine gallonage tax on its native wine it: (1) sells at retail in Iowa in its winery and in its retail establishments, (2) ships to individuals inside and outside Iowa, and (3) sells to other Class "A" wine permittees and to Class "F" beer permittees.

This rule is intended to implement Iowa Code sections 123.4, 123.56, and 123.183.

185—5.2(123) Special permits issued. Rescinded IAB 8/18/93, effective 7/29/93.

185—5.3(123) Licensed manufacturers and wholesalers.

5.3(1) *License required.* A separate manufacturer's or wholesaler's license shall be required for each place of business of the holder.

5.3(2) *To whom liquor may be sold outside the state of Iowa.* The holder of a manufacturer's or wholesaler's license shall not sell alcoholic liquor outside the state of Iowa, except to a purchaser having the legal right to buy and receive it from the seller at the place of sale and place of delivery, respectively.

5.3(3) *Proof of right to purchase.* Before making a sale to a purchaser other than the division, a licensed manufacturer or wholesaler shall require the purchaser to produce and exhibit for inspection proof of the right to purchase alcoholic liquor according to the laws of the purchaser's own state.

5.3(4) *Registry number of license or permit to physician or pharmacist required.* If the purchaser is a licensed physician or pharmacist or the holder of any other form of license or permit entitling the purchaser to purchase alcoholic liquor, the licensed manufacturer or wholesaler must make a record of the sale which shows the registry number of the license or permit, date thereof and where and to whom it was issued and the date of the sale, name and address of the purchaser and kind and quantity of alcoholic liquor sold.

5.3(5) *Licensed manufacturer or wholesaler to maintain record.* The licensed manufacturer or wholesaler shall maintain a record of all shipments of liquor received and an individual record of each and every sale made, which record shall disclose the name and address of the purchaser and the kind and quantity of alcoholic liquor sold to each purchaser. The licensed manufacturer or wholesaler shall obtain from the carrier a receipt for each shipment of alcoholic liquor to each purchaser and shall deliver the receipt or the duplicate original of the receipt to the division.

5.3(6) *Records accessible and available for inspection.* All records, books of account and premises of a licensed manufacturer or wholesaler shall be accessible and available at all reasonable times for inspection by representatives of the division.

This rule is intended to implement Iowa Code sections 123.4, 123.41 and 123.42.

185—5.4(123) Investigation before issuing license or permit. No manufacturer's or wholesaler's license, nor any special permit referred to in Iowa Code section 123.29, shall be issued until an investigation has been made which shows that the applicant is entitled to such license or permit under the laws of Iowa and the rules of the division.

This rule is intended to implement Iowa Code sections 123.4, 123.41 and 123.42.

185—5.5(123) Eligibility for beer and wine wholesalers licenses. Rescinded IAB 5/15/91, effective 6/19/91.

185—5.6(123) Living quarters permit. This permit may be issued by the administrator to a licensee/permittee after an application furnished by the division has been filed with and approved by the local approving authority. The local approving authority shall forward the application to the license division of the division for processing.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

185—5.7(123) Change of ownership of a licensed premises, new license or permit required.

5.7(1) A new license or permit and a new bond and a new dramshop policy must be obtained whenever one of the following occurs:

a. When a business is sold or leased to another person.

b. When a licensee or permittee changes to another form of business, such as: sole proprietorship to a corporation; a corporation to a sole proprietorship; a sole proprietorship to a partnership; a partnership to a sole proprietorship; a partnership to a corporation; or a corporation to a partnership.

c. When a partner leaves a partnership or when a new partner is added to a partnership.

d. When a corporation name is changed due to a merger or is voluntarily changed by its owners.

e. Each time an entity obtains a seasonal license or permit.

f. When a receiver takes over the operation of an establishment.

5.7(2) A new license or permit is not required:

a. When only the trade name of the business is changed.

b. When the stock of a corporation holding a license or permit is sold. A letter to the division listing the new owner or owners and the amount of stock held by each is required.

c. When a name of a licensee or permittee is changed by marriage, divorce, or other legal proceeding. A letter requesting the name change is required.

d. When a license or permit is transferred to another location within the jurisdiction of the local authority as allowed by rule 185—4.18(123).

This rule is intended to implement Iowa Code sections 123.4, 123.21(11), 123.31 and 123.56.

185—5.8(123) Dramshop liability insurance requirements. For the purpose of providing proof of financial responsibility, as required under the provisions of Iowa Code section 123.92, a liability insurance policy must meet the following requirements.

5.8(1) *Current certificate required.* It must be issued by a company holding a current certificate of authority from the Iowa insurance commissioner authorizing the company to issue dramshop liability insurance in Iowa or issued under the authority and requirements of Iowa Code sections 515.147 to 515.149. The dramshop policy must take effect the day the license or permit takes effect and must run until the expiration date of the license or permit. A new dramshop and a new bond must be provided each time the division issues a new license with a new license number or a new permit with a new permit number.

5.8(2) *Countersigned.* It must be countersigned by a resident insurance agent licensed by the issuing company.

5.8(3) *Limits of liability.* It must provide the following limits of liability, exclusive in interests and cost of action, per accident: (For the purpose of this subrule, the word "accident" shall mean any one occurrence, or any one accident, or series of accidents or occurrences arising out of any one event, or any one case of intoxication.)

a. Ten thousand dollars in respect to any one person who shall be injured in person or killed.

b. Subject to the limitation stated above as respects any one person, $20,000 in respect to all persons who shall be injured in person or killed.

c. Five thousand dollars in respect to any and all persons who shall be injured in means of support.

5.8(4) *Cancellation.* A surety company or a principal may cancel a bond by giving a minimum of 30 days' prior written notice to this division of the party's intent to cancel the bond. The 30-day period shall begin on the date that this division receives the notice of cancellation. The party seeking to cancel a bond shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, and further shall mail a copy of the notice of cancellation to the other party, at that party's post office address. The notice of cancellation shall contain: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was mailed, the date the bond is being canceled, and the liquor control license or permit number of the licensee or permittee to be affected by such cancellation. The cancellation or notice thereof shall have no force or effect in the event that the principal's liquor control license or permit has been revoked during the period of the policy, or where an administrative hearing complaint has been filed, and charges are currently pending against the licensee or permittee which could result in revocation of the license or permit after an administrative hearing on the complaint.

5.8(5) *Civil tort liability.* Subject to these conditions and exclusions usually found in a policy of dramshop liability insurance, the policy must contain coverage to insure against all civil tort liability of the insured, created under Iowa Code sections 123.92, 123.93 and 123.94, as they now exist or may hereafter be amended.

5.8(6) *Proof of financial responsibility.* A licensee or permittee shall be deemed to have furnished proof of financial responsibility as contemplated under the provisions of Iowa Code sections 123.92, 123.93, and 123.94 when it has filed with the division at its offices in Ankeny, Iowa, a properly executed form as described by 185—subrule 12.2(8).

5.8(7) *Signature required.* Copies of the form described above shall not be deemed properly executed unless the authorized company representative executing the same shall first have filed with the division a sample of the representative's signature. Facsimile signatures will be acceptable.

5.8(8) *Proof of liability insurance.* Rescinded IAB 5/15/91, effective 6/19/91.

This rule is intended to implement Iowa Code sections 123.4, 123.21(11), 123.92, 123.93, and 123.94.

185—5.9(123) Surety bond requirements. A $5000 penal bond must be filed with the division with each application for a liquor control license. A $500 penal bond must be filed with the division for a retail beer permit. Each must meet the following requirements.

5.9(1) *Certificate of authority.* It must be issued by a company holding a current certificate of authority from the commissioner of insurance authorizing the company to issue bonds in Iowa.

5.9(2) *Forfeiture of beer or liquor bond.* It must contain a provision for the principal and surety to consent to the forfeiture of principal sum of the bond in the event of revocation of the license or permit by the violation of any Iowa Code provision which requires forfeiture of the bond.

5.9(3) *Cancellation.* An insurance company or an insured may cancel a liability policy by giving a minimum of 30 days' prior written notice to this division of the party's intent to cancel the liability policy. The 30-day period shall begin on the date that this division receives the notice of cancellation. The party seeking to cancel a liability policy shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, and further shall mail a copy of the notice of cancellation to the other party, at that party's post office address. The notice of cancellation shall contain: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was mailed, the date the liability policy is being canceled, and the liquor control license or permit number of the licensee or permittee to be affected by such cancellation.

5.9(4) *Proof of bond.* A licensee or permittee shall be deemed to have furnished a surety bond when it has filed with the division at its offices in Ankeny, Iowa, a form described by 185—subrule 12.2(7).

5.9(5) *Alternate for surety bond.* Rescinded IAB 5/15/91, effective 6/19/91.

5.9(6) *Two bonds.* Rescinded IAB 5/15/91, effective 6/19/91.

5.9(7) *Class "E" bond.* A Class "E" liquor control licensee shall post a bond with the division, on forms approved by the division, in one of the following amounts: $5,000, $10,000 or $15,000. A Class "E" liquor control licensee may determine the amount of the bond to be posted with the division, and may increase or decrease the face amount of the bond in increments of $5,000 on one occasion during the licensee's first year of business. Thereafter, a licensee may increase or decrease the face amount of the bond in increments of $5,000 only when the liquor control license is renewed. A Class "E" liquor control licensee is authorized to order or purchase alcoholic liquor from the division in an amount not to exceed the face amount of the bond posted in any single transaction. If a licensee desires to order or purchase alcoholic liquor in an amount exceeding the face amount of the bond posted in any single transaction, the licensee shall be required, at the time of delivery, to tender cash or a certified check for the amount of the order or purchase which exceeds the face amount of the bond posted.

This rule is intended to implement Iowa Code sections 123.21, 123.30, 123.128 and 123.129.

185—5.10(123) Combination wine licenses and permits. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.11(123) Fees and surcharge enacted by the legislature for combination wine licenses and permits. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.12(123) Distribution of fees and the surcharge enacted by the legislature for combination wine licenses and permits. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.13(123) Bonds for combination wine and beer permits. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.14(123) Effect on retail and wholesale bottled wine licenses and permits. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.15(123) Refunds for fees for wholesale and retail bottled wine licenses. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.16(123) Liquor license surcharge enacted by the legislature. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.17(123) Calculating liquor license cost with Sunday Sales Privilege and surcharge enacted by the legislature. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.18(123) Surcharge on seasonal licenses. Rescinded IAB 5/19/99, effective 6/23/99.

185—5.19(123) Surcharge refund. Rescinded IAB 5/19/99, effective 6/23/99.

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*Effective date of 5.1(2), 5.1(7) and 5.7(1) delayed 70 days by the Administrative Rules Review Committee on 6/11/85.
◊Two ARCs.
**See Alcoholic Beverages Division in IAB.

CHAPTER 8
TRANSPORTATION AND WAREHOUSE

[Ch 8, IAC 7/1/75 rescinded 3/7/79; see 5.8, 5.9]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—8.1(123) Transportation of alcoholic liquor.

8.1(1) *Transportation of tax-free alcohol.* Any common carrier may receive for transportation, and transport and deliver tax-free alcohol consigned to a holder of a permit from the United States Government authorizing such holder to purchase tax-free alcohol; provided, however, that in respect of such shipments compliance shall be had with Iowa Code sections 123.98, 123.101, 123.103 and 123.104, provided further that such common carrier shall make to the division a report of each such shipment showing date thereof, to whom and where made, and the character and quantity of such shipment.

8.1(2) *Transportation of sacramental wines.* Any common carrier may receive for transportation, and transport and deliver sacramental wines to holders of clergy's permits issued under law, provided the transportation thereof and delivery to the consignee is in conformity with the provisions of this chapter.

8.1(3) *Transportation and delivery of intoxicating liquors.* Any common carrier may receive for transportation, transport, and deliver shipments of intoxicating liquors made by or consigned to wholesalers, distillers, rectifiers, blenders and manufacturers holding a permit issued by the division provided that in respect to such shipments and the delivery thereof, compliance shall be required under Iowa Code sections 123.98, 123.101, and 123.103, and provided further that promptly upon arrival of any such shipment at the delivery point, the carrier shall report to the division in Ankeny, Iowa, the purported amount and character thereof, and the name and address of the consignor and consignee.

This rule is intended to implement Iowa Code subsection 123.20(1).

185—8.2(123) Rules and regulations as between shippers and this division.

8.2(1) *Shipment into state.* Shipments of alcoholic liquors can only be made into the state of Iowa by suppliers. Shipments can only be made to the state warehouse, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, or to receiving points designated by the administrator.

8.2(2) *Purchase order and requirements.* The original copy of the purchase order and a duplicate acknowledgment copy are mailed directly by the division to the supplier. The shipping plant will execute the acknowledgment duly signed and will return it directly to the merchandising coordinator.

8.2(3) *Bottle-label requirements and registration.* After the type of container and labels submitted are approved by the division for use on shipments into Iowa, no change may be made in the type of container or labels without the express approval of the division. All labels must conform to the regulations of the Bureau of Alcohol, Tobacco and Firearms.

8.2(4) *Standard case code label.* All shipments of alcoholic liquor or wine, consigned to the division, must have affixed to each shipping case a standard case code label as adopted by the Industry Advisory Committee for Control States. Affix the standard case code label to the end of the case and to that end of the case which will place the government serial number side on your left as you stand facing the case. Affix the label in the upper left hand corner of the designated end of the case and about ¼ inch away from the edges to prevent fringing. On such merchandise where serial numbers are not used, affix the standard case code label on the recognized end of said case. This will permit the warehouse to tier cases with the end with the standard case code label outward and the government or serial number side on the left as you stand facing the tier of cases.

8.2(5) *Notification—changes in age, proof, formula.* Whenever consent has been given by the division for a change in either age or proof, the supplier must notify the division at the time the first shipment goes forward, giving the new age or proof together with car number and initial, and date of shipment. Failure of the shipper to give this notification shall mean that the shipper shall assume all cost of necessary inconvenience suffered by the division as a result of the changes made. Letter covering this advice should be forwarded to the administrator of the division, State Office Building, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

8.2(6) *Car loading plan.* Be as consistent as possible in keeping codes together and yet keep cases properly and safely braced.

8.2(7) *Standard manifest of liquor shipment.* Standard manifest of liquor shipment on typewriter (or its equivalent as to legibility) and handled as follows:

a. Original to go forward with shipment.

b. Duplicate to accompany copy of forwarding advice furnished to the traffic department.

8.2(8) *How to consign shipments.* All shipments to the division are to be forwarded on straight bill of lading. The original bill of lading is to be retained in the files of the shipper. The signed memorandum copy of the bill of lading is to be forwarded to the products division, attention: Traffic manager.

8.2(9) *Freight bill.* Under the sales agreement with the division, the goods are to be sold on a freight-collect basis unless otherwise specified.

8.2(10) *Forwarding advice.* Upon forwarding shipment the shipper shall send by first-class mail such advice showing therein:

a. Shipping point .....

b. Shipping date .....

c. Carrier or car number .....

d. Division purchase order nos .....

e. ..... cases of code .....

..... cases of code .....

..... cases of code .....

The above advice should be sent to the traffic manager of the division, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

8.2(11) Rescinded 5/2/84.

8.2(12) *Invoicing instructions.* Shipping plant is to use its own regular invoice form as no special invoice form is supplied by the division. Purchase order number must be shown on the invoice and in the proper place. Car initial and number must be shown without fail and complete routing. Iowa code number must be shown on the same line with the particular brand and size and not placed at the foot of the invoice. The various items on the invoices must be listed in consecutive order of the code numbers, namely, the item carrying the lowest code number must be the first item appearing on the face of the invoice. The signed memorandum copy of the bill of lading is to be attached to the invoice when mailed to the division. Shipping plant will retain in its files the original bill of lading. After completing the invoice to the above extent, the shipping plant must show the following claimant's affidavit typewritten across the face of the original and duplicate of the invoice and to have same signed and dated:

Claimant's Affidavit

State of _____

_____ County ss:

We, _____, the within claimant, do state that items for which payment is claimed were furnished under authority of the law, that the charge is just and lawful and that the same is wholly unpaid.

_____

Claimant

Date_____

The invoice in duplicate carrying the above claimant's affidavit together with signed memorandum copy of the bill of lading is to be forwarded to: (Also see following note)

Accounting Department
Alcoholic Beverages Division
1918 S.E. Hulsizer
Ankeny, Iowa 50021

NOTE: Shipping plant must be careful to observe the special requirements of Iowa and forward all shipping papers complete, attached together, and in one envelope to the Accounting Department, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, so that same will be received by time shipment arrives. A complete set of shipping papers to the accounting department will comprise the following:

a. Invoice in duplicate with Claimant's Affidavit executed thereon.
b. Acknowledgment of order duly executed.
c. Signed memorandum copy of bill of lading.

8.2(13) Reserved. [Rescinded effective 10/8/80]

This rule is intended to implement Iowa Code sections 123.4 and 123.20(1).

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CHAPTER 9
PROCUREMENT LEASING OF STATE LIQUOR STORES

Rescinded IAB 5/19/99, effective 6/23/99

CHAPTER 10
CONTESTED CASES

[Ch 10, IAC 11/3/75 rescinded see Ch 11]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—10.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the alcoholic beverages division.

185—10.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrator, the administrator's designee or an administrative law judge available under 1998 Iowa Acts, chapter 1202, section 3, and Iowa Code section 123.39(1a).

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the administrator did not preside.

185—10.3(17A) Time requirements.

10.3(1) *Computation.* Time shall be computed as provided in Iowa Code section 4.1(34).

10.3(2) *Time extended or shortened.* For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

185—10.4(123,17A) Statute of limitations. Requests for a contested case proceeding alleging a violation of Iowa Code chapter 123 must be filed with the division or the local authority within one year from the date of the alleged violation or the date of conviction for the violation, whichever is later.

185—10.5(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request 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 agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency 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.

185—10.6(17A) Notice of hearing.

10.6(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

10.6(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding.

185—10.7(17A) Presiding officer.

10.7(1) *Administrative law judge.* The administrator may appoint an administrative law judge as presiding officer in all contested case hearings pursuant to 1998 Iowa Acts, chapter 1202, section 3, and Iowa Code section 123.39(1a).

10.7(2) *Appeal.* 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 agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.7(3) *Administrator's review.* Unless otherwise provided by law, the administrator, 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.

185—10.8(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 agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

185—10.9(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

185—10.10(17A) Disqualification.

10.10(1) *Withdrawal.* A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally 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.

10.10(2) *Personally investigated.* 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 agency 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 10.10(3) and 10.23(9).

10.10(3) *Statement of reasons for nonwithdrawal.* 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.

10.10(4) *Motion asserting disqualification.* If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.10(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 10.25(17A) and seek a stay under rule 10.29(17A).

185—10.11(17A) Consolidation—severance.

10.11(1) *Consolidation.* The presiding officer may 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.

10.11(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

185—10.12(17A) Pleadings.

10.12(1) *Pleadings.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

10.12(2) *Petition.* A petition shall state in separately numbered paragraphs the following:

a. The persons or entities on whose behalf the petition is filed;

b. The particular provisions of statutes and rules involved;

c. The relief demanded and the facts and law relied upon for such relief; and

d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

10.12(3) *Answer.* An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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.

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.

10.12(4) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

185—10.13(17A) Service and filing of pleadings and other papers.

10.13(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 agency, 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.

10.13(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

10.13(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division.

10.13(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

10.13(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

10.13(6) *Facsimile.* In appropriate cases, a facsimile copy may be filed with approval of the division with subsequent mailing of the original.

185—10.14(17A) Discovery.

10.14(1) *Discovery procedures.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.14(2) *Discovery motions.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

10.14(3) *Evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

185—10.15(17A) Subpoenas.

10.15(1) *Issuance.*

a. Agency subpoenas. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Service of subpoenas. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

10.15(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

185—10.16(17A) Motions.

10.16(1) *Rehearing motions.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

10.16(2) *Written responses.* Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

10.16(3) *Oral argument.* The presiding officer may schedule oral argument on any motion.

10.16(4) *Service.* 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 division or an order of the presiding officer.

10.16(5) *Motions for summary judgment.* Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 45 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 20 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 10.28(17A) and appeal pursuant to rule 10.27(17A).

185—10.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

10.17(1) *Application for continuance.* A written application for a continuance shall:

a. Be made at the earliest possible time and no less than three days before the hearing except for a good cause showing;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

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

10.17(2) *Issuing of continuance.* In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance. Notwithstanding the foregoing, each party shall be entitled to one continuance without the need of a good cause showing.

185—10.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing without prejudice.

185—10.19(17A) Intervention.

10.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, as well as the position and interest of the proposed intervenor. 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.

10.19(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. 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 ordinarily be denied.

10.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

10.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

185—10.20(17A) Hearing procedures.

10.20(1) *Role of presiding officer.* The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

10.20(2) *Objections.* All objections shall be timely made and stated on the record.

10.20(3) *Representative of parties.* Parties have the right to participate or to be represented in all hearings related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

10.20(4) *Role of parties.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

10.20(5) *Decorum of hearing.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

10.20(6) *Sequestering of witnesses.* Witnesses may be sequestered during the hearing.

10.20(7) *Conduct of hearing.* The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

185—10.21(17A) Evidence.

10.21(1) *Admissibility.* The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

10.21(2) *Stipulation of facts.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

10.21(3) *Scope of evidence.* Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

10.21(4) *Admission and examination.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

10.21(5) *Objection.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.21(6) *Offer of service.* 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.

185—10.22(17A) Default.

10.22(1) *Default.* 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.

10.22(2) *Motion for default.* Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

10.22(3) *Motion to vacate.* Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 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 10.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

10.22(4) *Appeal.* 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.

10.22(5) *Good cause showing.* 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.

10.22(6) *Good cause defined.* "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 236.

10.22(7) *Interlocutory appeal.* A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 10.25(17A).

10.22(8) *Resumption of hearing.* 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.

10.22(9) *Relief.* A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

10.22(10) *Effect of decision.* 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 10.29(17A).

185—10.23(17A) Ex parte communication.

10.23(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 division 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 10.10(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.

10.23(2) *Length of prohibitions.* 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.

10.23(3) *Forms of ex parte communication.* Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

10.23(4) *Notice.* 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 10.13(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

10.23(5) *Communication between presiding officers.* 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.

10.23(6) *Deliberations.* The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 10.23(1).

10.23(7) *Scheduling or procedural matters.* 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 10.17(17A).

10.23(8) *Disqualification of presiding officer.* 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.

10.23(9) *Disclosure of prohibited communications.* 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.

10.23(10) *Sanctions.* 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 division. Violation of ex parte communication prohibitions by division personnel shall be reported to the administrator or the administrator's designee for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

185—10.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

185—10.25(17A) Interlocutory appeals. Upon written request of a party or on the administrator's own motion, the administrator may review an interlocutory order of the presiding officer. In determining whether to do so, the administrator shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

185—10.26(17A) Final decision.

10.26(1) *Administrator's final decision.* When the administrator presides over the reception of evidence at the hearing, the administrator's decision is a final decision.

10.26(2) *Proposed decision.* When the administrator does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the administrator within the time provided in rule 10.27(17A).

185—10.27(17A) Appeals and review.

10.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the administrator within 30 days after issuance of the proposed decision.

10.27(2) *Review.* The administrator may initiate review of a proposed decision on the administrator's own motion at any time within 30 days following the issuance of such a decision.

10.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the division. 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;

e. The grounds for relief.

10.27(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 non-appealing party, within 14 days of service of the notice of appeal. The administrator may remand a case to the presiding officer for further hearing or the administrator may preside at the taking of additional evidence.

10.27(5) *Scheduling.* The administrator shall issue a schedule for consideration of the appeal.

10.27(6) *Briefs and arguments.* Unless otherwise ordered, within 30 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 30 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 administrator may resolve the appeal on the briefs or provide an opportunity for oral argument. The administrator may shorten or extend the briefing period as appropriate.

185—10.28(17A) Applications for rehearing.

10.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

10.28(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 10.27(4), the applicant requests an opportunity to submit additional evidence.

10.28(3) *Time of filing.* The application shall be filed with the division within 20 days after issuance of the final decision.

10.28(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 division shall serve copies on all parties.

10.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

185—10.29(17A) Stays of agency actions.

10.29(1) *When available.*

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

b. Stay or temporary remedy. Any party to a contested case proceeding may petition the division 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.

10.29(2) *When granted.* In determining whether to grant a stay, the administrator shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

10.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the division or any other party.

185—10.30(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 of 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.

185—10.31(17A) Emergency adjudicative proceedings.

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

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

10.31(2) *Issuance of order.*

a. Contents. 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 division's decision to take immediate action.

b. Service. 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 agency;
(3) Certified mail to the last address on file with the agency;
(4) First-class mail to the last address on file with the agency; or
(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. Delivery. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

10.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

10.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

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CHAPTER 11
PROCEDURE—HEARING BOARD

185—Chapter 11 rescinded IAB 8/18/93, effective 7/29/93.

CHAPTER 12
FORMS

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—12.1(123,17A) Purpose and scope. These rules shall govern all forms prescribed by the alcoholic beverages commission for use in proceedings before the division. The division may allow different forms to be utilized in a specific case as necessary.

12.1(1) *Forms compliance.* All papers filed with the division shall substantially comply with the requirements set forth in this chapter.

12.1(2) *General requirements.* All papers, except exhibits, shall be cut or folded so as not to exceed 8½ inches by 11 inches in size with inside margins not less than 1 inch in width. Whenever practical, all exhibits of a documentary character should conform to the foregoing requirements of size and margin.

This rule is intended to implement Iowa Code section 123.21.

185—12.2(123,17A) Specific forms.

12.2(1) *Petition for rule making.* Rescinded IAB 5/19/99, effective 6/23/99.

12.2(2) *Statement of position.* Rescinded IAB 5/19/99, effective 6/23/99.

12.2(3) *Counterstatement of position.* Rescinded IAB 5/19/99, effective 6/23/99.

12.2(4) *Request for rule-making oral presentation.* Rescinded IAB 5/19/99, effective 6/23/99.

12.2(5) *Request for rule-making statement.* Rescinded IAB 5/19/99, effective 6/23/99.

12.2(6) *Petition for declaratory ruling.* Rescinded IAB 5/19/99, effective 6/23/99.

12.2(7) *Retail bond.*

ALCOHOLIC BEVERAGES DIVISION
1918 S.E. Hulsizer, Ankeny, Iowa 50021
BOND FOR RETAIL: LIQUOR LICENSES, BEER PERMITS, OR WINE PERMITS

Bond No. _____

KNOW ALL BY THESE PRESENTS THAT _____
(Principal)

of, _____ County,
(City and/or County)

State of Iowa, as Principal and _____
(Surety)

of _____,
(City and State)

as Surety, are held firmly bound unto the State of Iowa in the penal sum of $ _____ lawful money of the United States, for the payment of which, in Des Moines, Polk County, Iowa, we bind ourselves, our successors and our legal representatives jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas, the Principal has made application for:

☐ Class ____ Liquor License; ☐ Class ____ Wine Permit;
☐ Class ____ Beer Permit; ☐ Special Class C Liquor License (Beer and Wine only);

to be issued by the Alcoholic Beverages Division.

NOW THEREFORE, if the Principal shall pay the amount Principal owes the division for writing the division insufficient funds checks for alcoholic beverages and wine as allowed by Iowa Code section 123.24, and shall faithfully observe and obey all other provisions of Iowa Code chapter 123, any amendments thereto, and the division's administrative rules, then this obligation to be void, otherwise to be and remain in full force and effect.

THIS BOND shall be effective on _____, 19_____, and shall remain effective continuously without cumulative liability until canceled. This bond may be canceled by the principal or the surety by giving written notice to the other party and the Alcoholic Beverages Division at its office in Ankeny, Iowa, stating the date of cancellation, which in no event shall be less than thirty days after actual receipt of notice; however, no cancellation shall be effective as to forfeiture in the event proceedings for the revocation of the principal's liquor control license or beer permit have been or are commenced prior to the effective date of cancellation.

☐ The Alcoholic Beverages Division by acceptance of this replacement bond gives notice to the Surety canceling prior bond(s) No.(s) _____, termination to be effective as of the time this bond becomes effective.

Signed this _____ day of _____, 19_____.
Countersigned _____
(Iowa Resident Agent)

_____
(Principal)

_____
(Principal)

_____
(Surety)
By: _____
(Attorney-in-Fact)

12.2(8) *Bond for three wholesalers' permits.*

ALCOHOLIC BEVERAGES DIVISION
1918 S.E. Hulsizer, Ankeny, Iowa 50021
Bond No. _____

The bond being issued is a:
- ☐ Class "A" beer permit (beer wholesale only)
- ☐ Class "A" wine permit (wine wholesale only)
- ☐ Class "F" beer permit (beer and wine wholesale)

KNOW ALL BY THESE PRESENTS THAT _____
(Principal)
of, _____ County,
(City and/or County)
State of Iowa, as Principal, and _____
(Surety)
of _____,
(City and State)
as Surety, are firmly bound unto the State of Iowa in the penal sum of:

FIVE THOUSAND AND NO/100 DOLLARS if issued for a CLASS "A" BEER PERMIT (beer wholesale only) or for a CLASS "A" WINE PERMIT (wine wholesale only)

OR

TEN THOUSAND AND NO/100 DOLLARS if issued for a CLASS "F" BEER PERMIT (beer and wine wholesale)

lawful money of the United States, for the payment of which we bind ourselves, our successors and our legal representatives jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas, the Principal has made application for either a class "A" beer permit, class "A" wine permit, or a class "F" beer permit to be issued by the Alcoholic Beverages Division.

NOW THEREFORE, if the Principal shall faithfully observe and obey all of the provisions of Iowa Code chapter 123, any amendments thereto, and the division's administrative rules, then this obligation to be void, otherwise to be and remain in full force and effect.

THE SURETY on the bond of any permittee whose permit has been issued by the Alcoholic Beverages Division may at any time notify the Principal and the Alcoholic Beverages Division that the surety desires after a date named, which shall be at least thirty days after the receipt of notification, to be relieved of liability on the bond, shall be terminated and canceled on the date specified, unless supported by other sufficient bond, or bonds, and the Surety shall be relieved of all future liability after the date specified in the notice of cancellation.

THIS BOND shall be effective on _____, 19____, and shall remain effective continuously without cumulative liability until canceled.

SIGNED THIS _____ DAY OF _____, 19____.

_____
(Principal)

_____
(Surety)

_____

_____

12.2(9) *Surety change rider.*

Surety Change Rider

It is hereby understood and agreed that Bond Number _____, issued by _____ to _____, effective
(Surety Company) (Principal)
_____ is amended as follows:
(Effective date of bond)

Class of license is changed from _____ to _____

Amount of Bond is changed from _____ to _____

Provided, however, that the bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified, and further that this bond and all riders attached thereto, including this rider, shall not be cumulative, and when loss shall occur under this bond during a time within which the penalty of the bond shall vary, then the aggregate liability of the Surety shall in no event exceed the largest penalty of this bond in force during the period of time within which such loss shall occur under this bond.

This rider shall become effective as of the _____ day of _____, 19_____.

Signed, sealed, and dated this _____ day of _____, 19_____.

_____
Principal

_____
_____
Surety Company

Countersigned

By: _____
Resident Agent

By: _____
Attorney-in-fact

12.2(10) *Bond for manufacturer's license in Iowa Code section 123.41.*

ALCOHOLIC BEVERAGES DIVISION
MANUFACTURER'S LICENSE BOND

KNOW ALL BY THESE PRESENTS:

That we, the _____ of _____, Iowa, as Principal and _____ of _____, as surety, are held and firmly bound unto the STATE OF IOWA, and the ALCOHOLIC BEVERAGES DIVISION and each of them jointly, or severally, in the penal sum of FIVE THOUSAND DOLLARS ($5,000.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT,

WHEREAS, the said _____ of _____ has made application under Iowa Code section 123.41 for a Manufacturer's license allowing the manufacture, storage and wholesale disposition and sale of alcoholic liquor to the Alcoholic Beverages Division and to customers outside of the state.

Now, therefore, if licensee shall faithfully and fully abide by and keep and perform each and every provision of Iowa Code chapter 123, so far as it applies to the licensee during the period for which license shall be granted, then this bond shall be of no further force or effect; otherwise, it shall remain in full force and effect and the penalty shall become payable to Alcoholic Beverages Division at Ankeny, Iowa, upon demand and equity jurisdiction is hereby consented to for the enforcement hereof.

Second, to fix and determine liability of both the principal and surety upon this bond for the full amount it shall be necessary only to prove by a fair preponderance of the evidence that licensee has violated one or more of the rules and regulations adopted by the Alcoholic Beverages Division and in force when such act or acts shall have been committed.

Third, it is specifically conditioned by the surety that it may, at anytime, on giving of sixty (60) days' notice in writing to the Alcoholic Beverages Division of a desire to be relieved from further responsibility under this bond, terminate its further responsibility for any act committed by the principal subsequent to sixty (60) days from the receipt of notice by the Alcoholic Beverages Division.

Executed this _____ day of _____, 19____, at _____.

This bond shall be effective for a one (1) year term beginning _____, 19____, and expiring _____, 19____.

_____
(Principal)

BY: _____

SURETY _____

BY: _____

12.2(11) *Bond for wholesaler's license in Iowa Code section 123.42.*

ALCOHOLIC BEVERAGES DIVISION
WHOLESALER'S LICENSE BOND

KNOW BY ALL THESE PRESENTS:

That we, the _____ of _____, Iowa, as Principal and _____ of _____ as surety, are held and firmly bound unto the STATE OF IOWA, and the ALCOHOLIC BEVERAGES DIVISION and each of them jointly, or severally, in the penal sum of ONE THOUSAND DOLLARS ($1,000.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT,

WHEREAS, the said _____ of _____ has made application under Iowa Code section 123.42 for a Wholesaler's license allowing the storage and wholesale disposition and sale of alcoholic liquor to the Alcoholic Beverages Division and to customers outside of the state.

Now, therefore, if licensee shall faithfully and fully abide by and keep and perform each and every provision of Iowa Code chapter 123, so far as it applies to the licensee during the period for which license shall be granted, then this bond shall be of no further force or effect; otherwise, it shall remain in full force and effect and the penalty shall become payable to Alcoholic Beverages Division at Ankeny, Iowa, upon demand and equity jurisdiction is hereby consented to for the enforcement hereof.

Second, to fix and determine liability of both the principal and surety upon this bond for the full amount it shall be necessary only to prove by a fair preponderance of the evidence that licensee has violated one or more of the rules and regulations adopted by the Alcoholic Beverages Division and in force when such act or acts shall have been committed.

Third, it is specifically conditioned by the surety that it may, at any time, on giving of sixty (60) days' notice in writing to the Alcoholic Beverages Division of a desire to be relieved from further responsibility under this bond, terminate its further responsibility for any act committed by the principal subsequent to sixty (60) days from the receipt of notice by the Alcoholic Beverages Division.

Executed this _____ day of _____, 19____, at _____.

This bond shall be effective for a one (1) year term beginning _____, 19____, and expiring _____, 19____.

_____
(Principal)
BY: _____

SURETY _____

BY: _____

12.2(12) *Certification of dramshop liability.*

STATE OF IOWA

ALCOHOLIC BEVERAGES DIVISION
LIQUOR CONTROL LICENSE
DRAMSHOP LIABILITY CERTIFICATE OF INSURANCE

Filed with
ALCOHOLIC BEVERAGES DIVISION
1918 S.E. Hulsizer
Ankeny, Iowa 50021

(Execute in Duplicate)

THIS IS TO CERTIFY, that the _____

_____
(Name of Company)
(hereinafter called Company) of _____

_____
(Home office address of Company)

has issued to _____ of _____
(Name of Assured)

_____, Policy no. _____
(Address of Assured)

effective _____ to _____.

The policy of insurance herein described contains coverage to comply with the provisions of section 123.92 and all regulation of the Alcoholic Beverages Division promulgated thereunder.

The policy described herein may be canceled by the Company or the Assured giving 30 days' notice in writing to the Alcoholic Beverages Division at its office, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, said 30 days' notice to commence to run from date notice is actually received at the office of the division.

Whenever requested by the division, the company agrees to furnish to the division a duplicate original of said policy and all endorsements thereon.

Countersigned at _____ this _____ day of _____, 19____.

_____
(Authorized Company Representative)

_____
Iowa Resident Agent

12.2(13) *Hearing complaint.*

STATE OF IOWA
BEFORE THE ALCOHOLIC BEVERAGES DIVISION
1918 S.E. Hulsizer
Ankeny, Iowa 50021

IN RE:	)	Date _____, 19_____
(insert the name of the	)	
licensee, trade name of the	)	
establishment and address)	)	
	)	HEARING COMPLAINT
Liquor Control License no. _____	)	
Beer Permit no. _____	)	
	)	

Complaint is hereby made that on _____, at _____, Iowa, the above named licensee/permittee did, or by an agent, clerk, or employee, violate section _____ of the Code of Iowa, or violate rule no. _____ of the Alcoholic Beverages Division.

TO WIT:

(insert the code or rule violation)

WHEREFORE, it is requested that the administrator of the Alcoholic Beverages Division hear the proceeding in accordance with the law and regulations.

Complainant Authority

By _____

List of Witnesses;
(insert names and addresses of witnesses)

12.2(14) *Appeal to hearing board.* Rescinded IAB 8/18/93, effective 7/29/93.

These rules are intended to implement Iowa Code sections 123.21(4), 123.21(12), 123.30, 123.41, 123.42, 123.125 and 123.127.

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]
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[Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85*]
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[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]
[Filed 10/10/85, Notice 7/31/85—published 11/6/85, effective 12/11/85]
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[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]
[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 13
OPERATION OF STATE LIQUOR STORES

Rescinded IAB 5/19/99, effective 6/23/99.

*Effective date of 12.2(7) delayed seventy days by the Administrative Rules Review Committee on 6/11/85.

BANKING DIVISION[187]

Created within the Department of Commerce by 1986 Iowa Acts, chapter 1245. Prior to 4/22/87, for Chs 1 to 15 see Banking Department[140] Chs 1 to 4, 8, 9 and 21; for Ch 16 see Auditor of State[130], Ch 1.

Note: Iowa Code chapter 453 renumbered as chapter 12C in 1993 Iowa Code.

CHAPTER 5
PETITIONS FOR RULE MAKING
[Prior to 4/22/87, see Banking Department[140] Ch 3]

187—5.1(17A) Petition for rule making. Any person may file a petition for rule making with the division at the Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
DIVISION OF BANKING

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.
2. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by rule 5.4(17A).

5.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

5.1(2) The division may deny a petition because it does not substantially conform to the required form.

187—5.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

187—5.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827.

187—5.4(17A) Division consideration.

5.4(1) Within 14 days after the filing of a petition, the division 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 division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the division by any person.

5.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division 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 rulemaking proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

5.4(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 division's rejection of the petition.

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

[Filed July 1, 1975]
[Filed 4/1/87, Notice 2/25/87—published 4/22/87, effective 5/28/87]
[Filed 9/17/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]
[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 6
DECLARATORY ORDERS
[Prior to 4/22/87, see Banking Department[140] Ch 3]

187—6.1(17A) Petition for declaratory order. Any person may file a petition with the division of banking for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division of banking, at the Iowa Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
DIVISION OF BANKING

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 6.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

187—6.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to 6.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

187—6.3(17A) Intervention.

6.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within six days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

6.3(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 division of banking.

6.3(3) A petition for intervention shall be filed at Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
DIVISION OF BANKING

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

187—6.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division of banking may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

187—6.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827.

187—6.6(17A) Service and filing of petitions and other papers.

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

6.6(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 Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

6.6(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 on contested cases 187—11.12(17A).

187—6.7(17A) Consideration. Upon request by petitioner, the division of banking must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division of banking, a member of the division of banking, or a member of the staff of the division of banking, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division of banking by any person.

187—6.8(17A) Action on petition.

6.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the superintendent or the superintendent's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

6.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule on contested cases 187—11.2(17A).

187—6.9(17A) Refusal to issue order.

6.9(1) The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.

3. The division of banking does not have jurisdiction over the questions presented in the petition.

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

5. 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.

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

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

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

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the division of banking to determine whether a statute is unconstitutional on its face.

6.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

6.9(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 the refusal to issue an order.

187—6.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

187—6.11(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.

187—6.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division of banking, 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 division. The issuance of a declaratory order constitutes final division action on the petition.

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

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[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 11
CONTESTED CASES

187—11.1(17A) Scope and applicability. Except when inconsistent with Iowa Code chapter 524, this chapter applies to contested case proceedings conducted by the Division of Banking.

187—11.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the superintendent of banking, the superintendent's designee or, under certain circumstances, the administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the superintendent did not preside.

187—11.3(17A) Time requirements.

11.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

11.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

187—11.4(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 division action in question. The request for a contested case proceeding should state the name and address of the requester, identify the specific division 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.

187—11.5(17A) Notice of hearing.

11.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

11.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the division or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., superintendent, superintendent's designee, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 11.6(17A), that the presiding officer be an administrative law judge.

187—11.6(17A) Presiding officer.

11.6(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 division head or members of the division.

11.6(2) The superintendent may deny the request only upon a finding that one or more of the following apply:

a. Neither the division nor any officer of the division 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 11.6(4) 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 interdivision appeal.

g. The request was not timely filed.

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

11.6(3) The superintendent shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 11.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

11.6(4) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the division: an administrative law judge shall have at least five years' experience as an executive officer in a bank or in the regulation or examination of banks.

11.6(5) 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 superintendent. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

11.6(6) Unless otherwise provided by law, the superintendent, when reviewing a proposed decision upon intradivision appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

187—11.7(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 division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

187—11.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

187—11.9(17A) Disqualification.

11.9(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.

11.9(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 division 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 11.9(3) and 11.23(9).

11.9(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.

11.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 11.25(17A) and seek a stay under rule 11.29(17A).

187—11.10(17A) Consolidation—severance.

11.10(1) *Consolidation.* The presiding officer may 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.

11.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

187—11.11(17A) Pleadings.

11.11(1) *Petition.* A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

a. The persons or entities on whose behalf the petition is filed;

b. The particular provisions of statutes and rules involved;

c. The relief demanded and the facts and law relied upon for such relief; and

d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

11.11(2) *Answer.* An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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.

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.

11.11(3) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

187—11.12(17A) Service and filing of pleadings and other papers.

11.12(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 division, 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.

11.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Division of Banking, Attn: Deputy Superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division of banking.

11.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the division of banking, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.12(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Division of Banking, Attn: Deputy Superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827 and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

187—11.13(17A) Discovery.

11.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

11.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

187—11.14(17A) Subpoenas.

11.14(1) *Issuance.*

a. A division subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

11.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

187—11.15(17A) Motions.

11.15(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.

11.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

11.15(3) The presiding officer may schedule oral argument on any motion.

11.15(4) Motions pertaining to the hearing 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 division or an order of the presiding officer.

187—11.16(17A) Prehearing conference.

11.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

11.16(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

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

11.16(3) In addition to the requirements of subrule 11.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

11.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

187—11.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

11.17(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 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 division may waive notice of such requests for a particular case or an entire class of cases.

11.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

187—11.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with division rules. Unless otherwise provided, a withdrawal shall be with prejudice.

187—11.19(17A) Intervention.

11.19(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.

11.19(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. 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 ordinarily be denied.

11.19(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

11.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

187—11.20(17A) Hearing procedures.

11.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

11.20(2) All objections shall be timely made and stated on the record.

11.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

11.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.20(6) Witnesses may be sequestered during the hearing.

11.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

187—11.21(17A) Evidence.

11.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.21(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

11.21(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 should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

11.21(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.

187—11.22(17A) Default.

11.22(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.

11.22(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.

11.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final division action 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 11.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

11.22(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.

11.22(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.

11.22(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 236.

11.22(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 11.25(17A).

11.22(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.

11.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

11.22(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 11.29(17A).

187—11.23(17A) Ex parte communication.

11.23(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 division 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 11.9(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.

11.23(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.

11.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

11.23(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 11.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.23(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.

11.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 11.23(1).

11.23(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 11.17(17A).

11.23(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.

11.23(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.

11.23(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 division. Violation of ex parte communication prohibitions by division personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

187—11.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

187—11.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the superintendent may review an interlocutory order of the presiding officer. In determining whether to do so, the superintendent shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the division at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

187—11.26(17A) Final decision.

11.26(1) When the superintendent presides over the reception of evidence at the hearing, the superintendent's decision is a final decision.

11.26(2) When the superintendent does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division without further proceedings unless there is an appeal to, or review on motion of, the superintendent within the time provided in rule 11.27(17A).

187—11.27(17A) Appeals and review.

11.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the superintendent within 30 days after issuance of the proposed decision.

11.27(2) *Review.* The superintendent may initiate review of a proposed decision on the superintendent's own motion at any time within 30 days following the issuance of such a decision.

11.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the division of banking. 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;

e. The grounds for relief.

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

11.27(5) *Scheduling.* The division shall issue a schedule for consideration of the appeal.

11.27(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 20 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 superintendent may resolve the appeal on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

187—11.28(17A) Applications for rehearing.

11.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

11.28(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 division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.27(4), the applicant requests an opportunity to submit additional evidence.

11.28(3) *Time of filing.* The application shall be filed with the division of banking within 20 days after issuance of the final decision.

11.28(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 division of banking shall serve copies on all parties.

11.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the division grants the application within 20 days after its filing.

187—11.29(17A) Stays of division actions.

11.29(1) *When available.*

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

b. Any party to a contested case proceeding may petition the division of banking 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.

11.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or superintendent shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

11.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the division or any other party.

187—11.30(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.

187—11.31(17A) Emergency adjudicative proceedings.

11.31(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 superintendent may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the superintendent by emergency adjudicative order. Before issuing an emergency adjudicative order the superintendent shall consider factors including, but not limited to, the following:

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

11.31(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 superintendent'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 division;

(3) Certified mail to the last address on file with the division;

(4) First-class mail to the last address on file with the division; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

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

11.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

11.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the division 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 division proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further division proceedings to a later date will be granted only in compelling circumstances upon application in writing.

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTERS 12 to 14
Reserved

CHAPTER 15
REGULATED LOANS

[Appeared as Ch 1, 1973 IDR]
[Prior to 4/22/87, see Banking Department[140] Ch 21]

187—15.1(536) Application.

15.1(1) *Form used.* Printed copies of application for license shall be obtained from the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The printed application form shall be used by each applicant when applying for a license. All questions shall be answered in full and whenever space is inadequate a rider may be attached giving in full the information required.

15.1(2) *License and investigation fee.* Separate checks or money orders in payment of investigation fee and annual license fee must accompany the application. Each check or money order shall be made payable to the superintendent of banking.

This rule is intended to implement Iowa Code section 536.2.

187—15.2(536) Suspension, revocation or surrender of license. No refund of license fee, in whole or in part, shall be made wherein a license is suspended, revoked, or surrendered.

This rule is intended to implement Iowa Code section 536.9.

187—15.3(536) Records.

15.3(1) *Loan register.* A "loan register" or its equivalent record which shall be the book of original entry shall show for every loan: account number, date of loan, name of borrower and nature of security. The register shall be kept chronologically in the order made for two years from the date of final entry.

15.3(2) *Ledger card.*

a. Such account card shall show: name and address of borrower; loan number; date of loan; terms of repayment including maturity date; amount financed; total of payments; nature of security; cost of each credit insurance policy and any other insurance policy with each premium stated separately; name of each endorser, comaker or surety; and amount of recording and releasing fees.

b. All payments shall be posted on the account card as of the date received. No erasures whatsoever may be made in the payment section of any account card. In case of error, a line should be drawn in ink through the improper entry, with the correct entry made on the following line. The entries on the card shall correspond with the receipts given to the borrower.

c. If payment is made in any other way than in the ordinary course of business, it shall be so designated; for example, payment by sale of security, insurance claim or endorser. When a death claim is filed, the exact date of death is to be recorded on the ledger card.

d. The card for an interest-bearing loan shall show the amount of the loan if different from the amount financed, the amount and date of each payment received, the allocation of the payment to principal and interest, and the remaining principal balance. If a portion of the interest earned is not paid at the time payment is made, the card for an interest-bearing loan must show either the date to which interest is paid or the amount of interest then due but unpaid.

e. The card for a precomputed loan shall show the actual amount of the loan excluding the precomputed interest, the amount of the precomputed interest and the face amount of the note including interest, the amount and date of each payment applied to the note, the unpaid balance of the note after applying such payment and the type and amount of any additional charges collected or assessed. If deferment charges are collected in whole or in part, the card shall indicate any uncollected portion of the deferment charge, the particular installment deferred, the number of times deferred, plus the date of the final installment.

f. When any loan is prepaid in full, either by cash or renewal, the card must show the date of prepayment, the amount paid to discharge the loan, the amount of the interest rebate, and any deduction from the rebate for previously earned but uncollected charges, and refunds of the unearned premiums of each credit insurance policy or other insurance policy. Each insurance refund shall be separately recorded on the card.

g. Account ledger cards relating to each type of business operation must be filed in separate groups. Paid-in-full and renewed ledger cards must also be filed in a similar manner and retained from one banking division examination to the next. After the examination, these cards may be filed in a permanent file.

15.3(3) *Account ledger card control.* A record shall be maintained in the licensed office showing the total number of accounts and total amount receivable for each type of business. This record shall be posted either daily or weekly.

15.3(4) *Loan file.* A separate file shall be maintained for each borrower in the office where the loan is outstanding. Such file shall contain the note, security agreement, wage assignment and all other evidence of indebtedness or security pertaining to the loan except when the note is kept in a separate promissory note file or when said papers are in custody of a court or an agent for collection or are hypothecated. When a borrower is also a comaker, guarantor or endorser on another loan, the file of such borrower shall be cross-referenced to the other, unless such cross-referencing is included on the alphabetical record required by 15.3(5) or on the individual account card required by 15.3(2). All instruments taken in connection with a loan and signed by a borrower must bear the loan number.

15.3(5) *Index.* An alphabetical record shall be maintained and show the name of each borrower, endorser, comaker, or surety who is currently indebted to the licensee, together with sufficient information to locate the account card.

15.3(6) *Disbursement voucher.* Licensees shall use a disbursement voucher or equivalent document in conjunction with each loan showing a detailed itemization of the distribution of the loan proceeds.

15.3(7) *EDP systems.* With prior written approval from the superintendent, the licensee's use, in whole or part, of mechanical or electronic data processing equipment to maintain its loan account records, or business records, shall be permitted if it is determined that the EDP system provides the same information as is otherwise required.

This rule is intended to implement Iowa Code sections 17A.3 and 536.11.

187—15.4(536) Miscellaneous restrictions.

15.4(1) *Mail loans.* A licensee shall have authority to make and complete loans by mail from the lender's licensed office. In making such loans, the lender shall mail all the necessary papers to the borrower; and upon completion of such papers by the borrower, the check or money order representing proceeds of the loan shall be mailed from the licensee's office.

15.4(2) *Default charge.* Default charges are not to be collected if payment is made by accident and health insurance claim.

This rule is intended to implement Iowa Code section 536.12 and 1985 Iowa Acts, chapter 158.

187—15.5(536) Interest rate. Pursuant to the power granted to the state banking board under Iowa Code section 536.13, subsections (1)"*b*" and (2), the state banking board in action taken at a board meeting held June 12, 1985, fixed the maximum interest that may be charged beginning July 15, 1985, and until such time as a different rate is fixed by the board as 36 percent per annum on any part of the unpaid balance not exceeding $1,000 and 24 percent per annum on any part of the unpaid balance in excess of $1,000, but not exceeding $2,800 and 18 percent per annum on any part of the unpaid balance in excess of $2,800, but not exceeding $10,000.

This rule is intended to implement Iowa Code section 536.13.

CREDIT UNION DIVISION[189]

Credit Union Department[295] renamed Credit Union Division[189] under the Department of Commerce by 1986 Iowa Acts, Senate File 2175, section 751, effective July 1, 1986. See IAB 9/10/86.

CHAPTER 4
PROCEDURE FOR ADOPTION OF RULES

189—4.1(17A) Written comments or oral presentations. Any person or agency described in Iowa Code section 17A.2 may submit written comments or requests to make an oral presentation in connection with a proposed rule. All such comments and requests shall be accepted by the division if received on or before the second business day prior to the scheduled meeting date at which the rule is to be considered. All such comments and requests should be made to the division and include the following information: name, address, and telephone number of the agency or persons submitting the comments or request; title and number of the proposed rule which is subject to the comment or request; and, with respect to requests for oral presentation, the general content shall be indicated.

189—4.2(17A) Petitions for rule making. Rescinded IAB 5/19/99, effective 6/23/99.

189—4.3(17A) Petitions for declaratory rulings. Rescinded IAB 5/19/99, effective 6/23/99.

[Filed 8/10/79, Notice 5/30/79—published 9/5/79, effective 10/10/79]
[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 5
SMALL EMPLOYEE GROUPS
Rescinded IAB 2/21/90, effective 3/28/90

CHAPTER 6
BRANCH OFFICES

189—6.1(533) Establishment of branch offices.

6.1(1) *Definition.* A branch office is determined to be a place where ordinary services of the credit union are provided to the members.

6.1(2) *Application.* A state chartered credit union desiring to establish and operate a branch office shall submit to the superintendent an "Application to Establish a Branch Office." The application and instructions for preparing and filing it are furnished upon request.

6.1(3) Reserved for hearing and notice.

6.1(4) *Guidelines.* In determining whether or not approval of a branch office should be granted, the superintendent will consider the following factors:

a. Whether the establishment of a branch office is reasonably necessary for service to, and is in the best interest of, the applicant credit union's membership.

b. Whether the member population density and other economic characteristics of the area primarily to be served by the proposed office afford reasonable promise of adequate support for the office.

c. Whether the capital structure of the applicant credit union is adequate in relation to the costs and anticipated increased business, if any, occasioned by the proposed branch office.

d. Whether the operation and management of the applicant credit union is such as will adequately provide for a branch office operation.

e. Such other factors as the superintendent determines appropriate or necessary in determining an applicant credit union's ability to establish and operate a branch office.

6.1(5) Reserved.

6.1(6) *Certification.* If after notice and hearing the decision of the superintendent is favorable, the superintendent shall issue certification to evidence approval for the establishment and operation of the branch office to be effective on a specified date and at a designated location.

189—6.2(533) Change of location of branch office.

6.2(1) A credit union desiring to move its branch office shall submit to the superintendent an application to relocate a branch office. The rules governing the establishment of a branch office shall also govern the relocation of a branch office.

6.2(2) If a credit union elects to cease operations at a branch office facility such credit union shall notify the superintendent at least 60 days prior to the effective date of ceasing such operations.

These rules are intended to implement Iowa Code section 533.4(19).

[Filed 11/9/79, Notice 9/5/79—published 11/28/79, effective 1/2/80]†
[Filed 3/28/80, Notice 2/6/80—published 4/16/80, effective 5/21/80]
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[Filed 2/17/87, Notice 11/19/86—published 3/11/87, effective 4/15/87]

†Effective date (Ch 6) delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 19
AMEND, MODIFY OR REVERSE ACTS OF THE BOARD OF DIRECTORS— MAILED BALLOT VOTING PROCEDURE

189—19.1(533) Definitions. Reserved.

189—19.2(533) Authority for mailed ballots.

19.2(1) The members present at any annual or special meeting of the membership may vote to amend, modify or reverse an act of the board of directors or to instruct the board to take action not inconsistent with the bylaws or Iowa Code chapter 533.

19.2(2) In order to be binding upon the board, any vote so taken by the membership at any meeting to amend, modify or reverse an act of the board or to instruct the board to take action requires an affirmative vote of a simple majority of all eligible members of the credit union after submitting the action to the membership by mailed ballot.

189—19.3(533) Notice to voting members.

19.3(1) Within 60 days of an annual or special meeting of the membership where it was voted to amend, modify or reverse an act of the board of directors or to instruct the board to take action not inconsistent with the bylaws or Iowa Code chapter 533, the board of directors shall submit the issue to all eligible voters of record as of the date of such annual or special meeting.

19.3(2) The proposed amendment, modification, reversal or instruction to take action shall be set forth in its entirety in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting by mail. The only items included in the mailing of the notice shall be pertinent to the proposed amendment, modification, reversal or instruction to take action, and the notice shall not be included as part of any general mailing to the members.

19.3(3) The notice shall set forth the rules and procedures of voting, the date of the close of balloting, the name of the election committee chairperson, and an announcement that balloting on the action(s) specified in the notice are subject to an affirmative vote of a simple majority of all members eligible to vote and that no other vote on the action(s) will be taken after the specified closing date of balloting.

19.3(4) The notice shall contain a summary of the board's reasons for their actions which were subsequently voted amended, modified or reversed, as well as a summary of the reasons, if known, for the vote to amend, modify or reverse the board action.

189—19.4(533) Balloting procedures.

19.4(1) A ballot and envelope shall be included with the notice to all eligible voting members of the credit union. The ballot shall be substantially in the form specified in this rule.

19.4(2) An envelope marked "BALLOT" shall be provided to all eligible voters and the voter shall sign in the appropriate location on the outside of the envelope and seal the envelope before mailing or delivering the ballot in person to the credit union office. The use of a return envelope with postage affixed is not required and the envelope shall be substantially in the form specified by this rule.

19.4(3) Ballots must be returned to the credit union by the date of the closing of the balloting as specified in the notice to members. Ballots hand-delivered to the credit union must be received prior to the close of normal credit union business hours of the closing date of balloting in order to be considered valid. Ballots mailed to the credit union must be postmarked no later than the closing date of balloting and received within five business days after such closing date in order to be considered valid.

19.4(4) Ballots shall be delivered to the election committee in envelopes unopened. Ballots received by the election committee not in compliance with this subrule shall be considered invalid.

189—19.5(533) Ballot and envelope.

19.5(1) Ballots referred to by this rule shall be substantially in the following form:

SAMPLE BALLOT:

It has been voted at an annual or special meeting of the membership that action previously taken by the Board of Directors of the credit union should be (amended) (modified) (reversed).

In accordance with Iowa Code section 533.7 and 189 Iowa Administrative Code Chapter 19, the enclosed notice advises you that you have the right to vote on this matter, provides you important information concerning this issue and sets forth the procedures and rules for voting.

ON THE ISSUE AT HAND: _____

_____

_____

SHALL THE ABOVE ACTION, PREVIOUSLY TAKEN BY THE BOARD OF DIRECTORS, BE (AMENDED) (MODIFIED) (REVERSED) AS WAS VOTED AT AN ANNUAL OR SPECIAL MEETING OF THE MEMBERSHIP AND AS SET FORTH IN ITS ENTIRETY IN THE NOTICE ENCLOSED WITH THIS BALLOT?

YES _____ NO _____

19.5(2) Envelopes referred to by this rule shall be substantially in the following form:

SAMPLE ENVELOPE:

FROM:

_____

_____

_____

TO: Election Committee
(Name) Credit Union
(Address)
(City, State & Zip)

"BALLOT ENCLOSED"

_____

Signature

19.5(3) Each proposed amendment, modification, reversal or instruction to take action must be listed separately on the ballot so that the member has the opportunity to vote on each proposal.

189—19.6(533) Confidentiality of ballots.

19.6(1) The board of directors shall appoint from the credit union membership an election committee of not less than five members to be in charge of counting of the ballots and verifying that no eligible member voted more than once. No more than two members of the election committee shall be from the board of directors.

19.6(2) All returned ballots become the property and responsibility of the election committee.

19.6(3) No director, employee, agent or member of the election committee shall reveal the manner in which any member voted on the proposed amendment, modification, reversal or instruction to take action.

189—19.7(533) Counting of ballots and reporting results of the vote to the membership.

19.7(1) No sooner than 10 nor later than 20 calendar days after the closing date of balloting, the election committee shall meet and open the ballot envelopes and count or cause to be counted the ballots.

19.7(2) If a simple majority of all eligible members voted in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting shall be considered affirmed, and the board of directors shall take immediate action to comply with the directions of the membership.

19.7(3) If a simple majority of all eligible members failed to vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting is not affirmed, and the prior action of the board of directors shall be considered upheld.

19.7(4) The election committee shall submit to the board of directors a certified statement as to the results of the election, including the number of members eligible to vote on the proposed amendment, modification, reversal or instruction to take action, the actual number of members voting on the proposal, and the vote count of the eligible members voting in favor of the proposed amendment, modification, reversal or instruction to take action. The certified statement shall be submitted to the board of directors within 30 days after the closing date of balloting.

19.7(5) Within five calendar days after certification by the election committee to the board of directors, the board of directors shall inform the members of the results of the vote and whether the amendment, modification, reversal or instruction to take action was or was not affirmed by the membership by conspicuously posting a notice in the credit union office for a period of 60 days and by one of the following methods:

a. Include the results in a notice in the next general mailing of the members' statements of account; or

b. Include the results in a notice in the next issue of the credit union newsletter; or

c. Include the results in a notice in a newspaper of general circulation within the credit union's area of operation.

189—19.8(533) Preservation of ballots.

19.8(1) Immediately upon certification of the vote by the election committee, the ballots shall be sealed and appropriately labeled.

19.8(2) Ballots shall be retained in the credit union for a period of 60 days after the date of the latest notice method used in providing the voting results to the members as specified in subrule 19.7(5) before being destroyed.

These rules are intended to implement Iowa Code section 533.7.

[Filed 11/10/92, Notice 8/19/92—published 11/25/92, effective 12/30/92]

CHAPTER 20
PETITIONS FOR RULE MAKING

189—20.1(17A) Petition for rule making. Any person may file a petition for rule making with the division at Credit Union Division, Attn: Rules Coordinator, 200 East Grand, Suite 370, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
CREDIT UNION DIVISION

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.
2. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by rule 20.4(17A).

20.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

20.1(2) The division may deny a petition because it does not substantially conform to the required form.

189—20.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

189—20.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Credit Union Division, Attn: Rules Coordinator, 200 East Grand, Suite 370, Des Moines, Iowa 50309-1827.

189—20.4(17A) Division consideration.

20.4(1) Within 14 days after the filing of a petition, the division 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 division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the division by any person.

20.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division 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 rulemaking proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

20.4(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 division's rejection of the petition.

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 21
DECLARATORY ORDERS

189—21.1(17A) Petition for declaratory order. Any person may file a petition with the credit union division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the credit union division, at Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
CREDIT UNION DIVISION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 21.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

189—21.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to 21.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

189—21.3(17A) Intervention.

21.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 21 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

21.3(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 credit union division.

21.3(3) A petition for intervention shall be filed at Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
CREDIT UNION DIVISION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

189—21.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The credit union division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

189—21.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827.

189—21.6(17A) Service and filing of petitions and other papers.

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

21.6(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 Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

21.6(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 189—22.12(17A).

189—21.7(17A) Consideration. Upon request by petitioner, the credit union division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the credit union division, a member of the credit union division, or a member of the staff of the credit union division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the credit union division by any person.

189—21.8(17A) Action on petition.

21.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the superintendent or the superintendent's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

21.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 189—22.2(17A).

189—21.9(17A) Refusal to issue order.

21.9(1) The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The credit union division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other division or judicial proceeding, that may definitively resolve them.
5. 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.

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

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

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

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the credit union division to determine whether a statute is unconstitutional on its face.

21.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

21.9(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 the refusal to issue an order.

189—21.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

189—21.11(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.

189—21.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the credit union division, 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 division. The issuance of a declaratory order constitutes final division action on the petition.

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 22
CONTESTED CASES

Prior to 2/21/90, see 189—Chapter 14.

189—22.1(17A) Scope and applicability. Except when inconsistent with Iowa Code chapter 533, this chapter applies to contested case proceedings conducted by the credit union division.

189—22.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the superintendent of credit unions, the superintendent's designee or, under certain circumstances, the administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the superintendent did not preside.

189—22.3(17A) Time requirements.

22.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

22.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

189—22.4(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 division action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific division 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.

189—22.5(17A) Notice of hearing.

22.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

22.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the division or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., superintendent, superintendent's designee, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 22.6(17A), that the presiding officer be an administrative law judge.

189—22.6(17A) Presiding officer.

22.6(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 division head or members of the division.

22.6(2) The superintendent may deny the request only upon a finding that one or more of the following apply:

a. Neither the division nor any officer of the division 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 22.6(4) 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 interdivision appeal.

g. The request was not timely filed.

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

22.6(3) The superintendent shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 22.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

22.6(4) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the division: An administrative law judge shall have had at least five years' experience as an executive officer in a credit union or in the regulation or examination of credit unions.

22.6(5) 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 superintendent. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

22.6(6) Unless otherwise provided by law, the superintendent when reviewing a proposed decision upon intradivision appeal shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

189—22.7(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 division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

189—22.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

189—22.9(17A) Disqualification.

22.9(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.

22.9(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 division 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 22.9(3) and 22.23(9).

22.9(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.

22.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 22.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 22.25(17A) and seek a stay under rule 22.29(17A).

189—22.10(17A) Consolidation—severance.

22.10(1) *Consolidation.* The presiding officer may 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.

22.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

189—22.11(17A) Pleadings.

22.11(1) *Petition.* A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

a. The persons or entities on whose behalf the petition is filed;

b. The particular provisions of statutes and rules involved;

c. The relief demanded and the facts and law relied upon for such relief; and

d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

22.11(2) *Answer.* An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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.

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.

22.11(3) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

189—22.12(17A) Service and filing of pleadings and other papers.

22.12(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 division, 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.

22.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

22.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Credit Union Division, Attn: Contested Case Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the credit union division.

22.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the credit union division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

22.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Credit Union Division, Attn: Contested Case Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827 and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
> (Date) (Signature)

189—22.13(17A) Discovery.

22.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

22.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 22.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

22.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

189—22.14(17A) Subpoenas.

22.14(1) *Issuance.*

a. A division subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

22.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

189—22.15(17A) Motions.

22.15(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.

22.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

22.15(3) The presiding officer may schedule oral argument on any motion.

22.15(4) Motions pertaining to the hearing 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 division or an order of the presiding officer.

189—22.16(17A) Prehearing conference.

22.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

22.16(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

22.16(3) In addition to the requirements of subrule 22.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

22.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

189—22.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

22.17(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 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 division may waive notice of such requests for a particular case or an entire class of cases.

22.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

189—22.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with division rules. Unless otherwise provided, a withdrawal shall be with prejudice.

189—22.19(17A) Intervention.

22.19(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.

22.19(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. 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 ordinarily be denied.

22.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

22.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

189—22.20(17A) Hearing procedures.

22.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

22.20(2) All objections shall be timely made and stated on the record.

22.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

22.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

22.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

22.20(6) Witnesses may be sequestered during the hearing.

22.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

189—22.21(17A) Evidence.

22.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

22.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

22.21(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

22.21(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 should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

22.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

22.21(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.

189—22.22(17A) Default.

22.22(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.

22.22(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.

22.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final division action 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 22.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

22.22(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.

22.22(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.

22.22(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 236.

22.22(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 22.25(17A).

22.22(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.

22.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

22.22(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 22.29(17A).

189—22.23(17A) Ex parte communication.

22.23(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 division 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 22.9(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.

22.23(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.

22.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

22.23(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 22.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

22.23(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.

22.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 22.23(1).

22.23(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 22.17(17A).

22.23(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.

22.23(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.

22.23(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 division. Violation of ex parte communication prohibitions by division personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

189—22.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

189—22.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the superintendent may review an interlocutory order of the presiding officer. In determining whether to do so, the superintendent shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the division at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

189—22.26(17A) Final decision.

22.26(1) When the superintendent presides over the reception of evidence at the hearing, the superintendent's decision is a final decision.

22.26(2) When the superintendent does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division without further proceedings unless there is an appeal to, or review on motion of, the superintendent within the time provided in rule 22.27(17A).

189—22.27(17A) Appeals and review.

22.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the superintendent within 30 days after issuance of the proposed decision.

22.27(2) *Review.* The superintendent may initiate review of a proposed decision on the superintendent's own motion at any time within 30 days following the issuance of such a decision.

22.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the credit union division. 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;

e. The grounds for relief.

22.27(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 non-appealing party, within 14 days of service of the notice of appeal. The superintendent may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

22.27(5) *Scheduling.* The division shall issue a schedule for consideration of the appeal.

22.27(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 20 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 superintendent may resolve the appeal on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

189—22.28(17A) Applications for rehearing.

22.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

22.28(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 division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 22.27(4), the applicant requests an opportunity to submit additional evidence.

22.28(3) *Time of filing.* The application shall be filed with the credit union division within 20 days after issuance of the final decision.

22.28(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 credit union division shall serve copies on all parties.

22.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the division grants the application within 20 days after its filing.

189—22.29(17A) Stays of division actions.

22.29(1) *When available.*

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

b. Any party to a contested case proceeding may petition the credit union division 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.

22.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or superintendent shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

22.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the division or any other party.

189—22.30(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.

189—22.31(17A) Emergency adjudicative proceedings.

22.31(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 superintendent may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the superintendent by emergency adjudicative order. Before issuing an emergency adjudicative order the superintendent shall consider factors including, but not limited to, the following:

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

22.31(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 superintendent'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 division;

(3) Certified mail to the last address on file with the division;

(4) First-class mail to the last address on file with the division; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

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

22.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

22.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the division 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 division proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further division proceedings to a later date will be granted only in compelling circumstances upon application in writing.

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

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CHAPTER 23
Reserved

CHAPTER 24
ELECTRONIC TRANSFER OF FUNDS

189—24.1(527) Scope. Iowa Code section 527.3 authorizes the administrator to issue rules applicable to financial institutions regarding the operation or control of a satellite terminal or pertaining to a financial transaction engaged in through a satellite terminal. Iowa Code section 527.11 empowers the administrator to adopt and promulgate rules which are necessary to properly and effectively carry out and enforce Iowa Code chapter 527. When the term "administrators" appears in this chapter, it signifies that joint action or enforcement may be taken by the administrators specified in Iowa Code sections 527.2 and 527.3.

189—24.2(527) Terms defined. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 527.2 shall be considered to be incorporated verbatim in these rules.

"Cardholder" means a person who has received an access device from a cardholder financial institution to access a customer asset account or customer asset accounts maintained at that financial institution by means of a satellite terminal.

"Cardholder financial institution" means the financial institution maintaining the customer asset account(s) of a cardholder which is accessible by means of an access device issued by that financial institution.

"Certification" means the process by which a central routing unit ensures that access devices, satellite terminals, software vendors, and the data processing center of an establishing or cardholder financial institution meet certain minimum operational standards established by the central routing unit to ensure that the central routing unit and electronic funds transfer system are in compliance with Iowa Code chapter 527. The certification process may be performed by a central routing unit prior to initial operation of a satellite terminal or data processing center and at any subsequent time as determined appropriate by a central routing unit to ensure continued compliance with Iowa Code chapter 527.

"Customer card number" means a unique number assigned to each cardholder to identify the cardholder financial institution, the cardholder, and the particular business location or office of the cardholder financial institution where the cardholder's customer asset account(s) is maintained which may be accessed by the access device issued by the cardholder financial institution.

"Electronic funds transfer system" means the electronic system which is used to process transactions initiated at a satellite terminal and includes the access device, the satellite terminal, the cardholder financial institution and its data processing center, the establishing financial institution and its data processing center, and a central routing unit.

"Establishing financial institution" means the financial institution that owns or retains control of a satellite terminal.

"Front-end processor" means a data processing device directly connected to a satellite terminal which is utilized in an electronic funds transfer system in conjunction with only one transaction authorization computer which is capable of authorizing or rejecting transactions initiated at the satellite terminal through verification of customer account data maintained at the authorization computer by only those financial institutions which are exclusively served by the front-end processor and authorization computer. A front-end processor and authorization computer which are directly connected constitute a single data processing center, as defined by Iowa law, only if the specified conditions are satisfied. All satellite terminal transactions received by the front-end processor of the data processing center which cannot be immediately authorized or rejected by the data processing center's authorization computer must be immediately transmitted to an approved central routing unit, subject to the exceptions expressed in Iowa Code subsection 527.5(9). All satellite terminal transactions received by the front-end processor of the data processing center which are capable of being immediately authorized or rejected by that data processing center's authorization computer must be transactions initiated by cardholders of financial institutions directly serviced by that data processing center and must be immediately authorized or rejected by the data processing center.

"Reversal" means the procedure implemented to cancel a previously transmitted transaction from a satellite terminal initiated by a cardholder through the use of an access device. A reversal may be cardholder-generated or system-generated.

"Switch-behind" means an electronic funds transfer system configuration in which a satellite terminal is directly connected to the establishing financial institution's data processing center, which is directly connected to a central routing unit.

"Switch-in-front" means an electronic funds transfer system configuration in which a satellite terminal is directly connected to a central routing unit.

"Transaction" means each separate, identifiable financial function as authorized by Iowa Code chapter 527, performed at a satellite terminal capable of completing the financial function, by a cardholder properly using an access device and an electronic personal identifier at the satellite terminal.

189—24.3(527) Applications to operate a central routing unit.

24.3(1) *Approval required.* A central routing unit shall not be operated in the state of Iowa unless written approval for that operation has been obtained from the administrators.

24.3(2) *Application requirements.* A person desiring to operate a central routing unit shall submit to the administrators an application which shall contain all of the information and shall be accompanied by all documentation expressly provided for in Iowa Code section 527.9. The administrators will notify the applicant in writing whether the application is considered complete.

24.3(3) *Incomplete applications.* If the application is found by the administrators to be incomplete, the applicant will be notified within a reasonable period of that fact and of the specific deficiencies. Anytime after 30 days following any such notification, the application may be denied for lack of information, if requested supplemental information is not timely submitted by the applicant.

24.3(4) *Final notice.* Upon receiving a complete application, the administrators shall approve or disapprove an application for operation of a central routing unit within 60 days after the date of written notice to the applicant that the application is determined to be complete. The administrators shall notify the applicant in writing as to the decision to approve or disapprove.

This rule is intended to implement Iowa Code section 527.9.

189—24.4(527) Compliance examinations of a central routing unit.

24.4(1) *Performance examinations.* A central routing unit shall be subject to examination by the administrators for the purpose of determining compliance with Iowa Code chapter 527. Such an examination may be conducted after the central routing unit is operating under the approval of the administrators and shall be conducted at the time the approval of the administrators is sought in accordance with rule 24.3(527).

24.4(2) *Compliance factors.* A compliance examination of a central routing unit conducted by the administrators shall consider the following factors to ensure that the central routing unit and all other components of an electronic funds transfer system are in full compliance with the requirements of Iowa Code chapter 527:

a. *Transaction charges.* The transaction charges paid to the central routing unit by each financial institution which utilizes the central routing unit must be consistent with the schedule of charges set forth in the application to operate a central routing unit and must be consistent with the requirements of Iowa Code subsection 527.5(6).

b. *Transmission capabilities.* The central routing unit must be capable of accepting and routing and, if approved to operate, is being operated to accept and route transmissions of transaction data originating at any satellite terminal located in the state, whether receiving transaction data from a satellite terminal or from a data processing center or other central routing unit.

c. *Connections with data processing centers.* The central routing unit must be directly connected to every data processing center that is directly connected to a satellite terminal located in the state.

d. *Transaction requirements.* A central routing unit must ensure that an electronic funds transfer system consistently complies with the following transaction requirements:

(1) All cardholders initiating transactions at satellite terminals must use an access device and an electronic personal identifier issued by the cardholder financial institution, unless the use of an electronic personal identifier is not required by Iowa Code chapter 527 for transactions initiated at specified types of satellite terminals.

(2) All transactions must originate at satellite terminals certified by a central routing unit. Satellite terminals located in this state must meet all applicable state and federal requirements.

(3) All transactions shall be authorized either on an on-line real time basis or on a batch basis through a data processing center or a central routing unit.

(4) If the establishing financial institution's data processing center cannot authorize or reject a particular transaction, then the transaction must be routed to a central routing unit.

e. *Validation.* A central routing unit must validate and edit all transaction messages flowing through the electronic funds transfer system to ensure transaction integrity.

f. *Error recovery.* A central routing unit must be responsible for error recovery of all of the central routing unit's owned or controlled hardware, software, and communication facilities and must define all necessary interface requirements for data processing centers, satellite terminals, and financial institutions.

g. *Authorization services.* A central routing unit shall provide authorization services for all cardholder financial institutions which have agreed to such authorization services if:

(1) The cardholder financial institution's data processing center is unavailable or is responding slowly; or

(2) The cardholder financial institution's cardholder information is retained at the central routing unit for card authorization services.

h. Third-party audits. Third-party audits of an electronic funds transfer system, including a central routing unit, must be conducted at least annually to ensure adequate security and controls and must be documented for review by the administrators, upon request.

i. Duplication of critical processing hardware. A central routing unit must provide duplication of critical processing hardware to ensure functional integrity of the central routing unit.

j. Electronic funds transfer system reliability standards. A central routing unit must be available for processing transactions 99 percent of the time, on an annual basis, during the schedule of operation established by the central routing unit. To provide this continuous service to cardholders and the respective cardholder financial institution, a central routing unit must provide for data processing center backup service for all cardholder financial institutions which utilize a data processing center. This may be accomplished by either of the following:

(1) Cardholder financial institutions may maintain a cardholder authorization file at the central routing unit; or

(2) A central routing unit may authorize transactions based on cardholder financial institution's established parameters when the cardholder financial institution's data processing center is responding slowly or is in an inoperative state.

k. Confidentiality.

(1) A central routing unit shall not divulge specific transaction information to any person or financial institution concerning any cardholder, or an establishing or cardholder financial institution, unless such person or financial institution is part of, or is necessary to effect, the specific transaction, or unless disclosure of such information is required by applicable state or federal law.

(2) A central routing unit shall not divulge any statistics on the operations of any establishing or cardholder financial institution to any third party without the written consent of the particular financial institution.

(3) A central routing unit may disclose total terminal statistics that are generic to the central routing unit and which do not identify any particular financial institution or the operations of any particular financial institution.

(4) A central routing unit may disclose transaction(s) data to any federal or state regulatory authority as required by law.

24.4(3) *Certification processes of a central routing unit to demonstrate compliance.* To assist the administrators with compliance examinations of a central routing unit, a central routing unit shall certify financial institutions, satellite terminals located in the state, and data processing centers directly connected to satellite terminals located in this state or directly connected to cardholder financial institutions, to demonstrate that satellite terminals located in this state and the central routing unit are performing in accordance with the requirements of Iowa Code sections 527.5 and 527.9.

a. Certification of financial institutions. All establishing financial institutions and their data processing centers must comply with the following procedures, which shall be confirmed and certified by a central routing unit:

(1) The establishing financial institution and its data processing center must ensure that all transaction data transmitted by the establishing financial institution's data processing center conforms to the central routing unit's electronic communication format standards.

(2) The establishing financial institution's data processing center must be certified or recertified to support new terminal types or models, to utilize any new satellite terminal vendor, or to perform terminal hardware upgrades or software version updates, prior to actual transmission of transaction data by that data processing center to the central routing unit.

(3) Use of any satellite terminal located in this state must be available to all cardholders of cardholder financial institutions and other establishing financial institutions on a nondiscriminatory basis. A cardholder financial institution shall have the right to offer to its cardholders any type of transaction which is supported by a central routing unit. Establishing financial institutions must offer to all cardholders of any establishing or cardholder financial institution the same type of transactions at their satellite terminals located off the premises of the establishing financial institution as are offered to cardholders of the establishing financial institution.

(4) An electronic personal identifier must be issued by a cardholder financial institution for each cardholder access device. A central routing unit must provide for cardholder entry of the electronic personal identifier for all transactions transmitted to the central routing unit. The requirement to issue an electronic personal identifier is not applicable to access devices which are only for use at a limited function terminal, as defined by Iowa Code section 527.2.

(5) A central routing unit must approve access devices displaying its logo or trade name which are issued by cardholder financial institutions, including any access devices that are redesigned, so that the central routing unit may control the operational quality of the access devices and ensure uniform implementation of changes of such access devices.

(6) A control record must be maintained by a central routing unit for every satellite terminal deployed by an establishing financial institution which participates with the central routing unit.

(7) The establishing financial institution's data processing center must be responsible for forwarding transactions which it cannot authorize or reject to a central routing unit for further routing. The establishing financial institution's data processing center must set a timer for that particular transaction at the time the transaction is forwarded to the central routing unit. If the establishing financial institution's data processing center does not receive a transaction transmission response from the central routing unit within the time frames established by the central routing unit, then the establishing financial institution's data processing center must immediately generate and transmit a reversal for that particular transaction. The cardholder financial institution's data processing center must accept the reversal from a central routing unit and the cardholder financial institution must post valid reversals to the particular cardholder's customer asset account. To monitor such reversals, a central routing unit must log each transaction routed through the central routing unit, validate each transaction's completion and ensure that all transactions are sent to and received by the appropriate data processing centers for both the cardholder financial institution and the establishing financial institution.

(8) A central routing unit must certify all satellite terminals (whether switch-in-front or switch-behind) that an establishing financial institution proposes to use in conjunction with the central routing unit. This certification process shall test each satellite terminal for its ability to satisfactorily perform all transaction functions supported by the central routing unit in accordance with operational standards for satellite terminals as established by the central routing unit.

(9) An establishing financial institution must ensure that each of its satellite terminals provides a record of all approved or denied transactions at the satellite terminal by either an audit journal or the creation of duplicate receipts held within the satellite terminal and must ensure that the satellite terminal generates a customer receipt in compliance with 12 CFR 205.9 (Regulation E) and requirements established by the central routing unit.

(10) Proper maintenance and service of satellite terminals on both a regular and emergency basis are the responsibilities of the establishing financial institution.

b. Certification of data processing centers. All data processing centers connected to a central routing unit must comply with the following procedures and requirements, which shall be confirmed by a central routing unit:

(1) A data processing center shall operate in such a manner as to comply with all requirements established in Iowa Code chapter 527.

(2) A data processing center shall conform to a central routing unit's standards including, but not limited to, the following:

1. Format and message content.
2. Electronic personal identifier encryption.
3. Communications protocol.
4. Certification of on-line transaction transmissions for data processing centers, new terminals, and all establishing and cardholder financial institutions directly or indirectly connected to the central routing unit.

(3) A data processing center must meet minimum response time goals established by a central routing unit. Satellite terminal transactions shall be handled on a first-in, first-out basis. No data processing center may prioritize satellite terminal transactions.

(4) If a data processing center utilizes a front-end processor, that device shall provide transaction transmission services for only that data processing center, either by immediately transmitting a transaction originating at a satellite terminal located in the state to an approved central routing unit if the data processing center's transaction authorization computer cannot authorize or reject the transaction, or by authorizing or rejecting a transaction originating at a satellite terminal located in the state in conjunction with the transaction authorization computer maintained by the data processing center for transactions initiated by cardholders of financial institutions serviced directly by that data processing center. The only exceptions to this requirement are consistent with those expressed in Iowa Code subsection 527.5(9).

(5) If a satellite terminal located in the state is not directly connected to an approved central routing unit, then the satellite terminal must be directly connected to a data processing center which is directly connected to an approved central routing unit. A data processing center or central routing unit is directly connected to a satellite terminal when a transaction transmission from the satellite terminal is received by the data processing center or central routing unit prior to being received or processed by or routed to any other data processing center or facility which categorizes, separates or routes the transaction transmission.

(6) This subrule does not limit the authority of a data processing center to authorize or reject transactions requested by cardholders of a cardholder financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the cardholder financial institution and provides to the cardholder financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of cardholders of the cardholder financial institution.

c. Nonsupport of a satellite terminal by a central routing unit. A central routing unit has the authority to refuse or discontinue support of any satellite terminal (either switch-in-front or switch-behind) that is not established or maintained by the establishing financial institution in accordance with the certification procedures and requirements of this subrule if the central routing unit reasonably determines that initial or continued support of the noncomplying satellite terminal may jeopardize the safety and soundness of the operation of an electronic funds transfer system. If such action is contemplated by a central routing unit, written notice of the intended action and the reasons for not supporting particular satellite terminals shall be sent by the central routing unit to the appropriate establishing financial institution by certified or restricted certified mail, with a copy provided to the administrator, within 30 days of the date such action to discontinue support is to be taken, or within 10 days from the date the central routing unit determines it appropriate to refuse initial support of a newly established satellite terminal.

d. Appeals to division administrator.

(1) Whenever a central routing unit provides notice concerning the nonsupport of any satellite terminal located in the state upon the determination that the satellite terminal will not be, or is not being, maintained by the establishing financial institution in accordance with the requirements of this subrule and Iowa Code chapter 527, the establishing financial institution has the right to file a written appeal to the administrator within 30 days from the date the central routing unit issued a written notice of such action. The written appeal shall set forth any facts in dispute and shall state the reasons why the decision of the central routing unit to refuse initial or continued support of its satellite terminal or terminals should be reversed by the administrator. If the establishing financial institution fails to file a written appeal to the administrator, the financial institution is deemed to have consented to the nonsupport of its satellite terminal or terminals by the central routing unit.

(2) The administrator shall conduct hearings and exercise any other appropriate authority conferred by Iowa Code sections 527.3 and 527.5 regarding the operation or control of a satellite terminal which a central routing unit has initially determined to be operating in a manner inconsistent with the requirements of this subrule and Iowa Code chapter 527.

(3) Upon appeal, the administrator may affirm, modify, or reverse the initial determination of a central routing unit that a satellite terminal located in Iowa is not being operated or controlled in accordance with the requirements of this subrule and Iowa Code chapter 527.

(4) In the event of consent by the establishing financial institution, or if upon the record made at the hearing the administrator affirms the initial determination of the central routing unit, the administrator may initiate proceedings to revoke the privilege of the establishing financial institution to continue operation and control of the satellite terminal or terminals determined to be in noncompliance in accordance with the procedures established in paragraph *"e"* of this subrule, or may deny the initial application to establish or operate such noncomplying satellite terminals in accordance with rule 24.5(527).

(5) If the initial determination of the central routing unit is either reversed or modified, the administrator shall document the reasons for determining that the satellite terminals in question comply with the requirements of this subrule and Iowa Code chapter 527 or why the initial determination of the central routing unit has been modified and shall deliver a copy of these findings to the establishing financial institution and the appropriate central routing unit. Any further proceedings or hearings on the same subject matter shall be governed by the provisions of Iowa Code chapter 17A relating to contested cases.

e. Revocation of privilege.

(1) Whenever the administrator determines, upon notice and hearing pursuant to Iowa Code chapter 17A, that a satellite terminal located in this state, a data processing center, or a central routing unit is being operated within an electronic funds transfer system in violation of Iowa Code chapter 527 or the compliance procedures and standards established by this subrule, the administrator may revoke the approval to operate within the electronic funds transfer system. If the administrator does not have any direct authority over the facility because of the provisions of Iowa Code section 527.3, the administrator may revoke with respect to any financial institution over which the administrator does have direct authority the privilege to engage in transactions through or with that facility. With respect to revocation of the approval to operate a central routing unit, all of the administrators specified in Iowa Code section 527.3 may jointly participate, since all types of financial institutions may be served by the central routing unit. All references to the term "administrator" in this paragraph *"e"* shall signify all of the administrators with respect to revocation of the approval to operate a central routing unit.

(2) The administrator shall have additional authority to cause such revocations as established in Iowa Code section 527.12.

(3) If a central routing unit or satellite terminal of an establishing financial institution is determined by the administrator to fail to comply with the requirements of Iowa Code chapter 527 or this subrule at the time of application to the administrator, then the application may be denied by the administrator without the need for notice or opportunity for hearing.

(4) A revocation by the administrator performed pursuant to this subrule shall be effective when ordered by the administrator, anything in Iowa Code chapter 17A to the contrary notwithstanding.

(5) The administrator may bring an action in the district court in the name of the state to enjoin any financial institution or other person who continues to utilize or to operate a satellite terminal, data processing center, or central routing unit after the approval has been revoked.

(6) The administrator may bring an action to enjoin any person who fails to obtain any approval required by Iowa Code chapter 527.

189—24.5(527) Applications to establish a satellite terminal.

24.5(1) *Approval required.* A satellite terminal shall not be established or operated in the state of Iowa unless written approval for that establishment and operation has been obtained from the administrator.

24.5(2) *Application requirements.* A person desiring to establish and operate a satellite terminal shall submit to the administrator an application which shall contain all of the information and shall be accompanied by all documentation expressly provided for in Iowa Code subsection 527.5(3).

24.5(3) *Incomplete applications.* If the application is found by the administrator to be incomplete, the applicant will be notified within a reasonable period of that fact and of the specific deficiencies. Anytime after 30 days following any such notification, the application may be denied for lack of information if requested supplemental information is not timely submitted by the applicant.

24.5(4) *Final notice.* Upon receiving a complete application, the administrator shall approve or disapprove an application for the establishment and operation of a satellite terminal within 30 days after the date of written notice to the applicant that the application is determined to be complete. The administrator shall notify the applicant in writing as to the decision to approve or disapprove.

24.5(5) *Denial of application.* If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal, the administrator shall notify the person filing the informational statement or an amendment thereto within 30 days of the filing thereof of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subrule shall not be construed to prohibit the administrator from enforcing the provisions of this chapter or Iowa Code chapter 527, nor shall it be construed to constitute a waiver of any prohibition, limitation or obligation imposed by this chapter or Iowa Code chapter 527.

24.5(6) *Failure to establish.* If the applicant fails to establish a satellite terminal within 60 days after the date of written notification of approval by the administrator or within 90 days of filing of the application if such notice is not given by the administrator and expressed approval is presumed, the application to establish and operate a satellite terminal in this state shall be considered to be withdrawn by the applicant and the satellite terminal shall not be established and operated in Iowa without reapplication or extension of the application period by the administrator.

24.5(7) *Notice to terminate satellite terminal operation.* If an establishing financial institution determines, for whatever reasons, that a satellite terminal it operates shall no longer be made available for continued use in the state of Iowa, written notice of such termination of service shall be provided to the administrator, with a copy to the central routing unit, at least 15 business days prior to such discontinuance of service.

This rule is intended to implement Iowa Code subsection 527.5(7).

189—24.6(527) Advertising at satellite terminals.

24.6(1) *Scope.* A satellite terminal as defined by Iowa Code section 527.2 includes terminals located on the premises of a financial institution, as well as all terminals located off the premises of a financial institution. For purposes of advertising, however, only satellite terminals located off the premises of the establishing financial institution are governed by the restrictions contained in these rules.

24.6(2) *Advertising at satellite terminal locations.* The term "satellite terminal location," as used in Iowa Code subsection 527.5(5), means all physical space within 100 feet in any direction of the satellite terminal. Advertising identifying the establishing financial institution may be displayed at any location outside this area as defined; however, any physical structure which encompasses a satellite terminal location, except a branch facility of the establishing financial institution, is also prohibited from displaying advertising identifying the establishing financial institution.

24.6(3) *Other forms of advertising.* The establishing financial institution is permitted to advertise its establishment of off-premises satellite terminals in newspaper, radio, television, or other media, as long as such advertising does not appear or is not broadcast at the satellite terminal location or anywhere in or upon the physical structure encompassing the satellite terminal.

24.6(4) *Satellite terminal use instructions.* Iowa Code subsection 527.5(4) prohibits employees of the establishing financial institution or affiliate from attending or operating a satellite terminal except on a temporary basis for the purpose of instructing customers in the proper use of the satellite terminal. For purposes of these rules, such temporary basis shall be defined to be no more than 30 calendar days from the date of initial operation of the satellite terminal. Satellite terminals located on the premises of the establishing financial institution are exempt from this restriction.

This rule is intended to implement Iowa Code subsections 527.5(4) and 527.5(5).

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193F—8.31(17A) Default.

8.31(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.

8.31(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.

8.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action 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 8.35(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

8.31(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.

8.31(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.

8.31(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 236.

8.31(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 8.34(17A).

8.31(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.

8.31(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

8.31(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 8.37(17A).

193F—8.32(17A) Ex parte communication.

8.32(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 board 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 8.17(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.

8.32(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.

8.32(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

8.32(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 8.20(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

8.32(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

8.32(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 8.32(1).

8.32(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 8.25(17A).

8.32(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.

8.32(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.

8.32(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 board. Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193F—8.33(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

193F—8.34(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193F—8.35(17A) Appeals and review.

8.35(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

8.35(2) *Review.* The board may initiate review of a proposed decision on its motion at any time within 30 days following the issuance of such a decision.

8.35(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. 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 which is being appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

8.35(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 non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

8.35(5) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

8.35(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 20 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 board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

193F—8.36(17A) Applications for rehearing.

8.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

8.36(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 board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 8.35(4), the applicant requests an opportunity to submit additional evidence.

8.36(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

8.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties.

8.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

193F—8.37(17A) Stays of board actions.

8.37(1) *When available.*

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

b. Any party to a contested case proceeding may petition the board for a stay 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.

8.37(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

8.37(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

193F—8.38(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.

193F—8.39(17A) Emergency adjudicative proceedings.

8.39(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 United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

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

8.39(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 board'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 board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

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

8.39(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

8.39(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board 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 board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193F—8.40(543D,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

193F—8.41(543D,272C) Reinstatement. Any person whose registration has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

8.41(1) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the registration was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

8.41(2) All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the respondent's registration. Such application shall be docketed in the original case in which the registration was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

8.41(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation or suspension of the respondent's registration no longer exists and that it will be in the public interest for the registration to be reinstated. The burden of proof to establish such facts shall be on the respondent.

8.41(4) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in rule 8.42(543D,272C).

193F—8.42(543D,272C) Publication of decisions. Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders, are public documents, are available to the public, shall be published in the professional licensing division's newsletter and may be transmitted to the appropriate professional association(s), other states, and news media.

193F—8.43(543D,272C) Hearing on license denial. If the board, upon receipt of a complete and proper application for initial registration or reciprocal registration, accompanied by the proper fee, shall deny registration to the applicant, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the basis for denial.

8.43(1) An applicant denied registration who desires to contest the denial must request a hearing before the board within 30 days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service. The request for hearing shall specify the grounds under which the applicant contends that the board erred in denying registration. If a request for hearing is timely made, the board shall issue notice of hearing and conduct a contested case hearing.

8.43(2) Hearings on registration denial shall be open to the public. The burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant.

8.43(3) The board, after a hearing on registration denial, may grant or deny the application for registration. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for registration could be granted, if applicable.

8.43(4) The notice of registration denial, request for hearing, notice of hearing, and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the appraisal subcommittee, and other persons or entities.

8.43(5) Judicial review of a final order denying registration may be sought in accordance with the provisions of Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, which are applicable to judicial review of any agency's final decision in a contested case.

193F—8.44(543D,272C) Recovery of hearing fees and expenses. The board may assess the real estate appraiser certain fees and expenses relating to a disciplinary hearing, only if the board finds that the real estate appraiser did violate Iowa Code chapter 543D and rules of the real estate appraiser examining board.

8.44(1) The board may assess an amount up to the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed $75.

b. All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.

d. All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.

e. The board, at its discretion, may assess an appropriate amount up to but not exceeding the $75 fee established by this subrule and the actual acceptable costs, fees, and expenses involved.

8.44(2) Fees, costs, and expenses assessed pursuant to this rule shall be calculated and may be entered into the disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the real estate appraiser.

a. When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or if the expenditures occur after the disciplinary order, the board, by a majority vote of the members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the real estate appraiser.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the real estate appraiser for such expenditure.

8.44(3) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

8.44(4) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall be considered prima facie evidence of a violation of Iowa Code chapter 543D. However, no action may be taken against the real estate appraiser without a hearing as provided in this chapter.

193F—8.45(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

8.45(1) The notice required by Iowa Code section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

8.45(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the registrant.

8.45(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intent to revoke the certificate of registration.

8.45(4) Registrants shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

8.45(5) All board fees for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

8.45(6) In the event a registrant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of suspension or revocation of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.45(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant or applicant when the certificate of registration is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

193F—8.46(261) Suspension or revocation of a certificate of registration—student loan. The board shall suspend or revoke a certificate of registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

8.46(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the registrant may accept service personally or through authorized counsel.

8.46(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the registrant.

8.46(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126, and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of licensure.

8.46(4) Registrants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

8.46(5) All board fees required for registration renewal or registration reinstatement must be paid by registrants and all continuing education requirements must be met before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

8.46(6) In the event a registrant timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.46(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the certificate of registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 252J, 272C, and 543D and Iowa Code sections 261.126 and 261.127.

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CHAPTER 1
ORGANIZATION AND OPERATION
[Prior to 10/8/86, Commerce Commission[250]]

199—1.1(17A,474) Purpose. This chapter describes the organization and operation of the Iowa utilities board (hereinafter referred to as board) including the offices where, and the means by which any interested person may obtain information and make submittals or requests.

199—1.2(17A,474) Scope of rules. Promulgated under Iowa Code chapters 17A and 474, these rules shall apply to all matters before the Iowa utilities board. No rule shall in any way relieve a utility or other person from any duty under the laws of this state.

199—1.3(17A,474) Waiver. The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided by law, may be waived by the board to prevent undue hardship to a party to a proceeding.

199—1.4(17A,474) Duties of the board. The utilities board regulates electric, gas, telephone, telegraph, and water utilities; and pipelines and underground gas storage. The board regulates the rates and services of public utilities pursuant to Iowa Code chapter 476; certification of electric power generators pursuant to chapter 476A; construction and safety of electric transmission lines pursuant to chapter 478; and the construction and operation of pipelines and underground gas or hazardous liquid storage pursuant to chapters 479, 479A and 479B.

199—1.5(17A,474) Organization. The utilities division consists of the three-member board, the office of the executive secretary, which heads the technical and administrative staff, and the office of general counsel.

1.5(1) *The board.* The three-member board is the policy-making body for the utilities division. The chairperson serves as the administrator of the utilities division. As administrator, the chairperson is responsible for all administrative functions and decisions.

1.5(2) *General counsel.* The duties of the general counsel are prescribed by Iowa Code section 474.10. The general counsel acts as attorney for and legal advisor of the board and its staff and represents the board in all actions instituted in a state or federal court challenging the validity of any rule, regulation or order of the board.

1.5(3) *The office of the executive secretary.* The executive secretary is appointed by the board and is its chief operating officer and responsible for all technical staff. The executive secretary is also the custodian of the board seal and all board records. The executive secretary. deputy executive secretary, or secretary's designee is responsible for attesting to the signatures of the board members and placing the seal on original board orders. The executive secretary, deputy executive secretary, or the secretary's designee is responsible for certifying official copies of board documents. The executive secretary shall also be responsible for establishing procedures for the examination of board records by the general public pursuant to the provisions of Iowa Code section 22.11 and for providing for the enforcement of those procedures.

a. The deputy executive secretary assists the executive secretary in carrying out responsibilities and is responsible for preparing the agency budget and managing the records center, technical library, and receptionist area.

b. The customer service section serves as the agency's information contact and provides customer assistance and education for both the staff and the public. The section assists customers and competitors in resolving disputes with service providers. The section monitors customer service policies and practices, provides information to the public, and advises the board on customer service quality and issues of public concern.

c. The energy section is responsible for providing the board with recommendations for appropriate actions on energy matters. The section monitors activities of gas, electric, and water service providers. It also provides analysis and recommendations on tariff filings, rate proceedings, annual fuel purchase reviews, service territory disputes, and restructuring issues. The section advises the board on issues before the Federal Energy Regulatory Commission (FERC) and U.S. Department of Energy (DOE).

d. The information technology section is responsible for the development of electronic support and technology training for the division. This includes the development of a management information system and other database applications for the division. It also maintains the board's local area network system and provides all computer and technical support services and systems for the processing of information and records, including website development and maintenance, and monitoring incoming electronic messages and requests for information.

e. The policy development section provides professional and technical support to the industry sections and the board in the areas of policy development and research. In cases before the board, the section is responsible for the review and analysis of cost of capital, cost of service, and rate design. The section is responsible for performing analysis of competitive and restructuring issues, utility management performance, least cost alternatives, energy efficiency activities, and other public policy matters.

f. The safety and engineering section is responsible for the regulation of gas and electric providers and pipeline and electric transmission and distribution companies as it relates to safety, construction, and operation and maintenance of facilities. The section reviews and processes all petitions for electric transmission line franchises under Iowa Code chapter 478 and for pipeline permits under Iowa Code chapters 479 and 479B. It also acts as an agent for the federal Department of Transportation in pipeline safety matters.

g. The telecommunications section is responsible for providing the board with recommendations for appropriate actions on telecommunications matters. The section monitors activities of telecommunications service providers. It also provides analysis and recommendations of telecommunications providers' filings, rate proceedings, and advises the board on ratemaking and restructuring issues. The section advises the board on issues before the Federal Communications Commission (FCC).

199—1.6(68B) Consent for the sale of goods and services.

1.6(1) *General prohibition.* An official or employee shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the board without obtaining written consent as provided in this rule.

1.6(2) *Definitions.*

"Employee" shall mean a full-time employee of the utilities division, the employee's spouse and dependents, a firm in which the employee is a partner, and any corporation in which the employee holds 10 percent or more of the stock either directly or indirectly.

"Employment" means selling of goods or services to another for hire or selling goods or services.

"Official" means an individual appointed to the utilities board, that individual's spouse or dependents, a firm in which the official is a partner, and any corporation in which the official holds 10 percent or more of the stock either directly or indirectly.

"Selling goods or services" may include "employment by" or "employment on behalf of."

1.6(3) *Application for consent.*

a. Written consent shall be obtained at least 30 days in advance of making a sale in the following manner:

(1) For utilities division employees, by written application to the utilities board.

(2) For utilities board members, by written application to the director of the department of management.

b. The written application, filed in the utilities division record center, shall include the following information:

(1) Name of prospective employer;

(2) Term of anticipated employment;

(3) Copy of the employment contract or job description, if available;

(4) Service to be provided, detailing duties or function to be performed;

(5) Description of goods to be sold; and

(6) Direct or indirect relationship to regulated entity.

c. Consent or denial of consent shall be given in writing within 14 days of the written request and shall be retained in the utilities division record center as a public record.

1.6(4) *Conditions of consent for officials.* Consent shall not be given to an official unless all of the following conditions are met:

a. The selling of the good or service does not affect the official's job duties or functions.

b. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department.

c. The selling of the good or service does not result in the official selling of a good or service to the division on behalf of the individual, association, or corporation.

1.6(5) *Conditions of consent for employees.* Consent shall not be given to an employee unless all of the following conditions are met:

a. The employee's job duties or functions are not related to the division's regulatory authority over the individual, association, or corporation, or the selling of the good or service does not affect the employee's job duties or functions.

b. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the division.

c. The selling of the good or service does not result in the employee selling a good or service to the department on behalf of the individual, association, or corporation.

1.6(6) *Effect of consent.* The consent must be in writing. The consent is valid only for the activities and period described in it and only to the extent that material facts have been disclosed and the actual facts are consistent with those described in the application. Consent can be revoked at any time by notice to the employee or official.

1.6(7) *Participation in utility programs.* Nothing in this rule shall prohibit employees or officials of the utilities division from participating in utility programs on the same terms and conditions offered to other customers.

1.6(8) *Appeal.* An employee may grieve the decision in accordance with 581—Chapter 12 of the Iowa department of personnel rules.

1.6(9) *Notice.* Officials and employees of the utilities division shall be provided a copy of the rule. A copy of the rule shall be provided by the division to each new official and employee upon employment.

199—1.7 Rescinded, effective January 1, 1984.

199—1.8(17A,474) Matters applicable to all proceedings.

1.8(1) *Communications.* All communications to the board shall be addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, unless otherwise specifically directed. Pleadings and other papers required to be filed with the board shall be filed in the office of the executive secretary of the board within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the board.

1.8(2) *Office hours.* Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law.

1.8(3) *Sessions of the board.* The board shall be considered in session at the office of the board in Des Moines, Iowa, during regular business hours. When a quorum of the board is present, it shall be considered a session for considering and acting upon any business of the board. A majority of the board constitutes a quorum for the transaction of business.

1.8(4) *Service of documents.*

a. *Method of service.* Unless otherwise specified, the papers which are required to be served in a proceeding may be served by first-class mail, properly addressed with postage prepaid, or by delivery in person. When a paper is served, the party effecting service shall file with the board proof of service substantially in the form prescribed in board rule 2.2(16) or by admission of service by the party served or his attorney. The proof of service shall be attached to a copy of the paper served. When service is made by the board, the board will attach an affidavit of service, signed by the person serving same, to the original of the paper.

b. *Date of service.* The date of service shall be the day when the paper served is deposited in the United States mail or is delivered in person.

c. *Parties entitled to service.* All parties in any proceeding, including the general counsel and the consumer advocate, shall be served with all notices, motions, or pleadings filed or issued in the proceeding. Consumer advocate shall be served three copies, either by separate mailing addressed to the Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0069, or by separate envelope delivered to the office of the consumer advocate.

d. Number of copies. An original and ten copies are required for most filings made with the board. There are some exceptions, which are listed below. The board may request additional copies.

A = Annual Report (rate regulated 2 copies, non-rate regulated 1 copy)
C = Complaints (original)
CCF = Customer Contribution Fund (original + 1 copy)
E = Electric Franchise or Certificate (original + 3 copies)
EAC = Energy Adjustment Clause (original + 3 copies)
GCU = Generating Certificate Utility (original + 20 copies)
H = Accident (original + 1 copy)
P = Pipeline Permit (original + 2 copies)
PGA = Purchased Gas Adjustment (original + 3 copies)
R = Reports-Outages (original + 1 copy)
RFU = Refund Filing Utility (original + 3 copies)
RN = Rate Notification (original + 2 copies)
TF = Tariff Filing (original + 3 copies)

e. Upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

199—1.9(22) Public information and inspection of records.

1.9(1) *Public information.* Any interested person may examine all public records of the board by written request or in person at the offices of the board. Public records shall be examined only at the board during the board's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays. Unless otherwise provided by law, all public records, other than confidential records, maintained by the board shall be made available for public inspection.

1.9(2) *Definitions.*

"Confidential records." Records not available for public inspection under state law.

"Personally identifiable information." Information about or pertaining to an individual. This does not include information pertaining to corporations.

"Public records." Records of or belonging to the board which are necessary to the discharge of its duties.

1.9(3) *Inspection of records.* Subrule 1.9(4) below lists those board records which are routinely available for public inspection in the board's records center. Procedures governing requests for inspection of the records are set out in subrule 1.9(7).

1.9(4) *Board records routinely available for public inspection.* In accordance with the provisions of the State Records Management Manual, the board collects and maintains the following records that are routinely available for public inspection:

a. Board calendars, agenda, news releases and other information intended for the public.

b. Board decisions, orders, opinions and other statements of law or policy issued by the board in the performance of its function.

c. The records of utility rate case proceedings.

d. The records of rule-making proceedings.

e. Annual reports of the board and annual reports filed with the board by public utilities.

f. Tariffs filed by a public utility showing the rates and charges for its services and the rules and regulations under which the services are furnished.

g. The records of formal utility service proceedings.
h. Documents relating to informal and formal complaints against utilities.
i. The records of formal utility investigations.
j. The records of utility depreciation proceedings.
k. Rulings on requests for waiver of board rules.
l. The records of the board's annual review of an electric or gas utility.
m. The records of proceedings for the issuance or amendment of an electric generator certificate.
n. Information on public utilities' energy conservation programs.
o. The records of formal proceedings for the issuance of an electric franchise or certificate.
p. The records of formal proceedings for the issuance of a permit to construct a pipeline or underground gas storage facility.
q. Petitions by a public utility for particular treatment of an extraordinary item under commission accounting rules.
r. The records of board proceedings on matters relating to electric and pipeline safety.
s. Public utility filings with the board relating to customer rights and remedies.
t. All other records that are not specifically exempted from disclosure by subrule 1.9(5).

The board's files of public records listed above may contain confidential records. Any request to review confidential records must be made in accordance with subrule 1.9(8). In addition, the board's records listed in *"b," "c," "e,"* and *"h"* may contain personally identifiable information.

Various legal and technical publications related to public utilities are also available for inspection by the public in the board's technical library.

1.9(5) *Records not routinely available for public inspection.* The following records are not routinely available for public inspection. The records are listed in this subrule by category, according to the statutory basis for withholding them from inspection.

a. Materials that are specifically exempted from disclosure by statute and which the board may in its discretion withhold from public inspection. Any person may request permission to inspect particular records withheld from inspection under this subrule. At the time of the request, the board will notify all interested parties. If the request is to review materials under subparagraphs 1.9(5)*"a"*(1) and 1.9(5)*"a"*(3), the board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. Records the commission is authorized to withhold from public inspection under Iowa law in its discretion include, but are not limited to, the following:

(1) Trade secrets recognized and protected as such by law. Iowa Code section 22.7.

(2) Records that represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body. Iowa Code section 22.7.

(3) Reports made to the board which, if released, would give advantage to competitors and serve no public purpose. Iowa Code section 22.7.

(4) Personal information in confidential personnel records of the board. Iowa Code section 22.7.

(5) Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications could reasonably believe that those persons would be discouraged from making them to the government body if they were available for general public examination. Notwithstanding this provision:

1. The communication is a public record to the extent the person outside of government making that communication consents to its treatment as a public record.

2. Information contained in the communication is a public record to the extent it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

3. Information contained in the communication is a public record to the extent it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger. Iowa Code section 22.7.

(6) Materials exempted from public inspection under any other provisions of state law.

b. Materials that are specifically exempted from disclosure by statute and which the board is prohibited from making available for public inspection. The board is required to withhold the following materials from public inspection:

(1) Tax records submitted to the board and required by it in the execution of its duties shall be held confidential. Iowa Code section 422.20.

(2) Reserved.

1.9(6) *Requests that materials or information submitted to the board be withheld from public inspection.* Any person submitting information or materials to the board may submit a request that part or all of the information or materials not be made available for public inspection pursuant to the following requirements.

a. Procedure. The materials to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the materials to which the request applies shall be clearly marked confidential.

b. Content of request. Each request shall contain a statement of the legal basis for withholding the materials from inspection and the facts to support the legal basis relied upon. The facts underlying the legal basis shall be supported by affidavit executed by a corporate officer (or by an individual, if not a business entity) with personal knowledge of the specific facts. If the request is that the materials be withheld from inspection for a limited period of time, the period shall be specified.

c. Compliance. If a request complies with the requirements of paragraphs *"a"* and *"b"* of this subrule, the materials will be temporarily withheld from public inspection. The board will examine the documents to determine whether the documents should be afforded confidentiality. If the request is granted, the ruling will be placed in a public file in lieu of the materials withheld from public inspection.

d. Request denied. If a request for confidentiality is denied, the documents will be held confidential for 14 days to allow the applicant an opportunity to seek injunctive relief. After the 14 days expire, the materials will be available for public inspection, unless the board is directed by a court to keep the information confidential.

1.9(7) *Procedures for the inspection of commission records which are routinely available for public inspection.* The records in question must be reasonably described by the person requesting them to permit their location by staff personnel. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

Advance requests to have records available on a certain date may be made by telephone or by correspondence.

a. *Search fees.* An hourly fee will be charged for searching for requested records. The fee will be based upon the pay scale of the employee who makes the search. No search fee will be charged if the records are not located, the records are not made available for inspection, or the search does not exceed one-quarter hour in duration.

b. *Written request.* Written requests should list the telephone number (if any) of the person making the request, and for each document requested should set out all available information which would assist in identifying and locating the document. The request should also set out the maximum search fee the person making the request is prepared to pay. If the maximum search fee is reached before all of the requested documents have been located and copied, the requesting person will be notified. When the requesting person requests that the board mail copies of the materials, postage and handling expenses should also be included.

c. *Procedure for written request.* The records will be produced for inspection at the earliest possible date following a request. Records should be inspected within seven days after notice is given that the records have been located and are available for inspection. After seven days, the records will be returned to storage and additional charges may be imposed for having to produce them again.

d. *Copies.* Copies of public records may be made in the board's records and information center and the charge shall be the actual copying cost.

1.9(8) *Procedures for the inspection of board records which are not routinely available for public inspection.* Any person desiring to inspect board records which are not routinely available for public inspection shall file a request for inspection meeting the requirements of this subrule.

a. *Content of request.* The records must be reasonably described by the person requesting them, so as to permit their location by staff personnel. Requests shall be directed to the executive secretary of the board.

b. *Procedure.* Requests for inspection shall be acted upon as follows:

(1) If the board is prohibited from disclosing the records, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the board is prohibited from disclosing part of a document from inspection, that part will be deleted and the remainder will be made available for inspection.

(3) In the case of requests to inspect records not routinely available for public inspection under 1.9(5)*"a"*(1) and 1.9(5)*"a"*(3), the board will notify all interested parties of the request to view the materials. The board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection. Requests to review materials not routinely available for public inspection under any other category of paragraph 1.9(5)*"a"* or 1.9(5)*"c,"* will be acted upon by the board. If the request is granted by the board, or is partially granted and partially denied, the person who submitted the records to the board will be afforded 14 days from the date of the written ruling in which to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection.

1.9(9) *Procedures by which the subject of a confidential record may have a copy released to a named third party.* Upon a request which complies with the following procedures, the board will disclose a confidential record to its subject or to a named third party designated by the subject. Positive identification is required of all individuals making such a request.

a. In-person requests. Subjects of a confidential record who request that information be given to a named third party will be asked for positive means of identification. If an individual cannot provide suitable identification, the request will be denied.

Subjects of a confidential record who request that information be given to a named third party will be asked to sign a release form before the records are disclosed.

b. Written request. All requests by a subject of a confidential board record for release of the information to a named third party sent by mail shall be signed by the requester and shall include the requester's current address and telephone number (if any). If positive identification cannot be made on the basis of the information submitted along with the information contained in the record, the request will be denied.

Subjects of a confidential record who request by mail that information be given to a named third party will be asked to sign a release form before the records are disclosed.

c. Denial of access to the record. If positive identification cannot be made on the basis of the information submitted, and if data in the record is so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom the record pertains, the board may deny access to the record pending the production of additional evidence of identity.

1.9(10) *Procedure by which the subject of a board record may have additions, dissents or objections entered into the record.* An individual may request an addition, dissent or an objection be entered into a board record which contains personally identifiable data pertaining to that individual. The request shall be acted on within a reasonable time.

a. Content of request. The request must be in writing and addressed to the executive secretary of the board. The request should contain the following information:

(1) A reasonable description of the pertinent record.
(2) Verification of identity.
(3) The requested addition, dissent or objection.
(4) The reason for the requested addition, dissent or objection to the record.

b. Denial of request. If the request is denied, the requester will be notified in writing of the refusal and will be advised that the requester may seek board review of the denial within ten working days after issuance of the denial.

1.9(11) *Advice and assistance.* Individuals who have questions regarding the procedures contained in these rules may contact the executive secretary of the board at the following address: Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319.

1.9(12) *Data processing system.* The board does not currently have a data processing system which matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

These rules are intended to implement Iowa Code sections 17A.3, 68B.4, 474.1, 474.5, 474.10, 476.1, 476.2, 476.31 and 546.7.

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CULTURAL AFFAIRS DEPARTMENT[221]

[Created by 1986 Iowa Acts, chapter 1245, section 1301. Divisions under this "umbrella" include Arts Division[222], Historical Division [223], Library Division[224], and Public Broadcasting Division[225]]

CHAPTER 7
MUSEUM PROPERTY

CHAPTER 8
CULTURAL ENRICHMENT GRANT
(CEG) PROGRAM

CHAPTER 1
ORGANIZATION AND OPERATION

221—1.1(303) Definitions. The definitions of terms listed in Iowa Code section 17A.2 shall apply for these terms as they are used throughout this chapter. In addition, as used in this chapter:

"Arts division" means the arts division of the department of cultural affairs.

"Department" means the department of cultural affairs.

"Director" means the director of the department of cultural affairs.

"Historical division" means the historical division of the department of cultural affairs.

221—1.2(303) Purpose. The department of cultural affairs has primary responsibility for development of the state's interest in the areas of the arts, history, and other cultural matters. In fulfilling this responsibility, the department is advised and assisted by the state historical board of trustees, and the Iowa arts council. The department performs the functions enumerated in Iowa Code section 303.1.

221—1.3(303) Administrative services section. The administrative services section performs the functions enumerated in Iowa Code section 303.2(1).

221—1.4(303) Director's duties. The director performs duties as specified in Iowa Code section 303.1A.

221—1.5(303) Divisions.

1.5(1) *Arts division.* The arts division performs the duties enumerated in Iowa Code section 303.2(3) and may perform other functions assigned to it by law or rule.

1.5(2) *Historical division.* The historical division performs the duties enumerated in Iowa Code section 303.2(2) and may perform other functions assigned to it by law or rule.

221—1.6(303) Administrative offices. Correspondence and communications with the department and its divisions shall be directed as follows:

1.6(1) The department and its administrative services section may be reached as follows: Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-7471, fax (515)242-6498.

1.6(2) The arts division may be reached as follows: Iowa Arts Council, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-4451, fax (515)242-6498.

1.6(3) The historical division may be reached as follows: State Historical Society of Iowa, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-5111, fax (515)242-6498.

These rules are intended to implement Iowa Code sections 303.1 to 303.2A.

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of cultural affairs hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices, which are printed in the first volume of the Iowa Administrative Code:

221—2.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "department of cultural affairs".

221—2.3(17A,22) Requests for access to records.

2.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "director, department of cultural affairs". Also in lieu of the words "(insert agency name and address)", insert "Director, Department of Cultural Affairs, New Historical Building, 600 East Locust Street, Des Moines, Iowa 50319".

2.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours a week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday except legal holidays".

2.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour".

221—2.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "director, department of cultural affairs".

221—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(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 2.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency 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 agency 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 fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

221—2.10(17A,22) Routine use.

2.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose 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.

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

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

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

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

221—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(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 agency 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.

221—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency 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. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

2.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

221—2.13(17A,22) Availability of records.

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

2.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

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

b. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

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

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

d. Any other records made confidential by law.

2.13(3) *Authority to release confidential records.* The agency 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 2.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

221—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

2.14(1) *Personnel records.* These records concern departmental employees and their families, as well as applicants for employment with the department. The system contains material on health, dental, life, and long-term disability insurance; pay and benefit documents; tax withholding; position description questionnaires; affirmative action and equal employment opportunity; disciplinary information; grievances and appeals; performance planning and evaluation; training; deferred compensation; workers' compensation; payroll records; and other materials relating to the employees of the department. Some of the information may be confidential under Iowa Code section 22.7(11) and other legal provisions. These records contain names, social security numbers and other identifying numbers, and are collected in paper form and through the state's automated data processing system.

2.14(2) Reserved.

221—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 2.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 2.13(17A,22). The records listed may contain information about individuals.

2.15(1) Council, board, and commission records. Agendas, minutes, and materials presented to the cultural affairs advisory council are available from the department of cultural affairs, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

2.15(2) Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

2.15(3) Publications. The office receives a number of books, periodicals, newsletters, government documents, annual reports and brochures related to its mission. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the library division.

2.15(4) Office publications. This office issues a variety of materials including promotional and grants brochures and pamphlets, press releases, project and annual reports, and newsletters which may contain information about individuals, staff or members of boards, councils, or commissions.

2.15(5) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

2.15(6) Office manuals. Information in office manuals may be confidential under Iowa Code section 17A.2(7)*"f"* or other applicable provision of law.

2.15(7) All other records that are not exempted from disclosure by law.

221—2.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

221—2.17(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that 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 agency 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 agency 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 agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed emergency 8/31/88 after Notice of 7/27/88—published 9/21/88, effective 8/31/88]

CHAPTER 3
DECLARATORY ORDERS

221—3.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department, at the Director's Office, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF CULTURAL AFFAIRS

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions provided for by 221—3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

221—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The department may also give notice to any other persons.

221—3.3(17A) Intervention.

3.3(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.

3.3(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 department.

3.3(3) A petition for intervention shall be filed at the director's office. Such a petition is deemed filed when it is received by that office. The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for that purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF CULTURAL AFFAIRS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

221—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

221—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319.

221—3.6(17A) Service and filing of petitions and other papers.

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

3.6(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 Administrative Offices, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319. All documents are considered filed upon receipt.

221—3.7(17A) Consideration. Upon request by petitioner, the department must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

221—3.8(17A) Action on petition.

3.8(1) Time frame for action. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or the date of delivery if service is by other means unless another date is specified in the order.

221—3.9(17A) Refusal to issue order.

3.9(1) The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

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

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

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

3.9(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 the refusal to issue an order.

221—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

221—3.11(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.

221—3.12(17A) Effect of declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound 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 ruling serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 4
DEPARTMENT PROCEDURE FOR RULE MAKING

221—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

221—4.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department 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 department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

221—4.3(17A) Public rule-making docket.

4.3(1) *Docket maintained.* The department shall maintain a current public rule-making docket.

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

4.3(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 determinations with respect thereto;

h. Any known timetable for department 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.

221—4.4(17A) Notice of proposed rule making.

4.4(1) *Contents.* At least 35 days before the adoption of a rule the department 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 department 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 department for the resolution of each of those issues.

4.4(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 4.12(2) of this chapter.

4.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the department 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 department 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 department 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.

221—4.5(17A) Public participation.

4.5(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 Director, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

4.5(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department 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 department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

4.5(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.

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

(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.

4.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

4.5(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with disabilities. Persons who have special requirements should contact: Director's Office, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-7471, or fax (515)242-6498 in advance to arrange access or other needed services.

221—4.6(17A) Regulatory analysis.

4.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

4.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the director.

The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department 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 department 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.

4.6(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 department 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 department 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.

4.6(4) *Qualified requesters for regulatory analysis—economic impact.* The department 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.

4.6(5) *Qualified requesters for regulatory analysis—business impact.* The department 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.

4.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the department shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

4.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

4.6(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).

4.6(9) *Publication of a concise summary.* The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

4.6(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(12a), unless a written request expressly waives one or more of the items listed in the section.

4.6(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).

221—4.7(17A,25B) Fiscal impact statement.

4.7(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.

4.7(2) If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

221—4.8(17A) Time and manner of rule adoption.

4.8(1) *Time of adoption.* The department 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 the oral proceedings thereon, the department 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.

4.8(2) *Consideration of public comment.* Before the adoption of a rule, the department 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.

4.8(3) *Reliance on department expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

221—4.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

4.9(1) The department 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.

4.9(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 department 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.

4.9(3) The department 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 department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

4.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

221—4.10(17A) Exemptions from public rule-making procedures.

4.10(1) *Omission of notice and comment.* To the extent the department 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 department 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 department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.10(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 that are mandated by federal law or regulations are exempted from the usual public notice and participation requirements in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules. Notice and public participation would be unnecessary since the provisions of the law or regulation must be adopted in order to maintain federal funding and the department would have no option in the rule which was adopted.

4.10(3) *Public proceedings on rules adopted without them.* The department 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 4.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a department or agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 4.10(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 department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 4.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

221—4.11(17A) Concise statement of reasons.

4.11(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 department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Director, Department of Cultural Affairs, 600 East Locust 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.

4.11(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 department's reasons for overruling the arguments made against the rule.

4.11(3) *Time of issuance.* After a proper request, the department 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.

221—4.12(17A) Contents, style, and form of rule.

4.12(1) *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

a. The date the department 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 department in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by 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 exception provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons; and

g. The effective date of the rule.

4.12(2) *Incorporation by reference.* The department 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 department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department 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 department may incorporate such matter by reference in a proposed or adopted rule only if the department 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 department, 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 department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

If the department 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.

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

4.12(4) *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

221—4.13(17A) Department rule-making record.

4.13(1) *Requirement.* The department 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.

4.13(2) *Contents.* The department 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 departmental submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the department'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 department, 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 department and considered by the director, 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 department 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 department 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 department 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.

4.13(3) *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

4.13(4) *Maintenance of record.* The department 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 4.13(2)*"g," "h," "i,"* or *"j."*

221—4.14(17A) Filing of rules. The department 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 department shall use the standard form prescribed by the administrative rules coordinator.

221—4.15(17A) Effectiveness of rules prior to publication.

4.15(1) *Grounds.* The department 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 department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.15(2) *Special notice.* When the department 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 department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule to the rule's indexing and publication. The term "all reasonable efforts" requires the department 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 department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 4.15(2).

221—4.16(17A) General statements of policy.

4.16(1) *Compilation, indexing, public inspection.* The department 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," "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.

4.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

221—4.17(17A) Review by department of rules.

4.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

4.17(2) In conducting the formal review, the department 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 department'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 department or granted by the department. 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 department'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.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

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CHAPTER 5
Reserved

INSURANCE DIVISION[191]

[Prior to 10/22/86, see Insurance Department[510], renamed Insurance Division[191] under the "umbrella" of Department of Commerce by the 1986 Iowa Acts, Senate File 2175]

ORGANIZATION AND PROCEDURES

REGULATION OF INSURERS

CHAPTER 5
REGULATION OF INSURERS—
GENERAL PROVISIONS

CHAPTER 6
ORGANIZATION OF DOMESTIC
INSURANCE COMPANIES

CHAPTER 7
DOMESTIC STOCK INSURERS PROXIES

PROXY REGULATIONS

HEALTH BENEFIT PLANS

CHAPTER 71
SMALL GROUP HEALTH BENEFIT PLANS

CHAPTER 72
LONG-TERM CARE ASSET PRESERVATION PROGRAM

CHAPTER 73
HEALTH INSURANCE PURCHASING COOPERATIVES

CHAPTER 2
DECLARATORY ORDERS
[Prior to 2/11/87, see 191—2.6]

191—2.1(17A) Petition for declaratory order.

2.1(1) Any person or agency may file a petition with the insurance division for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the division, at the address disclosed in rule 191—1.2(502,505). A petition is deemed filed when it is received. The division shall provide petitioner with a file-stamped copy of the petition if petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE INSURANCE DIVISION OF THE STATE OF IOWA

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

2.1(2) The petition shall provide the following information:

a. A clear and concise statement of all relevant facts upon which the order is requested.

b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability or interpretation is questioned, and any other relevant law.

c. The questions petitioner wants answered, stated clearly and concisely.

d. The answers to the questions desired by petitioner and a summary of the reasons urged by petitioner in support of those answers.

e. The reasons for requesting the declaratory order and disclosure of petitioner's interest in the outcome.

f. A statement indicating whether petitioner is currently a party to another proceeding involving the questions at issue and whether, to petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

g. Any request by petitioner for a meeting provided for by rule 2.7(17A).

The petition must be dated and signed by petitioner or petitioner's representative. It must also include the name, mailing address, and telephone number of petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

191—2.2(17A) Notice of petition. Within seven days after receipt of a petition for a declaratory order, the insurance division shall give notice of the petition to all persons not served by petitioner pursuant to rule 2.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

191—2.3(17A) Intervention. A person may file a petition for intervention at any time prior to issuance of an order and may be allowed to intervene in a proceeding for a declaratory order at the discretion of the insurance division.

191—2.4(17A) Briefs. Petitioner or any intervenor shall file a brief in support of the position urged.

191—2.5(17A) Inquiries. Inquiries concerning the status of a declaratory proceeding may be made to the insurance division at the address disclosed in rule 191—1.2(502,505).

191—2.6(17A) Service and filing of petitions and other papers.

2.6(1) 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. The party filing a document is responsible for service.

2.6(2) All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the insurance division at the address disclosed in rule 191—1.2(502,505). All petitions, briefs, or other papers required to be served upon a party shall be filed simultaneously with the division.

2.6(3) Method of service, time of filing, and proof of mailing shall be as provided by rule 3.12(17A).

191—2.7(17A) Consideration. Upon request by petitioner, the insurance division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commissioner or a member of the commissioner's staff, to discuss the questions raised.

191—2.8(17A) Action on petition.

2.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receiving a petition for a declaratory order, the insurance division shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

2.8(2) The date of issuance of an order is as defined in rule 3.2(17A).

191—2.9(17A) Refusal to issue order.

2.9(1) The insurance division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(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 comply with the required form.

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

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

j. Petitioner requests the division to determine whether a statute is unconstitutional on its face.

2.9(2) A refusal to issue a declaratory order must indicate the specific grounds for refusal and constitutes final agency action on the petition.

2.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude filing of a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

191—2.10(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 petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

191—2.11(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.

191—2.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the insurance division, 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 division. Issuance of a declaratory order constitutes final agency action on the petition.

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

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CHAPTER 3
CONTESTED CASES
[Prior to 10/22/86, Insurance Department[510]]

191—3.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the insurance division.

191—3.2(17A) Definitions. Except where otherwise specifically defined by law or the context otherwise requires:

"Commissioner" means the commissioner of insurance or the commissioner'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 1998 Iowa Acts, chapter 1202, section 14.

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

"License" means the whole or a part of any permit, certificate, approval, registration, charter or similar form of permission required by statute.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the commissioner, the commissioner's designee or an administrative law judge from the department of inspections and appeals.

"Proposed decision" means the administrative law judge's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commissioner did not preside.

191—3.3(17A) Time requirements.

3.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

3.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer may afford all parties an opportunity to be heard or to file written arguments.

191—3.4(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 agency action in question. The request shall be filed with the insurance division, at the address disclosed in rule 191—1.2(502,505).

The request for a contested case proceeding shall state the name and address of the requester, identify the specific agency action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing a contested case proceeding in the particular circumstances involved, and shall include a short and plain statement of the issues of material fact in dispute.

191—3.5(17A) Commencement of hearing; notice.

3.5(1) Delivery of the notice of hearing constitutes commencement of the contested case proceeding. Delivery shall be accomplished in the manner described below, at least 15 days before the hearing date unless the parties agree to a shorter time period, or unless otherwise provided by statute.

a. For nonlicensed persons, delivery may be accomplished by:

(1) Personal service as provided in the Iowa Rules of Civil Procedure; or

(2) Certified mail, return receipt requested; or

(3) First-class mail; or

(4) Publication, as provided in the Iowa Rules of Civil Procedure.

b. For licensees, delivery shall be executed by:

(1) Personal service as provided in the Iowa Rules of Civil Procedure; or

(2) Restricted certified mail.

3.5(2) The notice of hearing shall be prepared in the form of an order and contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the insurance division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the division and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer and address, if known. If not known, a description of who generally will serve as presiding officer; and

i. Notification of the time period in which a party may request, under 1998 Iowa Acts, chapter 1202, section 15(1), and rule 3.6(17A), that the presiding officer be an administrative law judge.

j. Notification that failure to file an answer within 20 days of service may result in default.

3.5(3) An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

a. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. 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.

c. Any allegation in the notice of hearing 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.

3.5(4) Any notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to a notice of hearing or charging document 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 who may impose terms or grant a continuance.

3.5(5) The hearing in a contested case proceeding shall be held within 45 days after the date of the notice of hearing, subject to the provisions of rule 3.17(17A).

191—3.6(17A) Presiding officer.

3.6(1) If the presiding officer is not an administrative law judge, any party wishing 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 with the insurance division within 20 days after service of a notice of hearing identifying or describing the presiding officer as the commissioner or members of the commissioner's staff.

3.6(2) The commissioner may deny the request only upon a finding that one or more of the following apply:

a. Neither the commissioner nor any designee 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 3.6(4) 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.

i. A statute requires the commissioner or designee to serve as presiding officer.

j. The contested case arises from matters asserted pursuant to Iowa Code chapters 507A, 507B, 508B, 515G and 521A.

3.6(3) The commissioner or designee shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 3.6(4), the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

3.6(4) An administrative law judge assigned to act as presiding officer in insurance and securities matters shall have the following technical expertise unless waived by the agency: be admitted to practice law before the courts of the state of Iowa and have experience in securities or insurance matters, or other qualifying experience.

3.6(5) 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 commissioner. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

191—3.7(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 insurance division may exercise discretion to refuse to give effect to such a waiver when the waiver is to be inconsistent with the public interest.

191—3.8(17A) Telephone proceedings.

3.8(1) The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have been afforded notice and an opportunity to participate.

3.8(2) Any party may call witnesses by telephone, with 14 days advance notice to all parties and the presiding officer. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

191—3.9(17A) Disqualification.

3.9(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 factually related contested case with common disputed facts, or a pending controversy with common disputed facts 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 factually related contested case with common disputed facts 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 is (1) a party to the case, or an officer, director or trustee of a party; (2) a lawyer in the case; (3) known to have an interest that could be substantially affected by the outcome of the case; or (4) 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 the case.

3.9(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 agency 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 3.9(3) and 3.23(9).

3.9(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.

3.9(4) To request disqualification of a presiding officer, a party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion shall be filed as soon as practical after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but shall establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party requesting disqualification may seek an interlocutory appeal under rule 3.25(17A) and seek a stay under rule 3.29(17A).

191—3.10(17A) Consolidation—severance.

3.10(1) The presiding officer may consolidate 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.

3.10(2) The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

191—3.11(17A) Pleadings.

3.11(1) Petition for intervention requirements:

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 petitioner and petitioner's attorney, if any.

3.11(2) An answer to a petition for intervention shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

b. 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.

c. 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.

3.11(3) Any petition for intervention 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 who may impose terms or grant a continuance.

191—3.12(17A) Service and filing of pleadings and other papers.

3.12(1) 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 insurance division, at the time of filing. Except for 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.

3.12(2) Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

3.12(3) After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer.

3.12(4) Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the presiding officer, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

3.12(5) Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Insurance Division at the address disclosed in 191—1.2(502,505) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

191—3.13(17A) Discovery.

3.13(1) Where statutory time limitations permit, discovery may be conducted as permitted by the Iowa Rules of Civil Procedure. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

3.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 3.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

191—3.14(17A) Subpoenas.

3.14(1) A subpoena shall be issued by the presiding officer at a party's request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least ten days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

3.14(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

3.14(3) The presiding officer may quash or modify a subpoena upon motion as provided in the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be promptly set for hearing.

191—3.15(17A) Motions.

3.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief and relief sought.

3.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. In ruling on a motion, the presiding officer may consider the motion unresisted, if no response is timely filed.

3.15(3) The presiding officer may schedule oral argument on any motion.

3.15(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 an order of the presiding officer.

3.15(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 may be filed and served within a reasonable time prior to the hearing, as 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 20 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 3.28(17A) and appeal pursuant to rule 3.27(17A).

191—3.16(17A) Prehearing conference.

3.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than 14 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.

3.16(2) Prehearing conferences shall be conducted by telephone unless otherwise ordered.

3.16(3) Each party shall exchange and receive 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 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 failure to include them.

3.16(4) Witness or exhibit lists may be amended subsequent to the prehearing conference within time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

3.16(5) In addition to the requirements of subrule 3.16(3), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

191—3.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

3.17(1) An application for a continuance shall:

a. Be made at the earliest possible time and no less than 14 days before the hearing except in case of unanticipated emergencies or consent of all parties, and

b. State the specific reasons for the request.

3.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request;

i. Failure to timely provide discovery responses; and

j. Other relevant factors.

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

191—3.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing.

191—3.19(17A) Intervention.

3.19(1) A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, including any statutory grounds, and the position and interest of the proposed intervenor. 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.

3.19(2) 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. Any later motion must contain a statement of good cause for 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 ordinarily be denied.

3.19(3) The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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; or (d) there exists a statutory right to intervene.

3.19(4) If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned and limit the number of representatives allowed to participate actively 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.

191—3.20(17A) Hearing procedures.

3.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure orderly conduct of the proceedings.

3.20(2) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

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

3.20(3) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel a person whose conduct is disorderly.

3.20(4) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law, subject to Iowa Court Rule 113.

3.20(5) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

3.20(6) All objections shall be timely made and stated on the record.

3.20(7) Witnesses may be sequestered during the hearing. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to presentation of the cause.

191—3.21(17A) Evidence.

3.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with applicable requirements of law.

3.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

3.21(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, may receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

3.21(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 should be provided to opposing parties no later than the time they are proffered to the presiding officer. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

3.21(5) A party may object to specific evidence. A party may request limits on the scope of any examination or cross-examination. Objections shall be accompanied by a brief statement of the grounds upon which the objections are based. The objection and the ruling on the objection 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, if appropriate.

3.21(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.

191—3.22(17A) Default.

3.22(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.

3.22(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 failed to file a required pleading or has failed to appear after proper service.

3.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate become final agency action 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 3.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

3.22(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.

3.22(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.

3.22(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 236.

3.22(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 3.25(17A).

3.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall schedule another hearing on the merits and the contested case shall proceed accordingly.

3.22(9) A default decision may award any relief consistent with the request for relief made in the petition, notice of hearing, or charging document and embraced in its issues.

3.22(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 3.29(17A).

191—3.23(17A) Ex parte communication.

3.23(1) 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 division 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 3.9(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.

3.23(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.

3.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

3.23(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 3.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification.

3.23(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.

3.23(6) 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 3.16(17A).

3.23(7) 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, either under seal by protective order or in the public file, at the discretion of the presiding officer. 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.

3.23(8) 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.

3.23(9) 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, suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the first deputy commissioner or designee for possible sanctions including censure, suspension, dismissal or other disciplinary action.

191—3.24(17A) Recording costs. Upon request, the presiding officer with notice to all parties shall provide a copy of the whole or any portion of the record at a reasonable cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

191—3.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commissioner or designee may review an interlocutory order of the presiding officer. In determining whether to do so, the commissioner or designee shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order at the time the proposed decision of the presiding officer is reviewed would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

191—3.26(17A) Final decision.

3.26(1) When the commissioner presides over the reception of evidence at the hearing, the commissioner's decision is a final decision.

3.26(2) When the commissioner does not preside over the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 3.27(17A).

3.26(3) The presiding officer's decision shall specify in bold print either that the decision is final or that the decision shall become final without further proceedings unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 3.27(17A).

191—3.27(17A) Appeals and review.

3.27(1) Any adversely affected party may appeal a proposed decision to the commissioner within 30 days after issuance of the proposed decision.

3.27(2) The insurance division may initiate review of a proposed decision on its own motion at any time within 30 days following issuance of such a decision.

3.27(3) An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commissioner. 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 proposed decision or order appealed from;

b. The parties initiating the appeal;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The grounds for relief; and

e. The relief sought.

3.27(4) On appeal from a proposed decision of a presiding officer, the issues shall be limited to those raised before the presiding officer. No new issues will be considered for the first time on appeal.

3.27(5) On appeal, a party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for 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 ten days of service of the notice of appeal. The commissioner may remand a case to the presiding officer for further hearing or the commissioner may preside at the taking of additional evidence.

3.27(6) The commissioner shall issue a schedule for consideration of the appeal.

3.27(7) Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 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. Any written requests to present oral argument shall be filed with the briefs. The commissioner may resolve the appeal on the briefs or provide an opportunity for oral argument. The commissioner may shorten or extend the briefing period as appropriate.

191—3.28(17A) Applications for rehearing.

3.28(1) Any party to a contested case proceeding may file an application for rehearing from a final order.

3.28(2) 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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 3.27(5), the applicant requests an opportunity to submit additional evidence.

3.28(3) The application shall be filed with the commissioner within 20 days after issuance of the final decision.

3.28(4) 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 division shall serve copies on all parties.

3.28(5) Any application for a rehearing shall be deemed denied unless the commissioner grants the application within 20 days after its filing.

191—3.29(17A) Stay of agency action.

3.29(1) Petition requirements for stay of agency action:

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

b. Any party to a contested case proceeding may petition the commissioner for a stay or other temporary remedy pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

3.29(2) In determining whether to grant a stay, the presiding officer or commissioner shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

3.29(3) A stay may be vacated by the issuing authority upon application of the commissioner or any other party.

191—3.30(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 is practicable.

191—3.31(17A) Emergency adjudicative proceedings.

3.31(1) 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 insurance division may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the division by emergency adjudicative order. Before issuing an emergency adjudicative order the division shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the division 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;

e. Whether the specific action contemplated by the insurance division is necessary to avoid the immediate danger; and

f. Whether the proposed emergency adjudicative order is sufficiently limited in scope and narrowly tailored to protect the public health, safety or welfare.

3.31(2) 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 insurance division's decision to take immediate action.

a. 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) For nonlicensed persons, delivery may be executed by:

1. Personal service as provided in the Iowa Rules of Civil Procedure; or
2. Certified mail, return receipt requested; or
3. First-class mail; or
4. Publication, as provided in the Iowa Rules of Civil Procedure; or
5. Facsimile or other electronic transmission. Facsimile or other electronic transmission may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by facsimile and has provided a fax number for that purpose.

(2) For licensees, delivery shall be executed by:

1. Personal service a provided in the Iowa Rules of Civil Procedure; or
2. Restricted certified mail.

b. If practical, the insurance division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

3.31(3) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the insurance division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

3.31(4) After issuance of an emergency adjudicative order, the insurance division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

3.31(5) A written emergency adjudicative order shall include notification of the date on which insurance division proceedings are scheduled for completion. After an emergency adjudicative order is issued, continuance of further division proceedings to a later date will be granted only in compelling circumstances, and upon written application.

3.31(6) This rule does not preclude issuance of summary cease and desist orders as authorized by Iowa Code sections 502.604, 502A.12, 523A.17, 523B.8(1), 523D.13, and 523E.17; chapters 505, 507B, 507C, 508, and 515; and rule 191—3.32(502,505).

191—3.32(502,505) Summary cease and desist orders. When a statute authorizes action to be taken without a prior hearing, the insurance division's order shall be sent to the last-known address of the party by certified mail, return receipt requested, unless the party is a licensee, in which case the order shall be sent by restricted certified mail. The order shall state the reasons for the division's action, cite the law or rule involved, and state that the party will be afforded a hearing, if a hearing is requested within 30 days of the date of the signing of the order, unless a different time is specified by statute. The insurance division shall issue a notice of hearing no later than 30 days from the date of receipt of a timely request for hearing. If a statute requires a hearing to be held following issuance of a summary order, the date and time of that hearing shall be set forth in the order. Summary orders shall remain effective during the pendency of proceedings.

191—3.33(17A,502,505) Informal settlement.

3.33(1) A party to a controversy that may culminate in contested case proceedings may attempt informal settlement of the controversy by complying with the procedures set forth in this subrule. No party to a controversy shall be required to settle the controversy by submitting to informal settlement procedures.

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

b. When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings.

c. Where there are more than two parties to a controversy involving the insurance division, a separate settlement between one party and the division is permissible.

d. 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.

3.33(2) A party to a contested case proceeding may attempt informal settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the contested case proceeding by submitting to informal settlement procedures.

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

b. When signed by the parties to the contested case proceeding and the presiding officer, a proposed settlement shall represent final disposition of the proceeding.

c. Where there are more than two parties to a contested case proceeding involving the insurance division, a separate settlement between one party and the division is permissible.

d. A proposed settlement which is not accepted or signed by the parties and the presiding officer shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are 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.

191—3.34(17A,502,505) Witness fees.

3.34(1) Subpoenaed witnesses shall be entitled to receive fees authorized by Iowa Code section 622.69.

3.34(2) Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, may receive additional compensation, to be fixed by the presiding officer, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed the sum set forth in Iowa Code section 622.72.

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

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

191—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the insurance division are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

191—4.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the insurance division 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 causing notice to be published in the Iowa Administrative Bulletin and indicating where, when, and how persons may comment.

191—4.3(17A) Public rule-making docket.

4.3(1) The insurance division shall maintain a current public rule-making docket.

4.3(2) 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 to the time it is terminated or the rule becomes 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 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;

h. Any known timetable for division decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

191—4.4(17A) Notice of proposed rule making.

4.4(1) At least 35 days before adoption of a rule the insurance division shall publish Notice of Intended Action 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 request 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 impractical, the insurance division 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 division for the resolution of each of those issues.

4.4(2) A proposed rule may incorporate other materials by reference only if it complies with subrule 4.12(2).

4.4(3) Persons desiring copies of future Notices of Intended Action by subscription must file with the insurance division at the address disclosed in rule 191—1.2(502,505) a written request indicating the name and address to which such Notices of Intended Action should be sent. The request shall specify whether the person wants to receive insurance rules, securities bureau rules as defined by rule 191—1.1(502,505), or both. Within seven days after submission of a Notice of Intended Action for publication, the division shall mail or otherwise transmit a copy of that notice to subscribers who have filed a written request. The written request shall be accompanied by payment of the subscription price. The subscription price per calendar year is $15 for securities rules only, $15 for insurance rules only, and $30 for both.

191—4.5(17A) Public participation.

4.5(1) 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 insurance division or the person designated in the Notice of Intended Action, at the address disclosed in rule 191—1.2(502,505).

4.5(2) The insurance division may, at any time, schedule an oral proceeding on a proposed rule. The division 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 division 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:

a. A request by one or more individual persons must be signed by each person and include the address and telephone number of each person;

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; and

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.

4.5(3) This rule 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.

a. 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.

b. The commissioner, or another person designated by the commissioner who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

4.5(4) 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 insurance division 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.

a. 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 agency 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.

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

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

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

e. 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 insurance division.

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

g. 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.

h. 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.

4.5(5) In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the insurance division may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

4.5(6) The insurance division shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the division at (515)281-5705 in advance to arrange access or other needed services. Persons who are hearing impaired should call Relay Iowa TTY at 1-800-735-2942.

191—4.6(17A) Regulatory analysis.

4.6(1) A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

4.6(2) Small businesses or organizations of small businesses may be registered on the insurance division's small business impact list by making a written application to the division at the address disclosed in rule 191—1.2(502,505). 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 each qualify as a small business shall indicate that fact; and

e. Whether the applicant desires copies of Notices of Intended Action, for a reasonable cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The insurance division 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 division may periodically send a letter to each registered small business or organization, 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.

4.6(3) Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the insurance division 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. For a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the division 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.

4.6(4) The insurance division 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 review committee; or

b. The administrative rules coordinator.

4.6(5) The insurance division 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. The request shall list the name, address and telephone number of not less than 25 small businesses it represents.

4.6(6) Upon receipt of a timely request for a regulatory analysis the insurance division shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

4.6(7) A request for a regulatory analysis is made when it is received by the division, at the address disclosed in rule 191—2.1(502,505). The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

4.6(8) The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

4.6(9) Upon request, the insurance division shall make available to the extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

4.6(10) 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 that section.

4.6(11) 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, and, if the insurance division determines that the rule would have a substantial impact on small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

191—4.7(17A,25B) Fiscal impact statement.

4.7(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.

4.7(2) If the insurance division determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the division shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

191—4.8(17A) Time and manner of rule adoption.

4.8(1) The insurance division 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 insurance division shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication in the Iowa Administrative Bulletin.

4.8(2) Before the adoption of a rule, the insurance division shall fully consider all of the written and oral submissions received in that rule-making proceeding and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

4.8(3) Except as otherwise provided by law, the insurance division may use its own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

191—4.9(17A) Variance between adopted rule and rule proposed in Notice of Intended Action. The insurance division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the rule is based unless:

1. 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
2. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto.

191—4.10(17A) Exemptions from public rule-making procedures.

4.10(1) To the extent the insurance division 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 division 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 division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.10(2) The insurance division 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 4.10(1).

191—4.11(17A) Concise statement of reasons.

4.11(1) 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 insurance division shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and shall be delivered to the division at the address disclosed in rule 191—1.2(502,505). 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.

4.11(2) 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; and

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the insurance division's reasons for overruling the arguments made against the rule.

4.11(3) After a proper request, the insurance division 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.

191—4.12(17A) Contents, style, and form of rule.

4.12(1) Each rule adopted by the insurance division shall contain the text of the rule and:

a. The date the division adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action;

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 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 insurance division exercises discretion to include such reasons; and

g. The effective date of the rule.

4.12(2) The insurance division 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 division finds that the incorporation of its text in the proposed or adopted rule would be unduly cumbersome, expensive, or otherwise burdensome. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any, and shall briefly indicate the precise subject and the general contents of the incorporated matter. The division may incorporate such matter by reference in a proposed or adopted rule only if the division makes copies of it readily available to the public. The proposed or adopted rule shall state how and where copies of the incorporated matter may be obtained at a reasonable cost from the division. The division shall retain permanently a copy of any materials incorporated by reference in a rule.

If the division 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.

4.12(3) When the administrative code editor omits the full text of a proposed or adopted rule, the insurance division shall prepare and submit to the administrative code editor a summary statement describing 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 division. The division shall provide a copy of that full text for a reasonable charge upon request, shall make copies of the full text available for review at the state law library, and may make the standards available electronically.

4.12(4) In preparing its rules, the division shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

191—4.13(17A) Agency rule-making record.

4.13(1) The insurance division shall maintain an official rule-making record for each rule proposed or adopted. The rule-making record and materials incorporated by reference must be available for public inspection.

4.13(2) The rule-making record shall contain:

a. Copies of all relevant publications in the Iowa Administrative Bulletin and any file-stamped copies of insurance division submissions to the administrative rules coordinator;

b. Copies of any relevant portions of the insurance division's public rule-making docket;

c. All written petitions, requests, and submissions received by the insurance division, 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 division and considered by the division, 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 division 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 division shall identify in the record the particular materials deleted and state the reasons for 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, amendments of, 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 insurance division response to that objection;

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

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

4.13(3) Except as otherwise required by a provision of law, the rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

4.13(4) The insurance division shall maintain the rule-making record for a period of not less than five years from the later of: (a) the date the rule to which it pertains became effective, (b) the date of the Notice of Intended Action, or (c) the date of any written criticism as described in paragraph 4.13(2)*"g," "h," "i,"* or *"j."*

191—4.14(17A) Filing of rules. The insurance division shall file each rule it adopts with the administrative rules coordinator. The filing must be executed as soon after adopting 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 for that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until after 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 division shall use the standard form prescribed by the administrative rules coordinator.

191—4.15(17A) Effectiveness of rules prior to publication.

4.15(1) The insurance division 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 the division 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 division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.15(2) When the insurance division 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 division 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 division 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 division of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice. 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 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.

191—4.16(17A) General statements of policy.

4.16(1) The insurance division 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(10)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

4.16(2) A general statement of policy subject to the requirements of this subsection shall not be relied on by the insurance division to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety or welfare.

191—4.17(17A) Review of rules by division.

4.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the insurance division to conduct a formal review of an existing rule. Upon approval of that request by the administrative rules coordinator, the division shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or whether the rule should be amended or repealed. The division 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.

4.17(2) In conducting the formal review, the insurance division shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall comply with Iowa Code section 17A.7(2). A copy of the division's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection at the division at the address disclosed in rule 191—1.2(502,505).

191—4.18(17A) Petition for rule making.

4.18(1) Any person or agency may file a petition for rule making with the insurance division at the address disclosed in rule 191—1.2(502,505). A petition is deemed filed when it is received. The division must provide petitioner with a file-stamped copy of the petition if petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE INSURANCE DIVISION OF THE STATE OF IOWA

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

4.18(2) The petition shall provide the following information:

a. A statement of the specific rule-making action sought by petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed.

b. A citation to any law deemed relevant to the insurance division'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 petitioner for a meeting provided for by subrule 4.18(7).

4.18(3) The petition must be dated and signed by petitioner or petitioner's representative. It must also include the name, mailing address, and telephone number of petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.18(4) The insurance division may deny a petition because it does not substantially conform to the required form.

4.18(5) Petitioner may submit a brief in support of the action urged in the petition. The insurance division may request a brief from petitioner or from any other person concerning the substance of the petition.

4.18(6) Inquiries concerning the status of a rule-making petition may be made to the insurance division at the address disclosed in rule 191—1.2(502,505).

4.18(7) Within 14 days after the filing of a petition, the insurance division 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 division must schedule a brief and informal meeting between the petitioner and the division or a member of the division staff, to discuss the petition. The division may request petitioner to submit additional information or argument concerning the petition.

4.18(8) Within 60 days after filing the petition, or within any longer period agreed to by petitioner, the insurance division 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

4.18(9) 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 insurance division's rejection of the petition.

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

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CHAPTER 41
LIMITED SERVICE ORGANIZATIONS

191—41.1(514B) Definitions.

"Act" when used in these rules shall mean Iowa Code chapter 514B.

"Complaint" means a written communication expressing a grievance concerning a limited service organization.

"Governing body" means the persons in which the ultimate responsibility and authority for the conduct of the LSO is vested.

"Limited health services" include dental care services, vision care services, mental health services, behavioral health care services, substance abuse services, pharmaceutical services, podiatric care services, chiropractic services, nursing services, services of a licensed dietitian, physical therapy services, or any other category of services approved by the commissioner. "Limited health services" do not include employee assistance programs which provide only assessment and referral services or intermediate or long-term care facilities.

"Limited service organization (LSO)" means any corporation or limited liability company or other entity which, in return for prepayment, undertakes to provide or arrange for the provision of one or more limited health services to enrollees. Entities authorized to do business pursuant to Iowa Code chapters 508, 512B, 514, 514B (health maintenance organizations), 515, 520 and organized delivery systems shall not be required to obtain separate licensure as an LSO.

"Outpatient provider services" means outpatient provider services provided within or outside of a hospital. These services shall include, but not be limited to, laboratory and diagnostic X-ray with emphasis directed toward primary care.

"Producer" means a person engaged in solicitation or enrollment for an LSO and who ultimately delivers the certificate of membership or policy to a member.

"Provider" means any person or institution duly licensed or otherwise authorized to deliver or furnish limited health services.

191—41.2(514B) Application. An application on forms provided by the insurance division accompanied by a filing fee of $100 payable to State Treasurer, State of Iowa, shall be completed by an officer or authorized representative of the LSO. The application with copies in duplicate shall be executed in conformance with rule 41.10(514B) and shall be accompanied by the information found in Iowa Code sections 514B.3(1) to 514B.3(14). An application shall not be deemed to be filed until all information necessary to properly process said application has been received by the commissioner, as indicated in rule 41.10(514B). Amendments to the application form shall be filed in the same manner as the application and approved by the commissioner before the change proposed by the amendment is effective.

191—41.3(514B) Inspection of evidence of coverage. Except for groups which maintain a cafeteria plan pursuant to Section 125 of the Internal Revenue Code (28 U.S.C.A. § 125), an enrollee may, if evidence of coverage is not satisfactory for any reason, return evidence of coverage within ten days of receipt of same and receive full refund of the deposit paid, if any. This right shall not act as a cure for misleading or deceptive advertising or marketing methods, nor may it be exercised if the enrollee utilizes the services of the LSO within the ten-day period. Enrollees in cafeteria plans must adhere to the plan provisions concerning termination or changes in coverage.

191—41.4(514B) Governing body and enrollee representation. An LSO shall have a basic written organizational document setting forth its scheme of organization and establishing a governing body appropriate to its form of organization. The governing body shall be responsible for matters of policy and operation.

The LSO shall develop bylaws or guidelines which describe the scope of the health care services the LSO renders to enrollees directly by a provider. Initial articles of incorporation, bylaws, guidelines of the LSO and revisions thereto shall be submitted to the commissioner of insurance for review and approval.

The articles of incorporation, bylaws, guidelines, or similar document shall provide for "reasonable representation" on the governing body by enrollees. "Reasonable representation" as used in Iowa Code section 514B.7 shall require that not less than 30 percent of the governing board members be enrollees who are not providers or are not associated with a provider. Enrollees shall have the opportunity to nominate said enrollee representatives.

The LSO may provide upon its initial formation that all representatives on the governing board shall be selected by the organizers of the LSO. Such members shall serve until the first annual meeting or election. If there are no enrollee representatives on the initial governing board, they shall be elected at the first annual meeting or election. The nomination procedures for enrollee representatives should provide for the following to ensure an adequate opportunity for participation by enrollees:

41.4(1) An opportunity for adult enrollees to nominate candidates for the governing body.

41.4(2) Notice to all adult enrollees of the nomination and elective procedures. The LSO shall be deemed to have complied with these requirements if it provides notice in its regular newsletter to enrollees of the opportunity to and the procedures for nomination of enrollee representatives. Nomination procedures may be waived by the commissioner for a period of up to three years from the LSO's commencement of delivery of services to enrollees.

191—41.5(514B) Quality of care. Each LSO shall:

41.5(1) Advise the insurance division annually of the ratio of full-time providers and ancillary health personnel to enrollees to ensure an adequate network. Changes in the provider ratios shall be immediately reported together with action taken to correct any deficiencies in the ratios.

41.5(2) Provide assurance that all personnel engaged in the provision of health services to enrollees are currently licensed or certified by the appropriate state agency where the providers are located to practice their respective professions. These personnel shall be no less qualified in their respective professions than the current level of qualification, which is maintained in the providers' communities.

41.5(3) Provide assurance that any health care facilities utilized by the LSO are licensed by the appropriate state agency where the facilities are located. These facilities shall be accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association; or they shall be certified as a provider for Medicare or Medicaid; or as otherwise accredited or licensed in accordance with state or federal law.

41.5(4) Have a qualified administrator designated by the governing body who shall be responsible for the management of the LSO.

41.5(5) Provide for an ongoing internal peer review program.

41.5(6) Maintain a provider records system which includes at a minimum the following information:

a. Documentation of utilization rates for every enrollee.

b. Patient's name, identification number, age, sex, and place of residence, and place of employment, if applicable.

c. Services provided, when provided, where provided, and by whom.

d. Provider diagnosis, treatment prescribed, therapy prescribed and drugs administered.

e. Statement in regard to the status of the patient's health, as appropriate.

41.5(7) Provide by contract or other arrangement for peer review. The plans for internal and external peer review shall be submitted to the commissioner of insurance for approval.

a. Internal peer review shall be conducted by the LSO staff on a continuing basis using standards adopted by the applicable accrediting body as a general guide. Internal peer review shall be structured to review the specific type of services for which the LSO is responsible. This review shall include but not be limited to the following:

(1) Utilization review and evaluation of the quality of services provided enrollees.

(2) The process or method by which services are provided.

(3) The outcome of services.

b. External review may be satisfied either by NCQA certification or meeting the requirements of the external review group appointed by the commissioner. The criteria and methodology for selection of an external review group (ERG) are as follows:

(1) The commissioner will appoint an ERG based on the following criteria:

1. The group's experience in evaluating the quality of service provided.

2. The degree to which the group is representative of the LSOs to be reviewed.

3. The degree to which the group is knowledgeable about the delivery of the services provided by the LSO in Iowa.

4. The group's ability to coordinate its activities with other review groups and with practitioners and providers of health services in Iowa.

5. The group's knowledge of current and accepted provider opinion and its ability to make qualitative evaluations of clinical practice.

(2) No provider shall review an LSO of which the provider is a member.

(3) Appointment of an ERG will be for a four-year period, and only one ERG will be appointed at a time. Applications for appointment or reappointment will be accepted between 180 days and 90 days before the expiration of the acting ERG's four-year term.

c. The following are criteria and methodology by which an ERG will evaluate the effectiveness of an LSO's peer review program:

(1) The ERG will conduct an on-site inspection of each Iowa-certified LSO every two years.

(2) The inspection will consist of an interview with LSO staff and providers and a review of records (including clinical records of LSO patients) the ERG determines are necessary to conduct its inspection. The records may include any records or parts thereof maintained by the LSO or any of its provider members which pertain to LSO quality assurance operations or LSO patients, excluding financial records.

(3) The function of the ERG will be to make a qualitative evaluation of the effectiveness of an LSO's internal peer review program and to report its findings to the insurance division.

(4) The following items will be considered by the ERG in making its determination:

1. The extent and acuity of the LSO's peer review program in evaluating the clinical management of enrollees provided by LSO providers.

2. The ability of the LSO's program to identify aberrant practices in clinical management and to take appropriate disciplinary action.

3. The method within the LSO by which the peer review program reports its findings to the provider staff and the governing body.

4. The authority within the LSO to correct practices which the peer review program has found to be detrimental.

5. The system developed within the LSO to facilitate the work of the peer review program.

6. The commitment on the part of the LSO governing body and provider staff toward an active peer review program with a goal of quality assurance.

d. The following are procedures to be followed upon completion of an ERG's inspection:

(1) Within 30 days of the completion of its inspection, the ERG will submit a written report of its findings to the LSO.

(2) The LSO will have 45 days to respond to the ERG.

(3) The ERG must file its final report with the insurance division within 90 days of the completion of its inspection. The final report must include any comments received from the LSO.

(4) The insurance division may extend the time periods referred to in 41.5(7)*"d"*(1) to (3).

(5) After considering the report of the ERG, the insurance commissioner shall determine if the LSO's certificate of authority is to be continued, suspended or revoked.

191—41.6(514B) Change of name. No name other than that certified by the division may be used. The name of the LSO may not be changed without prior approval of the division.

191—41.7(514B) Change of ownership. Each LSO which desires to transfer ownership of more than 10 percent of the stock or ownership interest in the LSO shall not do so without first submitting a proposed plan to the division for review and approval or disapproval.

191—41.8(514B) Complaints.

41.8(1) Each LSO shall provide in its bylaws for a system to resolve and record complaints.

41.8(2) The complaint system shall provide for the resolution of the following kinds of complaints and the recording of the information required to be reported to the commissioner.

a. Complaints about the quality of health care services provided by the LSO.

b. Complaints about the availability of such services.

c. Complaints relating to enrollee participation in the operation of the LSO.

41.8(3) The complaints record shall be included in the annual report to the commissioner.

41.8(4) All complaint files shall be retained by the LSO until the examination for the period during which the complaint was received has been completed.

191—41.9(514B) Cancellation of enrollees.

41.9(1) Membership of an enrollee in an LSO may be terminated by the LSO for the following reasons and no other:

a. Nonpayment of charges when due.

b. Termination of the conditions, other than a change in the health of the enrollee, under which the enrollee became eligible to be enrolled under a group contract.

c. Termination of the group contract under which the enrollee was enrolled.

d. Change of place of residence of the enrollee from the geographic area served by the LSO.

e. Failure of the enrollee to pay deductible or coinsurance charges permitted under Iowa Code section 514B.5(3).

f. Unreasonable refusal of the enrollee to follow a prescribed course of treatment.

g. A materially false statement or misrepresentation by the enrollee in an application for membership or benefits.

h. Withdrawal of licensure by the LSO from the state. Upon withdrawal, an LSO has no obligation to secure replacement coverage for enrollees.

41.9(2) Membership of an enrollee in an LSO may be terminated only upon giving a notice of cancellation not less than 30 days before the date of termination. Such notice shall:

a. Be given by delivery of the notice in duplicate to the enrollee in person or by certified mail addressed to the enrollee at the last address known to the LSO.

b. State the date and hour upon which the enrollment shall terminate.

c. State the reason for cancellation.

d. If cancellation is for nonpayment of charges, state the amount of charges due, the cost of preparing and serving the notice, and the total cost of charges and preparing the notice, and that if the enrollee pays the amount of charges due plus the cost of preparing and serving the notice at any time before the cancellation date, the coverage will remain in force.

e. State that the enrollee has the right to a hearing before the commissioner if requested by the enrollee within 20 days after receipt of notice of cancellation.

f. Provide for the enrollee to indicate on the notice that the enrollee requests such hearing.

g. State that the enrollee may request such hearing by forwarding one copy of the notice of cancellation, marked to request a hearing, to the Commissioner of Insurance, 330 E. Maple Street, Des Moines, Iowa 50319.

41.9(3) When a hearing is requested, the commissioner may require the LSO to continue to provide coverage during the pendency of the hearing and a period of not more than ten days after the decision is made known. The commissioner may require the enrollee, as a condition of granting continued coverage, to pay the LSO the charges for such period of coverage.

41.9(4) The hearing shall be held before the commissioner or the delegated administrative law judge in the following manner:

a. Upon receipt of a request for hearing, the commissioner shall notify the LSO and the enrollee of the time and place of hearing.

b. Formal rules of evidence need not be observed, but no evidence shall be received which does not relate to the issue.

c. The burden of proof shall be upon the LSO to show by a preponderance of the evidence that it had good cause for cancellation for one or more of the reasons stated in the notice and provided herein, except that when the cancellation is for nonpayment of charges, the burden of proof shall be upon the enrollee to show a tender of payment before the date of cancellation.

d. At the close of the hearing, or as soon thereafter as possible, the commissioner shall advise the parties of the commissioner's decision.

191—41.10(514B) Application for certificate of authority. The application for certificate of authority shall be in the following form:

LIMITED SERVICE ORGANIZATION
APPLICATION FOR CERTIFICATE OF AUTHORITY
(Name of Limited Service Organization)

Organized as _____ under the laws of the state of _____, makes application to the commissioner of insurance for a certificate of authority to establish and operate a limited service organization in compliance with Iowa Code chapter 514B.

Attached and made a part of this application are exhibits bearing numbers corresponding to the following:

1. A copy of the basic organizational document of the applicant, such as the articles of incorporation, articles of association or other applicable documents and all of its amendments.

2. A copy of the bylaws, rules or similar document regulating the conduct of the internal affairs of the applicant.

3. A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if a corporation and the partners or members if a partnership or association.

3.1 A list of the names and addresses of each owner of 5 percent or more of the LSO.

4. A copy of any contract made or to be made between any providers and the applicant.

4.1 A copy of any contract made or to be made between the applicant and any person listed in paragraph "3" above.

4.2 A copy of any contract made or to be made between the applicant and any person for management services.

5. A statement generally describing the LSO including, but not limited to, a description of its facilities and personnel.

6. A copy of the form of evidence of coverage.

7. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.

8. Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement is attached.

8.1 A copy of any contract made or to be made between the applicant and its reinsurer.

8.2 A copy of any contract made or to be made between the applicant and any person for cash or asset management services.

9. A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.

10. A power of attorney executed by the applicant, if not domiciled in this state, appointing the commissioner, the commissioner's successors in office and deputies as the true and lawful attorney of the applicant for this state upon whom all lawful process in any legal action or proceeding against the LSO on a cause of action arising in this state may be served.

11. A statement reasonably describing the geographic area to be served and assessing in detail the economic feasibility of the LSO's projected operation.

12. A description of the complaint procedures to be utilized as required under Iowa Code section 514B.14.

13. A description of the procedures and programs to be implemented to meet the requirements for quality of health care as determined by the commissioner of insurance under Iowa Code section 514B.4.

14. A description of the mechanism by which enrollees shall be allowed to participate in matters of policy and operation as required by Iowa Code section 514B.7.

14.1 A copy of the notice to be given to enrollees of the procedure for nomination and election of members of the governing body.

15. A schedule of the liability and workers' compensation insurance to be maintained in force by the LSO.

VERIFICATION

The undersigned deposes and states that deponent has duly executed the attached application, dated _____, _____, for and on behalf of _____; that the deponent is the
(Year) (Name of Applicant)
_____ of such company, and that deponent is authorized to execute and file such
(Title of Officer)
instrument. Deponent further states that deponent is familiar with such instrument and the contents

thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information and belief.

(Signature)

(type or print name beneath)

Subscribed and sworn to before me by _____ on this _____ day of _____, _____.
(Year)

(Notary Public)

191—41.11(514B) Net equity and deposit requirements.

41.11(1) Net equity requirements.

a. Each LSO shall, at all times, have and maintain a tangible net equity at least equal to the greater of:

(1) $100,000 at the inception of the first year of operation, $200,000 at the inception of the second year of operation and thereafter; or

(2) Two percent of the organization's annual gross premium income, up to a maximum of the required capital and surplus of an accident and health insurer.

b. An LSO that has uncovered expenses in excess of $500,000, as reported on the most recent annual financial statement filed with the commissioner, shall maintain tangible net equity equal to 25 percent of the uncovered expense in excess of $500,000 in addition to the tangible net equity required by paragraph 41.11(1)"*a.*"

c. For the purpose of this rule, "net equity" shall mean the excess of total assets over total liabilities, excluding liabilities which have been subordinated in a manner acceptable to the commissioner; and "net equity" shall mean net equity reduced by the value assigned to intangible assets, including, but not limited to:

(1) Goodwill;

(2) Going-concern value;

(3) Organizational expense;

(4) Start-up costs;

(5) Obligations of officers, directors or affiliates, except short-term obligations of affiliates for goods or services arising in the normal course of business which are payable on the same terms as equivalent transactions with nonaffiliates and which are not past due;

(6) Long-term prepayments of deferred charges; and

(7) Nonreturnable deposits.

41.11(2) Deposits.

a. Each LSO shall deposit with the commissioner or with any organization or trustee meeting the requirements of rule 191—32.4(508) cash, securities or any combination of these that is acceptable to the commissioner having a fair market value equal to the minimum net worth of the LSO as determined by paragraph 41.11(1)"*a.*" The amount on deposit shall remain as an admitted asset of the organization in the determination of its net worth.

b. All income from deposits shall be an asset of the LSO. An LSO may withdraw a deposit or any part thereof, first having deposited, in lieu thereof, a deposit of cash, securities, or any combination of these in an amount and value equal to that to be withdrawn. Securities shall be approved by the commissioner before being substituted.

41.11(3) No LSO organized under the laws of another state shall, directly or indirectly, assume risks or provide the services of an LSO, as defined in Iowa Code section 514B.33, subsection (3), unless it first obtains licensure from the commissioner and complies with the requirements of rule 191—41.11(514B).

41.11(4) As deemed necessary by the division, each LSO that is a subsidiary of another person shall file with the division, in a form satisfactory to the division, a guarantee of the LSO's obligations issued by the ultimate controlling parent or such other person satisfactory to the division.

41.11(5) Each LSO shall, at the time of application, pay to the division a one-time, nonrefundable fee of $10,000 to be used by the division to create a special fund solely for the payment of administrative expenses in connection with the insolvency of an LSO.

191—41.12(514B) Fidelity bond. An LSO shall maintain in force a fidelity bond on employees and officers in an amount not less than $100,000 or such other sum as may be prescribed by the commissioner. All such bonds shall be written with at least a one-year discovery period and if written with less than a three-year discovery period shall contain a provision that no cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of cancellation or termination has been filed with the commissioner unless an earlier date of cancellation or termination is approved by the commissioner.

191—41.13(514B) Annual report. An LSO shall annually, on or before the first day of March, file with the commissioner of insurance a report verified by at least two of its principal officers and covering the preceding calendar year. The report shall be on the form designated by the National Association of Insurance Commissioners (NAIC) as the report form for LSOs. The report shall be completed using statutory accounting practices (SAP), and shall include any other information required under law or rule.

The commissioner of insurance may request additional reports and information from an LSO as often as is deemed necessary to enable the commissioner to carry out the duties of Iowa Code chapter 514B.

191—41.14(514B) Cash or asset management agreements. If an LSO utilizes a cash or asset management arrangement with its parent, affiliate, or any other person, the arrangement shall be written and subject to prior approval by the commissioner. Cash or asset management agreements shall meet the following minimum requirements:

1. Cash receipts shall be under the direct control of the LSO that generated the receipts. If the system is under the control of the LSO's parent or affiliate, then receipts shall be transferred to the LSO within five working days.
2. Securities purchased shall be in the name of the LSO generating the funds for the security purchase.
3. An LSO's investments shall not be pooled with other entities' investments unless there is an agreement which vests an undivided interest in the pooled arrangement to the LSO. Such an agreement shall be subject to prior approval by the commissioner.
4. An LSO's cash or investments shall not be commingled with the cash or investments of any other person.
5. Investments made on behalf of an LSO shall be subject to the limitations imposed by Iowa Code sections 511.8 and 514B.15.
6. The agreement shall provide for prompt notice and verification of investments, establish responsibility for brokerage and other fees and provide for periodic reports on earnings and expenses.
7. A parent, affiliate, person, and employees thereof providing cash or asset management services shall be bonded and responsible for any physical loss of investments.

191—41.15(514B) Reinsurance. Reinsurance contracts and stop-loss agreements entered into by an LSO shall be subject to prior approval and shall meet the following minimum requirements:

1. Reinsurance contracts and stop-loss agreements shall provide that the commissioner of insurance be given notice of termination by certified mail at least 30 days prior to the effective date of termination of the reinsurance contract or stop-loss agreement.
2. Retention levels shall be reasonable in light of the LSO's financial condition and potential liabilities.

191—41.16(514B) Provider contracts. An LSO's arrangements for health care services shall be by written contract. Initial provider contracts shall be subject to prior approval. Thereafter, any provider contract deviating from previously submitted or approved contracts shall be submitted to the division for approval. In all instances, all provider contracts shall include the following provision:

(Provider), or its assignee or subcontractor, hereby agrees that in no event, including, but not limited to, nonpayment by the LSO, LSO insolvency or breach of this agreement, shall (Provider), or its assignee or subcontractor, bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against subscriber/enrollee or persons other than the LSO acting on the providers' behalf for services provided pursuant to this agreement. This provision shall not prohibit collection of supplemental charges or copayments on LSO's behalf made in accordance with terms of (applicable agreement) between LSO and subscriber/enrollee.

(Provider), or its assignee or subcontractor, further agrees that (1) this provision shall survive the termination of this agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the LSO subscriber/enrollee and that (2) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between (Provider) and subscriber/enrollee or persons acting on their behalf.

191—41.17(514B) Producers' duties. In order to qualify for solicitation, enrollment, or delivery of a certificate of membership or policy in an LSO, a producer must comply with the licensing rules set forth in 191—Chapter 10 of the Iowa Administrative Code and in particular submit to an examination to determine the applicant's competence to sell accident and health insurance as described in rule 191—10.7(522), qualification 6.

191—41.18(514B) Emergency services. "Emergency services" (inpatient and outpatient), as defined in rule 191—40.20(514B), shall be provided by the LSO, either through its own facilities or through guaranteed arrangements with other providers, on a 24-hour basis unless a waiver from such services is approved by the commissioner. A provider and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since LSOs may not contract with every emergency care provider in an area, LSOs shall make every effort to inform members of participating providers.

191—41.19(514B) Reimbursement. Reimbursement to a provider of "emergency services," as defined in rule 191—40.20(514B), shall not be denied by any LSO without that organization's review of the patient's provider history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the LSO as outlined in rule 191—40.9(514B). Upon denial of reimbursement for emergency services, the LSO shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—41.20(514B) Limited service organization requirements. An LSO shall not prohibit or otherwise restrict a participating provider from advising a covered person about the health status of the covered person or medical care or treatment of the covered person's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the provider is acting within the lawful scope of practice.

An LSO shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the LSO that, in the opinion of the provider, jeopardizes patient health or welfare.

191—41.21(514B) Disclosure requirements. All LSOs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, all LSOs offering policies under this chapter that include a prescription drug formulary shall inform policyholders, and prospective policyholders at time of issuance, whether a prescription drug specified in the request is included in such formulary.

All LSOs shall also disclose the existence of any contractual arrangements providing rebates received by them for drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated uses and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily function or preventing further deterioration of the medical condition caused by sickness or injury.

These rules are intended to implement Iowa Code section 514B.33.

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CHAPTER 42
GENDER-BLENDED MINIMUM NONFORFEITURE STANDARDS FOR LIFE INSURANCE

[Prior to 10/22/86, Insurance Department[510]]

191—42.1(508) Purpose. The purpose of this rule is to permit life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women. No change in minimum valuation standards is implied by this rule.

191—42.2(508) Definitions. For purposes of this chapter, the following definitions shall apply:

"1980 CSO Table, with or without Ten-Year Select Mortality Factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

"1980 CSO Table (M), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table with or without Ten-Year Select Mortality Factors.

"1980 CSO Table (F), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

"1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

"1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

"1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.

191—42.3(508) Use of gender-blended mortality tables. For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state after the operative date of Iowa Code section 508.37, an insurer may:

42.3(1) Substitute a mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without Ten-Year Select Mortality Factors for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture values, and

42.3(2) Substitute a mortality table which is of the same blend as used in subrule 42.3(1) above but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) for the 1980 CET Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

42.3(3) The following tables, as developed and revised by the Society of Actuaries and adopted by the National Association of Insurance Commissioners shall be considered as the basis for acceptable gender-blended mortality tables:

a. 100 percent male 0 percent female, for tables to be designated as the "1980 CSO-A" and "1980 CET-A" tables.

b. 80 percent male 20 percent female, for tables to be designated as the "1980 CSO-B" and "1980 CET-B" tables.

c. 60 percent male 40 percent female, for tables to be designated as the "1980 CSO-C" and "1980 CET-C" tables.

d. 50 percent male 50 percent female, for tables to be designated as the "1980 CSO-D" and "1980 CET-D" tables.

e. 40 percent male 60 percent female, for tables to be designated as the "1980 CSO-E" and "1980 CET-E" tables.

f. 20 percent male 80 percent female, for tables to be designated as the "1980 CSO-F" and "1980 CET-F" tables.

g. 0 percent male 100 percent female, for tables to be designated as the "1980 CSO-G" and "1980 CET-G" tables.

Tables 1980 CSO-A, 1980 CET-A, 1980 CSO-G, and 1980 CET-G shall not be used with respect to policies issued on or after January 1, 1985, except where 90 percent or more of persons insured thereunder are anticipated to be of one gender or except for certain policies converted from group insurance. Such group conversions issued on or after January 1, 1986, shall use mortality tables based on the blend of lives by gender expected for such policies if the group conversion policy is considered to be controlled by the decision in *Arizona Governing Committee v. Norris.*

191—42.4(508) Unfair discrimination. It shall not be a violation of Iowa Code section 507B.4(7) for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

191—42.5(508) Separability. If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected.

This rule is intended to implement Iowa Code section 508.37(6)*"h"*(6).

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p. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

q. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

r. Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under Iowa Code chapter 502 notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

s. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Iowa Code chapter 502 or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

t. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

u. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

50.104(2) The conduct set forth in subrule 50.104(1) is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290).

This rule is intended to implement Iowa Code chapter 502.

191—50.105(502) Custody of client funds or securities.

50.105(1) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

a. The investment adviser notifies the administrator in writing that the investment adviser has or may have custody;

b. The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place free from risk of destruction or other loss;

c. All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the accounts, and the exact amount of each client's beneficial interest in the account;

d. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and, subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

e. At least once every three months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

f. At least once every calendar year, an independent certified public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each examination. The effective date of this paragraph shall be June 9, 2000.

g. For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

50.105(2) Reserved.

This rule is intended to implement Iowa Code chapter 502.

191—50.106(502) Minimum financial requirements for investment advisers.

50.106(1) Except as otherwise provided in subrule 50.106(7), an investment adviser registered or required to be registered under Iowa Code section 502.302 who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser registered or required to be registered under Iowa Code section 502.302 who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000.

50.106(2) Except as otherwise provided in subrule 50.106(7), an investment adviser registered or required to be registered under Iowa Code section 502.302 who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

50.106(3) Except as otherwise provided in subrule 50.106(7), or unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under Iowa Code section 502.302 shall by the close of business on the next business day notify the administrator if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the administrator of the adviser's financial condition, including the following:

a. A trial balance of all ledger accounts;

b. A statement of all client funds or securities which are not segregated;

c. A computation of the aggregate amount of client ledger debit balances; and

d. A statement as to the number of client accounts.

50.106(4) For the purposes of this rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include the following as assets: prepaid expenses (except items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

50.106(5) For the purposes of this rule, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

50.106(6) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

50.106(7) Every investment adviser whose principal place of business is in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains the adviser's principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

The effective date of this rule shall be June 23, 2000.

This rule is intended to implement Iowa Code section 502.302.

191—50.107(502) Bonding requirements for certain investment advisers.

50.107(1) Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

a. Every investment adviser registered or required to be registered under Iowa Code section 502.302 having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser.

b. Every investment adviser registered or required to be registered under Iowa Code section 502.302 who has custody of or discretionary authority over client funds or securities and who does not meet the minimum net worth standard in subrule 50.106(1) shall be bonded in the amount of net worth deficiency rounded up to the nearest $5000.

50.107(2) An investment adviser whose principal place of business is in a state other than this state shall be exempt from the requirements of subrule 50.107(1), provided that the investment adviser is registered as an investment adviser in the state of the adviser's principal place of business and is in compliance with such state's requirements related to bonding.

The effective date of this rule shall be June 23, 2000.

This rule is intended to implement Iowa Code section 502.302.

191—50.108(502) Record-keeping requirements for investment advisers.

50.108(1) Except as otherwise provided in subrule 50.108(12) for out-of-state investment advisers, every investment adviser registered or required to be registered under Iowa Code chapter 502 shall make and keep true, accurate and current the following books, ledgers and records:

a. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

c. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

d. All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

e. All bills or statements (or copies of all bills or statements), paid or unpaid, relating to the investment adviser's business as an investment adviser.

f. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation.

g. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given,

(2) Any receipt, disbursement or delivery of funds or securities, or

(3) The placing or execution of any order to purchase or sell any security.

The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser. If the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

h. A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

i. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

j. A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

k. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

l. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"l,"* "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations: any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(4) For the purposes of 50.108(1)*"l,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(5) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"l"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

m. Notwithstanding the provisions of 50.108(1)*"l,"* when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"m,"* an investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of the adviser's most recent three fiscal years or for the period of time since organization, whichever is the lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of the adviser's total sales and revenues, and the adviser's income or loss before income taxes and extraordinary items, from such other business or businesses.

(4) For purposes of 50.108(1)*"m,"* "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

1. Any person in a control relationship to the investment adviser;
2. Any affiliated person of a controlling person; and
3. Any affiliated person of an affiliated person.

(5) For the purposes of 50.108(1)*"m,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(6) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"m"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

n. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Iowa Code chapter 502 and these rules, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

o. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(1) Evidence of a written agreement as required by 50.103(1)*"b"* to which the adviser is a party related to the payment of such fee;

(2) A signed and dated acknowledgment of receipt from the client as required by 50.103(1)*"c"*(3)"2" that evidences the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor's written disclosure statement as required by 50.103(1)*"c"*(3)"1." The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 206(4)-3 of the Investment Advisers Act of 1940.

(4) For purposes of 50.108(1)*"o,"* the term "solicitor" shall mean any person or entity that, for compensation, acts as an agent of an investment adviser in referring potential clients.

p. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

q. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

r. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

s. Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

t. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in 50.108(1)*"l"*(3), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

50.108(2) If an investment adviser subject to subrule 50.108(1) has custody or possession of securities or funds of any client, the records required to be made and kept under subrule 50.108(1) shall include:

a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

c. Copies of confirmations of all transactions effected by or for the account of any client.

d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

50.108(3) Every investment adviser subject to subrule 50.108(1) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

a. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

b. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

50.108(4) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

50.108(5) Every investment adviser subject to subrule 50.108(1) shall preserve the following records in the manner prescribed:

a. All books and records required to be made under the provisions of paragraphs 50.108(1)*"a"* to 50.108(3)*"a,"* inclusive, except for books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

b. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

c. Books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p"* shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media).

d. Books and records required to be made under the provisions of 50.108(1)*"q"* to *"t,"* inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

e. Notwithstanding other record preservation requirements of this rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(1) Records required to be preserved under 50.108(1)*"c," "g"* to *"j," "n"* to *"o,"* and *"q"* to *"s,"* subrule 50.108(2) and subrule 50.108(3), and

(2) The records or copies required under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in 50.108(5)*"c."*

50.108(6) An investment adviser subject to subrule 50.108(1), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing on Form ADV-W of the exact address where the books and records will be maintained during the period.

50.108(7) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photographic film or, as provided in subrule 50.108(8), on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator through the administrator's examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available for the administrator's examination the adviser's records, pursuant to Iowa Code section 502.303, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

50.108(8) Pursuant to subrule 50.108(7), an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

50.108(9) For purposes of this rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

50.108(10) For purposes of this rule, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

50.108(11) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

50.108(12) Every investment adviser that is registered or required to be registered in this state and that has the adviser's principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with such state's record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502.

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CHAPTERS 51 to 53
Reserved

ACCOUNTANCY EXAMINING BOARD[193A]

[Prior to 7/13/88, see Accountancy, Board of[10]]

CHAPTER 12
PROCEDURE FOR ENFORCEMENT

CHAPTER 1
DEFINITIONS
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—1.1(542C) Definitions. The following definitions shall be applicable to the rules of the board of accountancy.

Act. The term "Act" refers to the "Public Accountancy Act of 1974."

AP. The term "AP" means accounting practitioner.

Board. The term "board" refers to the accountancy examining board established by Iowa Code section 542C.3.

Certificate. The term "certificate," when used, means the certificate of certified public accountant granted under Iowa Code section 542C.5.

Contested case. The term "contested case" means any adversary proceeding before the board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 542C, or any other proceeding designated a contested case under the law or by these rules.

Corporation. The term "corporation" means a professional corporation under Iowa Code chapter 496C.

CPA. The term "CPA" means certified public accountant.

Ethics and enforcement committee. The term "ethics and enforcement committee" means a committee of five board members which is responsible for reviewing and investigating disciplinary complaints and handling other matters related to licensee discipline or referred to it by the board.

Firm. The term "firm" means a sole proprietorship (individual practitioner), a partnership of CPAs or APs, a professional corporation of CPAs or APs, a professional limited company of CPAs or APs, or the office of the auditor of state, state of Iowa, when the auditor of state is a certified public accountant.

Full-time employment. The term "full-time" employment means the usual and customary 40-hour workweek.

Issuance. The term "issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

License. The term "license," when used, means the license of accounting practitioner granted under Iowa Code section 542C.7, 542C.8 or 542C.13.

Managing partner, managing shareholder, or managing member. The term "managing partner," "managing shareholder," or "managing member" means the designated individual with ultimate responsibility for the operation of a firm's practice.

Office. The term "office" means any work space identified or advertised to the general public as being connected with any firm of CPAs or APs where business is conducted.

Partnership. The term "partnership" means any partnership of CPAs or APs under Iowa Code chapter 486 as amended by 1994 Iowa Acts, chapter 1049.

Permit. The term "permit," when used, means the permits granted under section 542C.20, to practice as a certified public accountant, public accountant, accounting practitioner or a firm of certified public accountants, public accountants or accounting practitioners in the state of Iowa.

Person. The term "person" shall, unless the context indicates otherwise, include individuals, partnerships, corporations, and professional limited companies.

Person associated with a CPA or AP. The term "person associated" means any partner, shareholder, member, employee, assistant, or independent contractor of a CPA or AP firm.

Professional Limited Company, PLC. The term "professional limited company" means a professional limited liability company under Iowa Code chapter 490A, subchapter XV.

Proposed decision. The term "proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order on a contested case in which the board did not preside.

Respondent. The term "respondent" means any person against whom a formal statement of charges has been filed, or any person whose legal right provided for in Iowa Code chapter 542C shall be determined or affected.

State. The term "state," when not referring specifically to this state, means any state, territory or insular possession of the United States or District of Columbia.

Year. The term "year," when used in the context as a time measurement of experience in accounting work, means a period of 365 days during which the employment was full-time and the services performed were those customarily performed by full-time regularly employed employees.

These rules are intended to implement Iowa Code chapter 542C.

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CHAPTER 2
ORGANIZATION AND ADMINISTRATION
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—2.1(542C) Description.

2.1(1) The purpose of the accountancy examining board is to administer and enforce the provisions of Iowa Code chapter 542C, (Public Accountancy Act of 1974) with regard to the practice of accountancy in the state of Iowa including the examining of candidates; issuing of certificates and licenses; granting of permits to practice accountancy, investigating violations and infractions of the accountancy law; and disciplining certificates, licenses or permits. To this end, the board has promulgated these rules to clarify the board's intent and procedures.

2.1(2) All official communications, including submissions and requests, should be addressed to the board at its official address.

2.1(3) Rescinded IAB 8/21/91, effective 9/25/91.

193A—2.2(542C) Administrative committees.

2.2(1) The board may appoint administrative committees of not less than three nor more than five members who shall be members of the board for the purpose of making recommendations on matters specified by the board.

2.2(2) An administrative committee may be appointed to make recommendations to the board concerning the board's responsibilities as to examinations, registrations and licensing, continuing education, professional conduct, discipline and other board matters.

193A—2.3(542C) Annual meeting. The annual meeting of the board shall be the first meeting scheduled after April 30. At this time the chairperson, secretary, and treasurer shall be elected to serve until their successors are elected. The office of secretary and treasurer may be held by the same individual. The election of these officers shall be the first order of business at the annual meeting after hearing the reports of outgoing officers. The newly elected officers shall assume the duties of their respective offices at the conclusion of the meeting at which they were elected.

This rule is intended to implement Iowa Code section 542C.3.

193A—2.4(542C) Other meetings. In addition to the annual meeting, and in addition to future meetings, the time and place of which may be fixed by resolution of the board, any meeting may be called by the chairman of the board or by joint call of a majority of its members. One week's notice shall be given for such meetings and the notice must designate the time and place of said meeting.

193A—2.5(542C) Adjournment and continuation of a meeting. Rescinded IAB 8/21/91, effective 9/25/91.

193A—2.6(542C) Conduct of meetings. Rescinded IAB 8/21/91, effective 9/25/91.

193A—2.7(542C) Secretary's duties.

2.7(1) The secretary shall cause complete records to be kept of all applications for examination and registration, all certificates, licenses and permits granted, and all necessary information in regard thereto.

2.7(2) The secretary shall determine when the legal requirements for licensure have been satisfied with regard to issuance of certificates, licenses or registrations; and the secretary shall submit to the board any questionable application.

2.7(3) The secretary shall keep accurate minutes of the meetings of the board. The secretary shall keep a list of the names of persons issued certificates as certified public accountants, persons issued licenses as accounting practitioners, and all persons and firms issued permits to practice.

193A—2.8(542C) Annual register. Rescinded IAB 8/21/91, effective 9/25/91.

193A—2.9(542C) Conferring with board members. Rescinded IAB 8/21/91, effective 9/25/91.

193A—2.10(542C) Disclosure of confidential information.

2.10(1) Iowa Code section 542C.16 prohibits members of the board from disclosing a final examination score to persons other than the one who took the examination. For the purposes of this rule, "final score" includes information as to whether the candidate "passed," "failed," or "conditioned" the examination. Persons who take the examination may consent to the publication of their names on a list of passing candidates.

2.10(2) Other information relating to the examination results, including the specific grades by subject matter, shall be given only to the person who took the examination, except that the board may:

a. Disclose the specific grades by subject matter to the regulatory authority of any other state or foreign country in connection with the candidate's application for a reciprocal certificate or license from the other state or foreign country, but only if requested by the applicant for reciprocity.

b. Disclose the specific grades by subject matter to educational institutions, professional organizations, or others who have a legitimate interest in the information, provided the names of the persons taking the examination are not provided in conjunction with the scores.

193A—2.11(542C) Advisory committee. Rescinded IAB 8/21/91, effective 9/25/91.

193A—2.12(542C) Adoption, amendment and repeal of administrative rules.

2.12(1) The board shall adopt, amend or repeal its administrative rules in accordance with the provisions of Iowa Code section 17A.4. Prior to the adoption, amendment or repeal of any rule of the board, any interested person, as described in section 17A.4(1)"*b,*" may submit any data, views, or arguments in writing, concerning such rule(s), or may request to make an oral presentation concerning such rule(s). Such written comments or request to make an oral presentation shall be filed with the board, at its official address, and shall clearly state:

a. The name, address, and telephone number of the person or agency authorizing the comment or request.

b. The number and title of the proposed rule, as given in the "Notice of Intended Action," which is the subject of the comment or request.

c. With regard to requests to make an oral presentation, the general content of the presentation shall be indicated. A separate comment or request to make an oral presentation shall be made for each proposed rule to which remarks are to be asserted.

2.12(2) The receipt and acceptance for consideration of written comments and requests to make oral presentations shall be acknowledged by the board.

2.12(3) Written comments received after the deadline, set forth in the "Notice of Intended Action," may be accepted by the board although their consideration is not assured. Requests to make an oral presentation, received after the deadline, shall not be accepted and shall be returned to the requester.

193A—2.13(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at 1918 S.E. Hulsizer, Ankeny, Iowa 50021. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

IOWA ACCOUNTANCY EXAMINING BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by rule 2.16(17A).

2.13(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.13(2) The agency may deny a petition because it does not substantially conform to the required form.

193A—2.14(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

193A—2.15(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Executive Secretary, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

193A—2.16(17A) Agency consideration.

2.16(1) Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

2.16(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

2.16(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 agency's rejection of the petition.

193A—2.17(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ACCOUNTANCY EXAMINING BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. 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.
7. 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.
8. Any request by petitioner for a meeting provided for by 2.23(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

193A—2.18(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 2.22(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

193A—2.19(17A) Intervention.

2.19(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.

2.19(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 board.

2.19(3) A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ACCOUNTANCY EXAMINING BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

193A—2.20(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

193A—2.21(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive secretary of the board at the board's offices.

193A—2.22(17A) Service and filing of petitions and other papers.

2.22(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.

2.22(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 board at the board's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

2.22(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 193A—subrule 12.10(2).

193A—2.23(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

193A—2.24(17A) Action on petition.

2.24(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by 1998 Iowa Acts, chapter 1202, section 13(5).

2.24(2) The date of issuance of an order or of a refusal to issue an order is as defined in 193A—1.1(542C).

193A—2.25(17A) Refusal to issue order. The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
9. 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.
10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

2.25(1) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

2.25(2) 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.

193A—2.26(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the names of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

193A—2.27(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.

193A—2.28(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 board, 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 board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 542C.

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CHAPTER 12
PROCEDURE FOR ENFORCEMENT
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—12.1(272C,542C) Compliance. The board is empowered to administer Iowa Code chapters 17A, 272C and 542C and the related administrative rules for the protection and well-being of those persons who may rely upon individuals and firms for the performance of public accounting services within the state.

193A—12.2(272C,542C) Complaints.

12.2(1) The board may consider, but is not limited to, the following in determining whether a disciplinary violation may have occurred:

a. Periodic reviews of financial statements submitted to or filed with state and local government agencies in the state of Iowa, which are conducted as part of the board's positive enforcement program.

b. News articles from any source.

c. Reports required to be filed by CPAs and APs under the provisions of rules 193A—15.1(542C) and 15.2(542C). Such reports shall meet the requirements of paragraph 12.2(1)*"e."*

d. Reports filed with the board by the commissioner of insurance as required by Iowa Code section 272C.4(9).

e. Complaints filed with the board by any member of the public. Such complaints shall be in writing and shall include the following:

(1) The full name, address, and telephone number of the complainant.

(2) The full name, address, and telephone number of the licensee.

(3) A statement of the facts concerning the alleged disciplinary violation.

f. Reports to the board from any regulatory or law enforcement agency from any jurisdiction.

12.2(2) As provided by Iowa Code section 272C.8, a person shall not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor shall an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

193A—12.3(272C,542C) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member shall abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193A—12.4(272C,542C) Grounds for disciplinary action. The board may initiate disciplinary action against a CPA, AP, or a firm of CPAs or APs, on any of the following grounds:

12.4(1) For any of the grounds set forth in Iowa Code section 542C.21.

a. A violation of any of the rules of professional conduct set forth in 193A—Chapter 11 is grounds for disciplinary action under Iowa Code section 542C.21(4).

b. When considering alleged violations of Iowa Code section 542C.21(11), the phrase "conduct discreditable to the public accounting profession" shall be construed in light of the following:

The reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on a CPA or AP engaged in such practice certain obligations both to their clients and the public. These obligations include the obligation to maintain independence of thought and action, to strive continuously to improve one's professional skills, to observe, where applicable, generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, to uphold the standards of the public accountancy profession, and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

Habitual intoxication or addiction to the use of drugs will be considered as not maintaining a high standard of personal or professional conduct.

12.4(2) For a violation of any of the provisions of Iowa Code section 542C.22.

12.4(3) For a violation of any of the provisions of Iowa Code section 542C.25.

12.4(4) For a violation of Iowa Code subsection 272C.9(2) or 272C.9(3) and any of the provisions of 193A—Chapter 15.

12.4(5) For any of the grounds set forth in Iowa Code section 272C.10.

12.4(6) For failure to comply with an order of the board imposing licensee discipline.

193A—12.5(272C,542C) Investigation of complaints.

12.5(1) When the board receives information pursuant to rule 12.2(272C,542C) that indicates a CPA, AP, or firm of CPAs or APs may have committed an act that is grounds for disciplinary action, it shall be referred to the ethics and enforcement committee.

12.5(2) Confidentiality of complaint and investigative information. All complaint and investigative information received by the board shall be confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section.

12.5(3) Upon receipt of such a complaint, the committee shall determine whether a violation may have occurred. If the facts presented constitute a basis for disciplinary action, the committee shall open a disciplinary case against the licensee and investigate the case. If the committee concludes that the complaint does not present facts which constitute a basis for disciplinary action, the committee shall take no further action.

12.5(4) After a disciplinary case has been opened, the committee shall examine the information submitted to determine whether there is probable cause to believe a disciplinary violation has occurred or if additional information is required before it can make such a determination.

12.5(5) If additional information is considered necessary, the committee may assign an investigator to conduct further investigation. Alternatively, the committee may request the department of inspections and appeals to conduct an investigation of the complaint.

12.5(6) In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). In the event a party refuses to obey a subpoena, the board may petition the court for its enforcement.

12.5(7) Upon completion of the investigation, the investigator or the department of inspections and appeals shall present a report to the committee. The committee shall review the report and determine what further action is necessary. The committee may:

a. Order the matter be further investigated.

b. Allow the licensee who is the subject of the complaint an opportunity to appear before the committee for an informal discussion regarding the circumstances of the alleged violation.

c. Determine there is not probable cause to believe a disciplinary violation has occurred, and close the case.

d. Determine there is probable cause to believe that a disciplinary violation has occurred.

12.5(8) If the committee determines there is probable cause, the committee shall, subject to board approval:

a. Seek an informal stipulation or settlement of the matter; or

b. When applicable, take appropriate action under the provisions of Iowa Code section 542C.28 or 542C.29; or

c. Commence a contested case proceeding by ordering that a statement of charges be filed against the licensee and a contested case hearing be scheduled.

193A—12.6(272C,542C) Informal discussions.

12.6(1) The licensee is not required to attend or participate in the informal discussion. By electing to attend, the licensee waives the right to seek disqualification based upon personal investigation of a board member or staff from participating in making a contested case decision or acting as a presiding officer in a later contested case hearing. The licensee is required to inform the board as to whether or not the licensee will attend the informal discussion.

12.6(2) Because an informal discussion constitutes a part of the committee's investigation of a pending disciplinary case, facts that are discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

12.6(3) The licensee may, but is not required to, be represented by an attorney at the informal discussion.

12.6(4) The informal discussion shall be held in closed session pursuant to Iowa Code section 21.2(2).

12.6(5) The committee may seek an informal stipulation or settlement of the case at the time of the informal discussion. If the parties agree to an informal settlement at the informal discussion, a statement of charges shall be filed simultaneously with the settlement document. In the event the committee does not reach a settlement under this rule, the settlement rules set forth in rule 12.7(272C,542C) are still applicable.

12.6(6) Consent to settlement negotiation by the licensee at an informal discussion constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and rule 12.31(17A) to the extent applicable. Thereafter, but prior to the filing of a statement of charges against the licensee, the prosecuting attorney is authorized to discuss informal settlement with the committee.

193A—12.7(272C,542C) Settlements.

12.7(1) Settlement negotiations may also be initiated after a statement of charges is filed. Neither party is obligated to utilize this procedure to settle the case. Such negotiations may be initiated by the state of Iowa through the prosecuting attorney, by the respondent, or by the board. The chair of the board, or another board member designated by the chair, shall have authority to negotiate on behalf of the board.

12.7(2) The board shall not be involved in negotiation until a written settlement signed by the licensee is submitted to the full board for approval.

12.7(3) Consent to settlement negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and rule 12.31(17A) during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or designee.

12.7(4) All informal settlement agreements are subject to the approval of a majority of the full board. No informal settlement shall be presented to the board for approval unless it is in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

12.7(5) The board member who participates in the negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

193A—12.8(17A) Time requirements.

12.8(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

12.8(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

193A—12.9(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 board action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specified board 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.

193A—12.10(272C,542C) Notice of contested case.

12.10(1) *Notice.* The board's notice of hearing shall fix the time and place for hearing and shall contain those items specified in Iowa Code section 17A.12(2). The notice shall also contain the following:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and identification of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 12.13(17A), that the presiding officer be an administrative law judge.

j. A statement requiring the respondent to submit an answer of the type specified in rule 12.11(272C,542C) within 20 days after receipt of the notice of hearing.

12.10(2) *Service.* The notice of hearing and the statement of charges shall be served on the respondent not less than 30 days prior to the date of hearing either personally or by mailing a copy by registered mail to the last-known address of the respondent.

a. For the purposes of this subrule, "registered mail" means that form of postal delivery, under postal regulations in effect at the time of service, which ensures that a mailing receipt and a record of delivery are obtained. "Registered mail" does not mean that form of postal delivery which provides only for protection against loss or damage, and does not ensure that a receipt and record of delivery are obtained.

b. In the event the respondent is a firm of CPAs or APs, service shall be made upon the managing partner, managing shareholder, or sole proprietor.

12.10(3) *Statement of charges.* The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and shall be in sufficient detail to enable the respondent to sufficiently prepare a defense. The statement of charges shall specify the statute(s) and any rule(s) which are alleged to have been violated and may also include additional information which the board deems appropriate.

193A—12.11(272C,542C) Form of answer. The answer shall contain the following information:

1. The name, address and telephone number of the respondent.

2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.

3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193A—12.12(272C,542C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193A—12.13(17A) Presiding officer.

12.13(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 board or a panel of the board.

12.13(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board 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. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

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 interboard appeal.

g. The request was not timely filed.

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

12.13(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

12.13(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 board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

12.13(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, 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.

193A—12.14(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 board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193A—12.15(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

193A—12.16(17A) Disqualification.

12.16(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.

12.16(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 board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 12.31(9).

12.16(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.

12.16(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 12.16(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 12.33(17A) and seek a stay under rule 12.36(17A).

193A—12.17(17A) Consolidation—severance.

12.17(1) *Consolidation.* The presiding officer may 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.

12.17(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193A—12.18(17A) Amendments. Any notice of hearing or statement of charges 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 who may impose terms or grant a continuance.

193A—12.19(17A) Service and filing of pleadings and other papers.

12.19(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 board, 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.

12.19(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

12.19(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

12.19(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

12.19(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Accountancy Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

193A—12.20(17A) Discovery.

12.20(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

12.20(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 12.20(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

12.20(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193A—12.21(17A) Subpoenas. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under rule 12.10(272C,542C), the following procedures are available to the parties in order to obtain relevant and material evidence:

1. Board subpoenas for books, papers, records, and other real evidence will be issued to party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

2. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

3. In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

193A—12.22(17A) Motions.

12.22(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.

12.22(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

12.22(3) The presiding officer may schedule oral argument on any motion.

12.22(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

12.22(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 12.35(17A) and appeal pursuant to rule 12.34(272C,542C).

193A—12.23(17A) Prehearing conference.

12.23(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

12.23(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

12.23(3) In addition to the requirements of subrule 12.23(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

12.23(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

193A—12.24(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

12.24(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 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 board may waive notice of such requests for a particular case or an entire class of cases.

12.24(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

193A—12.25(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193A—12.26(17A) Intervention.

12.26(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.

12.26(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. 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 ordinarily be denied.

12.26(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

12.26(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

193A—12.27(272C,542C) Hearings.

12.27(1) A hearing may be conducted before the board or a panel of not less than three members of the board who hold permits to practice public accounting in this state.

12.27(2) Panel of nonboard member specialists. When in the opinion of a majority of the board it is desirable to obtain specialists within an area of practice of the public accounting profession when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members and who hold permits to practice public accounting in this state to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

12.27(3) Presiding officer. The board chair or a person designated by the chair shall serve as the presiding officer. The presiding officer shall conduct the hearing and shall have authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. Either the board or a three-member panel may be assisted by a hearing officer or administrative law judge.

12.27(4) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the hearing panel. The official record of the hearing shall include the reasons for granting the immunity.

12.27(5) Examination of witnesses by board. The presiding officer and other board members have the right to question a witness at any stage of that witness's testimony. Examination of witnesses by board members is subject to objections properly raised in accordance with the rules of evidence set forth in subrule 12.27(7).

12.27(6) Public hearing. The hearing shall be open to the public unless the licensee or attorney for the licensee requests that the hearing be closed.

12.27(7) Evidence. Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14.

Copies of documents offered as evidence at the hearing shall be provided to opposing parties. If requested by the board, copies shall also be furnished to each member of the board or hearing panel at the expense of the submitting party.

12.27(8) Record of proceedings. Oral proceedings at a hearing shall be recorded by a certified shorthand reporter. The requirement in Iowa Code section 542C.23(7) that a transcript of the proceedings be filed with the board applies only if a transcript is prepared upon the request of either party. Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

12.27(9) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, identity of the administrative law judge, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board.

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state's interest before the board shall make a brief opening statement which will include a summary of charges and the witnesses and documents to support such charges.

c. The respondent(s) shall be offered the opportunity to make an opening statement, which includes the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. A summary, at the close of the evidence on behalf of the state.

f. The presentation of evidence on behalf of the respondent(s).

g. Rebuttal evidence on behalf of the state, if any.

h. Rebuttal evidence on behalf of the respondent(s), if any.

i. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

193A—12.28(272C,542C) Disciplinary sanctions.

12.28(1) The board has authority to impose the following disciplinary sanctions:

a. Revoke a certificate, registration, license, or permit issued by the board. In the event of a revocation, the licensee shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such an entity be CPAs or APs.

b. Suspend a certificate, registration, license, or permit issued by the board. A CPA or AP who is under suspension shall refrain, during the period of the suspension, from all facets of the ordinary practice of public accounting.

c. Revoke or suspend the privilege to engage in one or more areas of the practice of public accounting.

d. Impose a period of probation. As a condition to a period of probation, the board may impose terms and conditions deemed appropriate by the board which may include, but are not limited to, the following:

(1) The board may require the licensee to undergo a quality review or peer review. The licensee shall select, subject to approval by the board, a CPA, a firm of CPAs or a review program which is endorsed by the American Institute of Certified Public Accountants. The costs of the review shall be paid by the licensee. The board shall be furnished a copy of the report issued by the reviewing party.

(2) The board may require the licensee to enter into an agreement with a CPA or firm of CPAs to obtain a preissuance review of any audits, compilations, or reviews issued by the licensee during the period of probation. The agreement shall be approved by the board. The board may require the licensee to report regularly concerning the preissuance reviews conducted pursuant to the agreement. Any cost incurred in obtaining preissuance review shall be paid by the licensee.

e. Impose requirements regarding continuing education. The board may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether this continuing education be in addition to that routinely required for license renewal.

The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a certificate, permit, license, or registration. The board may also specify that current reference materials be obtained and maintained.

f. Required reexamination, using one or more parts of the CPA or AP examinations given to candidates for the CPA certificate or the AP license.

g. Impose civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed $1,000. Civil penalties may be imposed for any of the disciplinary violations specified in rule 12.4(272C,542C).

h. Issue a citation and warning.

12.28(2) Voluntary surrender. The board may accept the voluntary surrender of a certificate, permit, or license to resolve a contested case. The board shall not accept a voluntary surrender of a certificate, permit, or license to resolve a pending disciplinary case unless a statement of charges has been filed in the case. Such a voluntary surrender will be considered disciplinary action and shall be published in accordance with rule 12.40(272C,542C).

12.28(3) Notification requirements. Whenever a licensee's certificate, permit or license is revoked, suspended, or voluntarily surrendered under this chapter, the licensee shall:

a. Within 15 days of receipt of the board's final order, notify in writing all clients of the fact that the license has been revoked, suspended, or voluntarily surrendered. Such notice shall advise the client to obtain alternative professional services;

b. Within 30 days of receipt of the board's final order, file with the board copies of the notices sent pursuant to paragraph 12.28(3)*"a."* Compliance with this requirement shall be a condition for an application for reinstatement.

193A—12.29(17A) Evidence.

12.29(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

12.29(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

12.29(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

12.29(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. Copies may also be furnished to members of the board.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

12.29(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

12.29(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.

193A—12.30(17A) Default.

12.30(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.

12.30(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.

12.30(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action 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 subrule 12.34(3). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

12.30(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.

12.30(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.

12.30(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 236.

12.30(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 12.33(17A).

12.30(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.

12.30(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

12.30(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 12.36(17A).

193A—12.31(17A) Ex parte communication.

12.31(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 board 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 12.16(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.

12.31(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.

12.31(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

12.31(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 12.19(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

12.31(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

12.31(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 12.31(1).

12.31(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 12.24(17A).

12.31(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.

12.31(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.

12.31(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 board. Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193A—12.32(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

193A—12.33(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193A—12.34(272C,542C) Final decision.

12.34(1) When five or more members of the board preside over the reception of the evidence at the hearing, the decision is a final decision.

12.34(2) When a panel of three specialists presides over the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The parties or the parties' attorneys shall, upon notice prescribed by the board, have the opportunity to appear personally to present their positions and arguments to the board. The decision of the board is a final decision.

12.34(3) When a panel of three board members presides over the hearing, the decision is a proposed decision.

a. A proposed decision may be appealed to the board by a party to the decision who is adversely affected. An appeal is commenced by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellees.

b. The board may review a proposed decision or order on its motion by serving notice on all parties within 30 days of the issuance of the proposed decision.

c. If the proposed decision is not timely appealed by any party, the proposed decision becomes final.

d. Within seven days after service of the notice of appeal, the appellant shall serve nine copies of its brief in support of the appeal on the executive secretary, and shall furnish an additional copy to each appellee by first-class mail. Any appellee shall have 14 days following service of exceptions and brief to file its brief. Except for the notice of appeal, the time requirements set forth in this rule may be extended by stipulation of the parties or may be extended upon application approved by a member of the board.

e. Oral argument of the appeal is discretionary, but may be required by the board upon its own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted, or if required by the board, the executive director shall notify all parties of the date, time, and place. The board chair or designee shall preside at the oral argument.

f. The record on appeal shall be the entire record made before the hearing panel.

12.34(4) All parties to a proceeding shall be promptly furnished with a copy of any proposed or final decision either in person or by first-class mail. In addition, either party may request to be notified of the decision by telephone as soon as the decision is reached.

193A—12.35(17A) Applications for rehearing.

12.35(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

12.35(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 board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 12.34(3), the applicant requests an opportunity to submit additional evidence.

12.35(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

12.35(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties.

12.35(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

193A—12.36(17A) Stays of board actions.

12.36(1) *When available.*

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

b. Any party to a contested case proceeding may petition the board for a stay 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.

12.36(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, section 23.

12.36(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

193A—12.37(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.

193A—12.38(17A) Emergency adjudicative proceedings.

12.38(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 United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

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

12.38(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 board'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 board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

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

12.38(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

12.38(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board 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 board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193A—12.39(272C,542C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

193A—12.40(272C,542C) Publicizing disciplinary action.

12.40(1) Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders are public documents, are available to the public and shall be published in the professional licensing division's newsletter. Publication shall include the name of the licensee disciplined by the board, the nature of the violation(s), and the nature of any formal sanction(s) imposed.

12.40(2) The board shall issue a formal press release in those instances where a certificate, permit, or license has been suspended or revoked.

12.40(3) The board may notify other state boards of accountancy, the National Association of State Boards of Accountancy, any appropriate professional associations, and the news media of disciplinary action taken against an Iowa licensee.

193A—12.41(272C,542C) Reinstatement. Any person whose certificate, permit, or license has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

12.41(1) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the certification, permit, or license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

12.41(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the certificate, permit, or license. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other cases before the board.

12.41(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

12.41(4) An application for reinstatement may include a request for a hearing on the issues raised in the application. The hearing on an application for reinstatement shall be a contested case within the meaning of Iowa Code section 17A.12.

12.41(5) The order to grant or deny reinstatement shall include findings of fact and conclusions of law, and must be based upon the affirmative vote of not fewer than five members of the board. If reinstatement is granted, terms and conditions of licensure may be imposed. Such terms and conditions may include restrictions on the licensee's practice. This order will be published as provided for in rule 12.40(272C, 542C).

193A—12.42(272C,542C) Hearing on license denial. If the board, upon receipt of a complete and proper application for initial registration or reciprocal registration, accompanied by the proper fee, shall deny registration to the applicant, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the basis for denial.

12.42(1) An applicant denied registration who desires to contest the denial must request a hearing before the board within 30 days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service. The request for hearing shall specify the grounds under which the applicant contends that the board erred in denying registration. If a request for hearing is timely made, the board shall issue notice of hearing and conduct a contested case hearing.

12.42(2) Hearings on registration denial shall be open to the public. The burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant.

12.42(3) The board, after a hearing on registration denial, may grant or deny the application for registration. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for registration could be granted, if applicable.

12.42(4) The notice of registration denial, request for hearing, notice of hearing, and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, National Association of State Boards of Accountancy and other persons or entities.

12.42(5) Judicial review of a final order denying registration may be sought in accordance with the provisions of Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, which are applicable to judicial review of any agency's final decision in a contested case.

193A—12.43(272C,542C) Recovery of hearing fees and expenses. The board may assess the CPA or AP certain fees and expenses relating to a disciplinary hearing only if the board finds that the CPA or AP did violate Iowa Code chapter 542C and the rules of the accountancy examining board.

12.43(1) The board may assess an amount up to the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed $75.

b. All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.

d. All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.

e. The board, at its discretion, may assess an appropriate amount up to but not exceeding the $75 fee established by this subrule and the actual acceptable costs, fees, and expenses involved.

12.43(2) Fees, costs, and expenses assessed pursuant to this rule shall be calculated and may be entered into the disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the CPA or AP.

a. When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or if the expenditures occur after the disciplinary order, the board, by a majority vote of the members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the CPA or AP.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the CPA or AP for such expenditure.

12.43(3) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

12.43(4) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall be considered prima facie evidence of a violation of Iowa Code chapter 542C. However, no action may be taken against the CPA or AP without a hearing as provided in this chapter.

193A—12.44(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

12.44(1) The notice required by Iowa Code section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

12.44(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the registrant.

12.44(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intent to revoke the certificate of registration.

12.44(4) Registrants shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

12.44(5) All board fees required for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

12.44(6) In the event a registrant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.44(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant or applicant when the certificate of registration is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

193A—12.45(261) Suspension or revocation of a certificate of registration—student loan. The board shall suspend or revoke a certificate of registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

12.45(1) The notice required by Iowa Code section 261.126, shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the registrant may accept service personally or through authorized counsel.

12.45(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the registrant.

12.45(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126, and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of licensure.

12.45(4) Registrants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

12.45(5) All board fees required for registration renewal or registration reinstatement must be paid by registrants and all continuing education requirements must be met before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

12.45(6) In the event a registrant timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.45(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the certificate of registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 252J, 272C and 542C and Iowa Code sections 261.126 and 261.127.

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LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Prior to 3/9/88, see Landscape Architectural Examiners Board[540]
[Landscape Architectural Examining Board[193D] created by 1986 Iowa Acts, ch 1245, §728
within the Professional Licensing and Regulation Division[193] of the Commerce Department[181] "umbrella"]

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

CHAPTER 6
SALES OF GOODS AND SERVICES

CHAPTER 7
WAIVERS OR VARIANCES FROM RULES

CHAPTER 8
PETITION FOR RULE MAKING AND FOR DECLARATORY ORDERS

CHAPTER 1
DESCRIPTION OF ORGANIZATION

[Prior to 3/9/88, see Landscape Architectural Examiners Board[540] Ch 1]

193D—1.1(544B,17A) Definitions. As used in these rules of the board, the following definitions of words and terms shall apply.

"Board" means the Iowa landscape architectural examining board.

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

"Landscape architect" means a person who engages in the practice of landscape architecture under the authority of Iowa Code chapter 544B.

"Practice of landscape architecture" means the rendering of professional service or offering to render professional service to clients, including any one or any combination of the professional services defined in section 544B.1.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order on a contested case in which the board did not preside.

193D—1.2(544B,17A) Organization and duties. The board consists of five members who are registered landscape architects and two members who are not registered landscape architects and who represent the general public. The board elects annually from its members a chairperson and vice chairperson. A quorum of the board shall be four members and all final motions and actions must receive a quorum vote. The board enforces the provisions of Iowa Code chapter 544B and maintains a roster of all registered landscape architects in the state.

1.2(1) *Chairperson.* The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties pertaining to the office of the chairperson.

1.2(2) *Vice chairperson.* The vice chairperson shall, in the absence or incapacity of the chairperson, exercise the duties and powers of the chairperson.

193D—1.3 Rescinded, effective April 13, 1988.

193D—1.4(544B,17A) Meetings. Calls for meetings shall be issued in accordance with Iowa Code section 21.4.

193D—1.5(544B,17A) Order of business. The chairperson or the chairperson's designee shall prepare an agenda listing all matters to be discussed at meetings. A copy of this agenda shall be available to each member of the board. Procedures shall be in accordance with Robert's Rules of Order.

193D—1.6 Rescinded, effective April 13, 1988.

193D—1.7(544B,17A) Seals and certificates.

1.7(1) *Individual seal.* Each registered landscape architect shall purchase an individual embossed seal or rubber stamp as prescribed by Iowa Code section 544B.12 in a design approved by the board. All landscape architecture documents shall be dated and bear the legible seal and the signature of the registrant who is responsible for the document.

1.7(2) *Certificate.* Certificates issued to successful applicants shall contain the following information: full name of the registrant, certificate number assigned to the registrant, date of issuance, statement that it is issued for the practice of landscape architecture and the seal of the board. The certificate may contain other information at the discretion of the board.

Each registrant will also be issued a receipt indicating current registration.

These rules are intended to implement Iowa Code chapter 544B.

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CHAPTER 4
DISCIPLINARY ACTION

[Prior to 3/9/88, see Landscape Architectural Examiners Board[540] Ch 4]

193D—4.1(544B,272C) Disciplinary action. The landscape architectural examining board has authority in Iowa Code chapters 544B, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder. The board shall consider the following acts or omissions to be grounds to revoke or suspend a certificate of registration or to impose other licensee discipline to a registrant:

1. Fraud in procuring a certificate of registration.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of landscape architecture or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession of the registrant that would affect the registrant's ability to practice professional landscape architecture. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representation as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Failure of a registrant to comply with Iowa Code chapter 272C or 544B and administrative rules implementing either chapter.
9. Failure of a registrant to complete continuing education requirements in accordance with 193D—Chapter 3.

193D—4.2(544B,17A) Receipt of complaints. The board shall receive and review all complaints which the board reasonably believes to indicate that a registrant may have committed an act that is cause for disciplinary action.

4.2(1) *Complaints.* Any person may file a complaint with the board charging that a registrant may have committed an act that is in violation of applicable law or rules. The complaint shall be written and signed by the complainant and accompanied with substantiating evidence indicating when, where, and how the registrant committed the violation. All complaints filed with the board shall be privileged and held confidential by all board members, peer review committee members and staff.

A person filing a complaint shall receive immunities in accordance with Iowa Code chapter 272C.

4.2(2) *Board instigated complaints.* Upon presentation of evidence by a board member, the board's staff, or other state agency, the board may determine that a complaint should be formulated to charge that a registrant may have committed an act that is in violation of applicable law or rules. A majority vote of the board approving a written motion stating the charges and containing evidence as to when, where, and how the violation might have occurred shall constitute a complaint to be processed by the complaint procedure.

193D—4.3(544B,17A) Peer review committee. At any point during the complaint procedure or the investigatory procedure and prior to determining whether probable cause exists that a violation has occurred, the board may appoint a peer review committee to assist the board in reaching its decisions by conducting an investigation(s) of the complaint.

4.3(1) *Makeup of the peer review committee.* The committee shall consist of one or more registered landscape architects who are selected for their knowledge and experience in the particular aspect of landscape architecture involved in the complaint. The following are ineligible for membership:

a. Members of the board.

b. Close relatives of the alleged violator(s) or complainant.

c. Individuals employed by the same firm or governmental unit as the alleged violator or complainant.

4.3(2) *Authority.* The committee's investigation shall be limited to interviewing of complainants, the alleged violator, individuals with knowledge of the alleged violation, and individuals with knowledge of the alleged violator's reputation in the community.

The committee may not hire legal counsel, investigators, secretarial help or any other assistants without written authorization from the board.

4.3(3) *Compensation.* Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within a budget limitation established by the board.

193D—4.4(544B,272C) Investigation report. Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the position or defense of the registrant to determine what further action is necessary. The board may:

1. Order the matter be further investigated.
2. Allow the registrant who is the subject of the complaint an opportunity to appear before the committee for an informal discussion regarding the circumstances of the alleged violation.
3. Determine there is no probable cause to believe a disciplinary violation has occurred and close the case.
4. Determine there is probable cause to believe that a disciplinary violation has occurred.

193D—4.5(544B,272C) Informal discussion. If the board considers it advisable, or if requested by the affected registrant, the board may grant the registrant an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The registrant may be represented by legal counsel at the informal discussion. The registrant is not required to attend the informal discussion. By electing to attend, the registrant waives the right to seek disqualification based upon personal investigation of a board member or staff from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

193D—4.6(544B,272C) Consent agreement. It is unlawful for a person not qualified by registration to engage in or offer to engage in the practice of landscape architecture. The board in its discretion and in lieu of prosecuting a first offense of any of the offenses described in Iowa Code section 544B.18 may enter into a consent agreement with a violator. A representative of the board, designated by the chair, and a designated staff person or an assistant attorney general may agree to negotiate a consent agreement. The proposed consent agreement must be presented to the board for approval and shall be binding if signed by the board chair and the violator.

Failure to abide by the agreement is grounds for prosecution as a serious misdemeanor pursuant to Iowa Code section 544B.18.

193D—4.7(544B,272C) Consent order. The board may negotiate a settlement and enter into a consent order with a landscape architect who acknowledges a violation of the statute or rules and agrees to refrain from any further violation, pursuant to Iowa Code section 544B.16. A representative of the board, designated by the chair, and a designated staff person or an assistant attorney general may agree to negotiate a settlement. The proposed consent order must be presented to the board for approval and shall be binding if signed by the board chair and the landscape architect. Any board member who participates in negotiation of a consent order is not disqualified from participating in adjudication of the contested case. Consent to negotiation by the respondent constitutes waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, during settlement negotiations. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board president or designee.

193D—4.8(544B,272C) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense.

193D—4.9(17A) Time requirements.

4.9(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.9(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

193D—4.10(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 board action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specific board 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.

193D—4.11(544B,272C) Notice of hearing. The board's notice of hearing shall fix the time and place for hearing and shall contain those items specified in Iowa Code section 17A.12(2). The notice shall also contain the following:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
5. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and identification of parties' counsel where known;
6. Reference to the procedural rules governing conduct of the contested case proceeding;
7. Reference to the procedural rules governing informal settlement;
8. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (i.e., the board, a panel of the board or administrative law judge from the department of inspections and appeals); and
9. A statement requiring the respondent to submit an answer of the type specified in rule 4.12(544B,272C) within 20 days after receipt of the notice of hearing.

193D—4.12(544B,272C) Form of answer. The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193D—4.13(544B,272C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193D—4.14(17A) Presiding officer.

4.14(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 board or a panel of the board.

4.14(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board 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. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

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 interboard appeal.

g. The request was not timely filed.

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

4.14(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

4.14(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 board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.14(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, 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.

193D—4.15(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 board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193D—4.16(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

193D—4.17(17A) Disqualification.

4.17(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.

4.17(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 board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 4.32(9).

4.17(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.

4.17(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.17(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.34(17A) and seek a stay under rule 4.37(17A).

193D—4.18(17A) Consolidation—severance.

4.18(1) *Consolidation.* The presiding officer may 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.

4.18(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193D—4.19(17A) Amendments. Any notice of hearing or statement of charges 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 who may impose terms or grant a continuance.

193D—4.20(17A) Service and filing of pleadings and other papers.

4.20(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 board, 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.

4.20(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.20(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

4.20(4)*Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.20(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Landscape Architectural Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

193D—4.21(17A) Discovery.

4.21(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.21(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.21(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.21(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193D—4.22(17A) Subpoenas. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under rule 4.11(544B,272C), the following procedures are available to the parties in order to obtain relevant and material evidence:

4.22(1) Board subpoenas for books, papers, records, and other real evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

4.22(2) The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

4.22(3) In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

193D—4.23(17A) Motions.

4.23(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.

4.23(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.23(3) The presiding officer may schedule oral argument on any motion.

4.23(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

4.23(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 4.36(17A) and appeal pursuant to rule 4.35(17A).

193D—4.24(17A) Prehearing conference.

4.24(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

4.24(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

4.24(3) In addition to the requirements of subrule 4.24(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.24(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

193D—4.25(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.25(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 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 board may waive notice of such requests for a particular case or an entire class of cases.

4.25(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

193D—4.26(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193D—4.27(17A) Intervention.

4.27(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.

4.27(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. 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 ordinarily be denied.

4.27(3) *Grounds for intervention.* The movant shall demonstrate that *(a)* intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; *(b)* the movant is likely to 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.

4.27(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

193D—4.28(544B,272C) Hearings. A hearing may be conducted before a majority of the board members. An administrative law judge may act as presiding officer to conduct the hearing for the board or a panel of the board. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and shall rule on all motions and objections.

4.28(1) *Examination of witnesses by the board.* The presiding officer and other board members have the right to conduct direct examination of the witnesses at any stage of that witness's testimony.

4.28(2) *Public hearing.* The hearing shall be open to the public unless the registrant or registrant's attorney requests in writing that the hearing be closed to the public.

4.28(3) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electrical 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 board for at least five years from the date of decision.

4.28(4) *Order of proceedings.* Before testimony is presented, the record shall show the identity of any board members present, identity of the administrative law judge, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board.

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state's interest before the board shall make a brief opening statement which will include a summary of charges and the witnesses and documents to support such charges.

c. The respondent(s) shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. A summary, at the close of the evidence on behalf of the state.

f. The presentation of evidence on behalf of the respondent(s).

g. Rebuttal evidence on behalf of the state, if any.

h. Rebuttal evidence on behalf of the respondent(s), if any.

i. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

4.28(5) *Immunity.* The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

4.28(6) *Evidence.* Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies may also be furnished to members of the board.

4.28(7) *Final decision.* When four or more members of the board preside over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive secretary. A copy of the decision and order shall immediately be sent by certified mail, return receipt requested, to the registrant's last-known post office address or may be served as in the manner of original notices upon the registrant.

193D—4.29(544B,272C) Dispensation. The board shall make findings of fact, conclusions of law and may take one or more of the following actions:

1. Dismiss the charges.
2. Revoke the landscape architect's registration.
3. Suspend the registrant's registration as authorized by law.
4. Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed $1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 544B.15 and Iowa Code sections 272C.9(2) and 272C.9(3) and these rules, or for any repeated offenses.
5. Impose a period of probation, either with or without conditions.
6. Require reexamination, using one or more parts of the examination given to landscape architectural registrant candidates.
7. Require additional professional education, reeducation, or continuing education.
8. Issue a citation and a warning.
9. Issue a consent order.
10. Voluntary surrender of registration is considered as disciplinary action.

193D—4.30(17A) Evidence.

4.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.30(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.30(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. Copies may also be furnished to members of the board.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.30(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.30(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.

193D—4.31(17A) Default.

4.31(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.

4.31(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.

4.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action 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 4.35(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

4.31(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.

4.31(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.

4.31(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 236.

4.31(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 4.34(17A).

4.31(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.

4.31(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

4.31(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 4.37(17A).

193D—4.32(17A) Ex parte communication.

4.32(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 board 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 4.17(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.

4.32(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.

4.32(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

4.32(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 4.20(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.32(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.32(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 4.32(1).

4.32(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 4.25(17A).

4.32(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.

4.32(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.

4.32(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 board. Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193D—4.33(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

193D—4.34(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193D—4.35(17A) Appeals and review.

4.35(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

4.35(2) *Review.* The board may initiate review of a proposed decision on its motion at any time within 30 days following the issuance of such a decision.

4.35(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. 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 which is being appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.35(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 non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.35(5) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

4.35(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 20 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 board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

193D—4.36(17A) Applications for rehearing.

4.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.36(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 board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.35(4), the applicant requests an opportunity to submit additional evidence.

4.36(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

4.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties.

4.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

193D—4.37(17A) Stays of board actions.

4.37(1) *When available.*

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

b. Any party to a contested case proceeding may petition the board for a stay 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.

4.37(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5*c*).

4.37(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

193D—4.38(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.

193D—4.39(17A) Emergency adjudicative proceedings.

4.39(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 United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

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

4.39(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 board'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 board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

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

4.39(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.39(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board 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 board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193D—4.40(544B,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

193D—4.41(544B,272C) Reinstatement. Any person whose registration has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

4.41(1) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the registration was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

4.41(2) All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the respondent's registration. Such application shall be docketed in the original case in which the registration was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

4.41(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation or suspension of the respondent's registration no longer exists and that it will be in the public interest for the registration to be reinstated. The burden of proof to establish such facts shall be on the respondent.

4.41(4) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in rule 4.42(544B,272C).

193D—4.42(544B,272C) Publication of decisions. Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders, are public documents, are available to the public, shall be published in the professional licensing division's newsletter and may be transmitted to the appropriate professional association(s), other states, and news media.

193D—4.43(544B,272C) Hearing on license denial. If the board, upon receipt of a complete and proper application for initial registration or reciprocal registration, accompanied by the proper fee, shall deny registration to the applicant, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the basis for denial.

4.43(1) An applicant denied registration who desires to contest the denial must request a hearing before the board within 30 days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service. The request for hearing shall specify the grounds under which the applicant contends that the board erred in denying registration. If a request for hearing is timely made, the board shall issue notice of hearing and conduct a contested case hearing.

4.43(2) Hearings on registration denial shall be open to the public. The burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant.

4.43(3) The board, after a hearing on registration denial, may grant or deny the application for registration. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for registration could be granted, if applicable.

4.43(4) The notice of registration denial, request for hearing, notice of hearing, and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, Council of Landscape Architecture Registration Boards (CLARB), and other persons or entities.

4.43(5) Judicial review of a final order denying registration may be sought in accordance with the provisions of Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, which are applicable to judicial review of any agency's final decision in a contested case.

193D—4.44(544B,272C) Recovery of hearing fees and expenses. The board may assess the landscape architect certain fees and expenses relating to a disciplinary hearing, only if the board finds that the landscape architect did violate Iowa Code chapter 544B and rules of the landscape architectural examining board.

4.44(1) The board may assess an amount up to the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed $75.

b. All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.

d. All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.

e. The board, at its discretion, may assess an appropriate amount up to but not exceeding the $75 fee established by this subrule and the actual acceptable costs, fees, and expenses involved.

4.44(2) Fees, costs, and expenses assessed pursuant to this rule shall be calculated and may be entered into the disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the landscape architect.

a. When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or if the expenditures occur after the disciplinary order, the board, by a majority vote of the members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the landscape architect.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the landscape architect for such expenditure.

4.44(3) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

4.44(4) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall be considered prima facie evidence of a violation of Iowa Code chapter 544B. However, no action may be taken against the landscape architect without a hearing as provided in this chapter.

193D—4.45(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the landscape architectural examining board establishes the impaired licensee review committee.

4.45(1) *Definitions.* The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

"Committee" means the impaired licensee review committee.

"Contract" means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

"Licensee" means a person registered under Iowa Code chapter 544B.

"Self-report" means the licensee's providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

4.45(2) *Purpose.* The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments.

4.45(3) *Composition of the committee.* The chairperson of the board shall appoint the members of the committee. The membership of the committee includes, but is not limited to:

a. One licensee, registered under Iowa Code chapter 544B;

b. One public member of the landscape architectural examining board;

c. One licensed professional with expertise in substance abuse/addiction treatment programs.

4.45(4) *Eligibility.* To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

a. The licensee must self-report an impairment or suspected impairment directly to the office of the board;

b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances or illegal substances;

c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

d. The licensee has not caused harm or injury to a client;

e. There is currently no board investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

f. The licensee has not been subject to a civil or criminal sanction or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of landscape architecture;

g. The licensee has provided truthful information and fully cooperated with the board or committee.

4.45(5) *Meetings.* The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

4.45(6) *Terms of participation.* A licensee shall agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

4.45(7) *Noncompliance.* Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for purpose of disciplinary action.

4.45(8) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

4.45(9) *Limitations.* The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action.

4.45(10) *Confidentiality.* The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee is not a matter of public record.

193D—4.46(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

4.46(1) The notice required by Iowa Code section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

4.46(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the registrant.

4.46(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intent to revoke the certificate of registration.

4.46(4) Registrants shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

4.46(5) All board fees for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

4.46(6) In the event a registrant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of suspension or revocation of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

4.46(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant or applicant when the certificate of registration is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

193D—4.47(261) Suspension or revocation of a certificate of registration—student loan. The board shall suspend or revoke a certificate of registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

4.47(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the registrant may accept service personally or through authorized counsel.

4.47(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the registrant.

4.47(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126, and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of licensure.

4.47(4) Registrants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

4.47(5) All board fees required for registration renewal or registration reinstatement must be paid by registrants and all continuing education requirements must be met before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

4.47(6) In the event a registrant timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

4.47(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the certificate of registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 17A, 252J, 272C, and 544B and Iowa Code sections 261.126 and 261.127.

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CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa landscape architectural examining board hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

193D—5.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(agency issuing these rules)", insert "Iowa landscape architectural examining board".

193D—5.3(22) Requests for access to records.

5.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "Iowa landscape architectural examining board". In lieu of the words "(insert agency name and address)", insert "the Iowa Landscape Architectural Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021".

5.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. Monday through Friday".

5.3(7) *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour".

193D—5.9(22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(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 5.10(22,544B) or in any notice for a particular record system.

b. To a recipient who has provided the agency 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 agency 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 fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

5.9(3) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code Supplement chapter 252J or 598.

193D—5.10(22,544B) Routine use. *"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. To the extent allowed by law, the following uses are considered routine uses of all agency records:

5.10(1) Disclosure to those officers, employees, and agents of the agency 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 legitimate need to use confidential records.

5.10(2) 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.

5.10(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

5.10(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

5.10(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

5.10(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

5.10(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

5.10(8) Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

5.10(9) The following board records are routinely available to members of the public:

a. Minutes of all open board meetings.

b. The name, home address, firm address, telephone number and certificate number of all registrants.

c. Data processing records similar to the written records identifying the name, home address, firm address, and certificate number of all registrants.

193D—5.11(22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(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 agency 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.

193D—5.12(22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency 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 pursuant to Iowa Code section 22.7(5).

d. As otherwise authorized by law.

e. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

193D—5.13(17A,21,22,544B,272C) Availability of records.

5.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(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. Information for the uniform national examination results except each candidate may receive their own examination grades and examination problems pursuant to Iowa Code section 544B.8.

b. All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing.

c. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders.

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

e. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

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

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

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency pursuant to Iowa Code sections 17A.2 and 17A.3.

h. Records exempted from public inspection under any other provision of law.

i. Information in nonlicensee investigation files maintained by the board which are otherwise exempt from disclosure under Iowa Code section 22.7 or other provision of law.

j. Records which constitute attorney work products, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11.

k. Any other records made confidential by law.

193D—5.14(22,544B) Authority to release confidential records. The agency 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 5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

193D—5.15(22,544B) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

5.15(1) Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing.

5.15(2) Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provision of law.

5.15(3) The following information regarding licensee disciplinary proceedings:

a. Formal charges and notices of hearing.

b. Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).

c. Final written decisions imposing sanctions, including informal stipulations and settlements.

5.15(4) Application records including address, education, experience, references, examination grades, and correspondence pursuant to Iowa Code section 544B.9. These records are maintained in personal files.

5.15(5) Documented evidence of examples of completed projects by candidates pursuant to Iowa Code section 544B.9. These records are maintained in personal files and can be destroyed six months after the board approves the registration pursuant to subrule 2.2(2).

5.15(6) Registration renewals of landscape architects pursuant to Iowa Code section 544B.13. These records are maintained in files.

5.15(7) Examination records of each candidate qualifying or nonqualifying for certificate of registration pursuant to Iowa Code section 544B.9. These records are maintained in personal files.

5.15(8) Affidavits of continuing education completed by registrants pursuant to Iowa Code section 272C.2. These records are maintained in files.

5.15(9) Data processing roster information for registrants including home address, firm address, and certificate number pursuant to Iowa Code section 544B.11. These records are maintained on a personal computer.

193D—5.16(22,544B) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(17A,21,22,544B272C). In addition, the records may contain information about individuals. All records are stored both on paper and in automated data processing systems unless otherwise noted.

5.16(1) Rule-making records. 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 stored in an automated data processing system.

5.16(2) Board records. Agendas, minutes, and materials presented to the landscape architectural examining board are available from the board office except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automatic data processing system.

5.16(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the landscape architectural examining board office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

5.16(4) Licensing, registration and approval. Records which pertain to applicants for a license, registration, or certificate of approval from the agency are open to the public as noted herein. Records which identify particular persons served by the applicant, such as incident reports or complaint investigations, are not open to the public. These records may contain information about individuals.

5.16(5) Appeal decisions and advisory opinions. All final orders, decisions, and opinions are open to the public.

5.16(6) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in every office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for information should be addressed to Professional Licensing and Regulation Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Policy manuals do not contain information about individuals.

5.16(7) All other records that are not exempted from disclosure by law.

193D—5.17(261) Sharing information with the college student aid commission. Notwithstanding any statutory confidentiality provision, the board may share information with the college student aid commission for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code sections 261.126 and 261.127.

These rules are intended to implement Iowa Code section 22.11 and Iowa Code chapter 252J.

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CHAPTER 6
SALES OF GOODS AND SERVICES

193D—6.1(68B) Selling of goods or services by members of the landscape architectural examining board. The board members shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department of commerce except as authorized by this rule.

6.1(1) *Conditions of consent for members.* Consent shall be given by a majority of the members of the board. Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department of commerce unless all of the following conditions are met:

a. The official requesting consent does not have authority to determine whether consent should be given.

b. The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association or corporation to the department of commerce.

d. The selling of the good or service does not result in the official selling a good or service to the department on behalf of the individual, association or corporation.

6.1(2) *Authorized sales.*

a. A member of the landscape architectural examining board may sell goods or services to any individual, association, or corporation regulated by any division within the department of commerce, other than the board or commission on which that official serves. This consent is granted because such sales do not constitute the sale of a good or service which affects the job duties or functions of that particular board or commission member.

b. A member of the landscape architectural examining board may sell goods or services to any individual, association, or corporation regulated by the licensing board or commission of which that person is a member, if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the licensing board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board, or would otherwise present a conflict of interest.

6.1(3) *Application for consent.* Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the department of commerce, an official must obtain prior written consent unless the sale is specifically allowed in subrule 6.1(2). The request for consent must be in writing signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

6.1(4) *Limitation of consent.* Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4.

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CHAPTER 8
PETITION FOR RULE MAKING AND FOR DECLARATORY ORDERS

193D—8.1(17A) Petition for rule making. Any person or board may file a petition for rule making with the board. A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

LANDSCAPE ARCHITECTURAL EXAMINING BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by rule 8.4(17A).

8.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

8.1(2) The board may deny a petition because it does not substantially conform to the required form.

193D—8.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

193D—8.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the executive secretary.

193D—8.4(17A) Board consideration.

8.4(1) Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

8.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

8.4(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 board's rejection of the petition.

193D—8.5(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

LANDSCAPE ARCHITECTURAL EXAMINING BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. 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.
7. 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.
8. Any request by petitioner for a meeting provided for by 8.11(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

193D—8.6(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 8.10(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

193D—8.7(17A) Intervention.

8.7(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.

8.7(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 board.

8.7(3) A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

LANDSCAPE ARCHITECTURAL EXAMINING BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

193D—8.8(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

193D—8.9(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive secretary of the board at the board's offices.

193D—8.10(17A) Service and filing of petitions and other papers.

8.10(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.

8.10(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 board at the board's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

8.10(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 193D—4.20(17A).

193D—8.11(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

193D—8.12(17A) Action on petition.

8.12(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by 1998 Iowa Acts, chapter 1202, section 13(5).

8.12(2) The date of issuance of an order or of a refusal to issue an order is as defined in 193D—1.1(544B,17A).

193D—8.13(17A) Refusal to issue order. The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
9. 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.
10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

8.13(1) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

8.13(2) 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.

193D—8.14(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner, 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.

193D—8.15(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.

193D—8.16(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 board, 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 board. The issuance of a declaratory order constitutes final board action on the petition.

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

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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

CHAPTER 9
PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

CHAPTER 10
FEES

CHAPTER 11
SALES OF GOODS AND SERVICES

CHAPTER 1
DEFINITIONS

193F—1.1(543D) Applicability. The following definitions shall be applicable to the rules of the real estate appraiser examining board.

"Appraisal Foundation." The Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois, to develop qualifications and criteria for the appraisal profession.

"AQB." The Appraiser Qualifications Board of the Appraisal Foundation.

"ASB." The Appraiser Standards Board of the Appraisal Foundation.

"Associate appraiser." The term associate appraiser applies to an individual meeting the educational requirements and successfully completing either the certified or licensed examination. The associate must work under the supervision of a licensed real property appraiser or a certified general or residential real property appraiser depending on which examination the individual successfully completes.

"Certified appraiser." The term certified appraiser is applicable to the following two classifications:

1. Certified residential real property appraiser classification applies to the appraisal of one to four residential units without regard to transaction value or complexity.
2. Certified general real property appraiser classification applies to the appraisal of all types of real property.

"FIRREA." The Financial Institutions Reform Recovery and Enforcement Act of 1989.

"Issuance." The term "issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Law." The term "law" refers to the "Iowa Voluntary Appraisal Standards and Appraiser Certification Law of 1989."

"Licensed appraiser." The term licensed appraiser is applicable to the following:

1. Licensed real property appraiser classification applies to the appraisal of noncomplex one to four residential units having a transaction value less than $1 million and complex one to four units having a transaction value less than $250,000.
2. Other agencies and regulatory bodies permit the licensed classification to appraise properties other than those listed above; individuals should refer to federal agency regulations to determine the type of property that may be appraised by the licensed appraiser.

"Proposed decision." The term "proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order on a contested case in which the board did not preside.

"USPAP." The Uniform Standards of Professional Appraisal Practice published annually by the Appraisal Foundation.

"Year." A year is defined in terms of hours within a calendar year. One thousand hours constitutes a year of appraisal experience.

This rule is intended to implement Iowa Code chapter 543D.

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CHAPTER 2
ORGANIZATION AND ADMINISTRATION

193F—2.1(543D) Description.

2.1(1) The purpose of the Iowa real estate appraiser examining board is to administer and enforce the provisions of Iowa Code chapter 543D (Iowa Voluntary Appraisal Standards and Appraiser Certification Law of 1989) with regard to the appraisal of real property in the state of Iowa including the examination of candidates and issuance of certificates and licenses; investigate alleged violations and infractions of the appraisal standards and appraiser certification law; and discipline certificate holders and licensees. To this end, the board has promulgated these rules to clarify the board's intent and procedures.

2.1(2) All official communications, including submissions and requests, should be addressed to the board at its official address, 1918 S.E. Hulsizer, Ankeny, Iowa 50021-3941.

193F—2.2(543D) Administrative committees.

2.2(1) The board may appoint administrative committees of not less than three nor more than five members who shall be members of the board for the purpose of making recommendations on matters specified by the board.

2.2(2) An administrative committee may be appointed to make recommendations to the board concerning the board's responsibilities as to examinations, registrations and licensing, continuing education, professional conduct, discipline and other board matters.

193F—2.3(543D) Annual meeting. The annual meeting of the board shall be the first meeting scheduled after April 30. At this time the chairperson and vice chairperson shall be elected to serve until their successors are elected. The election of these officers shall be the first order of business at the annual meeting after hearing the reports of outgoing officers. The newly elected officers shall assume the duties of their respective offices at the conclusion of the meeting at which they were elected.

193F—2.4(543D) Other meetings. In addition to the annual meeting, and in addition to future meetings, the time and place of which may be fixed by resolution of the board, any meeting may be called by the chairperson of the board or by joint call of a majority of its members. One week's notice shall be given for such meetings and the notice must designate the time and place of the meeting.

193F—2.5(543D) Executive secretary's duties.

2.5(1) The executive secretary shall cause complete records to be kept of all applications for examination and registration, all certificates, licenses and permits granted, and all necessary information in regard thereto.

2.5(2) The executive secretary shall determine when the legal requirements for licensure have been satisfied with regard to issuance of certificates, licenses or registrations; and the executive secretary shall submit to the board any questionable application.

2.5(3) The executive secretary shall keep accurate minutes of the meetings of the board. The executive secretary shall keep a list of the names of persons issued certificates as certified general real property appraisers and certified residential real property appraisers and persons issued licenses as state licensed real property appraisers and associate appraisers.

193F—2.6(543D) Disclosure of confidential information. Members of the board shall not disclose a final examination score to persons other than the one who took the examination. For the purposes of this rule, "final score" includes information as to whether the candidate "passed" or "failed" the examination. Persons who take the examination may consent to the publication of their names on a list of passing candidates.

Other information relating to the examination results, including the specific grades by subject matter, shall be given only to the person who took the examination, except that the board may:

1. Disclose the specific grades by subject matter to the regulatory authority of any other state or foreign country in connection with the candidate's application for a reciprocal certificate or license from the other state or foreign country, but only if requested by the applicant for reciprocity.

2. Disclose the specific grades by subject matter to educational institutions, professional organizations, or others who have a legitimate interest in the information provided in conjunction with the scores.

193F—2.7(543D) Adoption, amendment and repeal of administrative rules.

2.7(1) The board shall adopt, amend or repeal its administrative rules in accordance with the provisions of Iowa Code section 17A.4. Prior to the adoption, amendment or repeal of any rule of the board, any interested person, as described in section 17A.4(1)*"b,"* may submit any data, views, or arguments in writing, concerning such rule(s), or may request to make an oral presentation concerning such rule(s). Such written comments or requests to make oral presentations shall be filed with the board, at its official address, and shall clearly state:

a. The name, address, and telephone number of the person or agency authoring the comment or request.

b. The number and title of the proposed rule, as given in the "Notice of Intended Action," which is the subject of the comment or request.

c. With regard to requests to make an oral presentation, the general content of the presentation shall be indicated. A separate comment or request to make an oral presentation shall be made for each proposed rule to which remarks are to be asserted.

2.7(2) The receipt and acceptance for consideration of written comments and requests to make oral presentations shall be acknowledged by the board.

2.7(3) Written comments received after the deadline set forth in the "Notice of Intended Action" may be accepted by the board although their consideration is not assured. Requests to make an oral presentation, received after the deadline, shall not be accepted and shall be returned to the requester.

PETITIONS FOR RULE MAKING

193F—2.8(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at 1918 S.E. Hulsizer, Ankeny, Iowa 50021-3941. A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	)))	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.

2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. 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.

6. Any request by petitioner for a meeting provided for by rule 2.15(17A).

2.8(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It also must include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.8(2) The board may deny a petition if it does not substantially conform to the required form.

193F—2.9(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

193F—2.10(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Executive Secretary, 1918 S.E. Hulsizer, Ankeny, Iowa 50021-3941.

193F—2.11(17A) Board consideration.

2.11(1) Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

2.11(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

2.11(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 board's rejection of the petition.

DECLARATORY ORDERS

193F—2.12(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

REAL ESTATE APPRAISER EXAMINING BOARD

Petition by (Name of Petitioner) for Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.

3. The questions the petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. 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.

7. 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.

8. Any request by petitioner for a meeting provided for by 2.18(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

193F—2.13(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 2.17(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

193F—2.14(17A) Intervention.

2.14(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.

2.14(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 board.

2.14(3) A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

REAL ESTATE APPRAISER EXAMINING BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.

2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

4. 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.

5. 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.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

193F—2.15(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

193F—2.16(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive secretary of the board at the board's offices.

193F—2.17(17A) Service and filing of petitions and other papers.

2.17(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.

2.17(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 board at the board's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

2.17(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 193F—8.20(17A).

193F—2.18(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

193F—2.19(17A) Action on petition.

2.19(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by 1998 Iowa Acts, chapter 1202, section 13(5).

2.19(2) The date of issuance of an order or of a refusal to issue an order is as defined in 193F—1.1(543D).

193F—2.20(17A) Refusal to issue order. The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

5. 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.

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

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

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

9. 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.

10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

2.20(1) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

2.20(2) 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.

193F—2.21(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner, 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.

193F—2.22(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.

193F—2.23(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 board, 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 board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 543D.

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CHAPTER 8
INVESTIGATIONS AND DISCIPLINARY PROCEDURES

193F—8.1(543D,272C) Disciplinary action. The real estate appraiser examining board has authority in Iowa Code chapters 543D, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193F—8.2(543D) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.

193F—8.3(543D) Peer investigative committee. A peer investigative committee may be appointed by the chairperson to investigate a complaint. The committee will consist of one or more certified or licensed real property appraisers registered to practice in Iowa and residing in Iowa. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

193F—8.4(543D) Investigation report. Upon completion of the investigation, a report containing the position or defense of the registrant shall be prepared by the investigator(s) for the board's consideration to determine what further action is necessary. The board may:

1. Order the matter be further investigated;
2. Allow the registrant who is the subject of the complaint an opportunity to appear before the board for an informal discussion regarding the circumstances of the alleged violation;
3. Determine there is no probable cause to believe a disciplinary violation has occurred, and close the case;
4. Determine there is probable cause to believe that a disciplinary violation has occurred.

193F—8.5(543D,272C) Informal discussion. If the board considers it advisable, or if requested by the affected registrant, the board may grant the registrant an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The registrant may be represented by legal counsel at the informal discussion. The registrant is not required to attend the informal discussion. By electing to attend, the registrant waives the right to seek disqualification, based upon personal investigation of a board member or staff, from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order or consent agreement at the time of the informal discussion. If the parties agree to a consent order or consent agreement, a statement of charges shall be filed simultaneously with the consent order.

193F—8.6(543D) Consent order. The board may negotiate a settlement and enter into a consent order with an appraiser who acknowledges a violation of the statute or rules and agrees to refrain from any further violation, pursuant to Iowa Code section 543D.17. A representative of the board, designated by the chairperson, and a designated staff person or an assistant attorney general may agree to negotiate a settlement. The proposed consent order must be presented to the board for approval and shall be binding if signed by the board chairperson and the respondent. Any board member who participates in negotiation of a consent order is not disqualified from participating in adjudication of the contested case. Consent to negotiation by the respondent constitutes waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, during settlement negotiations. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or designee.

193F—8.7(543D) Consent agreement. The board, in its discretion and in lieu of prosecuting a first offense of any of the offenses described in Iowa Code section 543D.17, may enter into a consent agreement with a violator which acknowledges the violation and the violator's agreement to refrain from any further violations. A representative of the board, designated by the chairperson, and a designated staff person or an assistant attorney general may agree to negotiate a consent agreement. The proposed consent agreement must be presented to the board for approval and shall be binding if signed by the board chairperson and the violator. Failure to abide by the agreement is grounds for prosecution.

193F—8.8(543D) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense.

193F—8.9(17A) Time requirements.

8.9(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

8.9(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

193F—8.10(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 board action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specific board 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.

193F—8.11(543D,272C) Notice of hearing. The board's notice of hearing shall fix the time and place for hearing and shall contain those items specified in Iowa Code section 17A.12(2). The notice shall also contain the following:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
5. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and identification of parties' counsel where known;
6. Reference to the procedural rules governing conduct of the contested case proceeding;
7. Reference to the procedural rules governing informal settlement;
8. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (i.e., the board, a panel of the board or an administrative law judge from the department of inspections and appeals); and
9. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 8.14(17A), that the presiding officer be an administrative law judge.
10. A statement requiring the respondent to submit an answer of the type specified in rule 8.12(543D,272C) within 20 days after receipt of the notice of hearing.

193F—8.12(543D,272C) Form of answer. The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193F—8.13(543D,272C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193F—8.14(17A) Presiding officer.

8.14(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 board or a panel of the board.

8.14(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board 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. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

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 interboard appeal.

g. The request was not timely filed.

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

8.14(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

8.14(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 board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

8.14(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, 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.

193F—8.15(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 board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193F—8.16(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

193F—8.17(17A) Disqualification.

8.17(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.

8.17(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 board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 8.32(9).

8.17(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.

8.17(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 8.17(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 8.34(17A) and seek a stay under rule 8.37(17A).

193F—8.18(17A) Consolidation—severance.

8.18(1) *Consolidation.* The presiding officer may 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.

8.18(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193F—8.19(17A) Amendments. Any notice of hearing or statement of charges 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 who may impose terms or grant a continuance.

193F—8.20(17A) Service and filing of pleadings and other papers.

8.20(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 board, 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.

8.20(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

8.20(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

8.20(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

8.20(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Real Estate Appraiser Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

193F—8.21(17A) Discovery.

8.21(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

8.21(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 8.21(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

8.21(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193F—8.22(17A) Subpoenas. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under rule 8.11(543D,272C), the following procedures are available to the parties in order to obtain relevant and material evidence:

8.22(1) Board subpoenas for books, papers, records, and other real evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

8.22(2) The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

8.22(3) In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

193F—8.23(17A) Motions.

8.23(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.

8.23(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

8.23(3) The presiding officer may schedule oral argument on any motion.

8.23(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

8.23(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 8.36(17A) and appeal pursuant to rule 8.35(17A).

193F—8.24(17A) Prehearing conference.

8.24(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

8.24(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

8.24(3) In addition to the requirements of subrule 8.24(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

8.24(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

193F—8.25(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

8.25(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 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 board may waive notice of such requests for a particular case or an entire class of cases.

8.25(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

193F—8.26(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193F—8.27(17A) Intervention.

8.27(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.

8.27(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. 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 ordinarily be denied.

8.27(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

8.27(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

193F—8.28(543D,272C) Hearings. A hearing may be conducted before a majority of the board members. An administrative law judge may act as presiding officer to conduct the hearing for the board or a panel of the board. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and shall rule on all motions and objections.

8.28(1) *Examination of witnesses by the board.* The presiding officer and other board members have the right to conduct direct examination of the witnesses at any stage of that witness's testimony.

8.28(2) *Public hearing.* The hearing shall be open to the public unless the registrant or registrant's attorney requests in writing that the hearing be closed to the public.

8.28(3) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electrical 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 board for at least five years from the date of decision.

8.28(4) *Order of proceedings.* Before testimony is presented, the record shall show the identity of any board members present, identity of the administrative law judge, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board.

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which will include a summary of charges and the witnesses and documents to support such charges.

c. The respondent(s) shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. A summary, at the close of the evidence on behalf of the state.

f. The presentation of evidence on behalf of the respondent(s).

g. Rebuttal evidence on behalf of the state, if any.

h. Rebuttal evidence on behalf of the respondent(s), if any.

i. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

8.28(5) *Immunity.* The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

8.28(6) *Evidence.* Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies may also be furnished to members of the board.

8.28(7) *Final decision.* When four or more members of the board preside over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive secretary. A copy of the decision and order shall immediately be sent by certified mail, return receipt requested, to the registrant's last-known post office address or may be served as in the manner of original notices upon the registrant.

193F—8.29(543D) Dispensation. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

1. Dismiss the charges.
2. Suspend the registrant's registration as authorized by law.
3. Impose civil penalties, the amount which shall be set at the discretion of the board, but which shall not exceed $1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 or for any repeat offenses.
4. Impose a period of probation, either with or without conditions.
5. Require reexamination.
6. Require additional professional education, reeducation, or continuing education.
7. Issue a citation and a warning.
8. Issue a consent order.

193F—8.30(17A) Evidence.

8.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

8.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

8.30(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

8.30(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. Copies may also be furnished to members of the board.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

8.30(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

8.30(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.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

CHAPTER 55
TARGETED SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM

CHAPTER 56
ENTREPRENEURS WITH DISABILITIES PROGRAM

CHAPTER 57
VALUE-ADDED AGRICULTURAL PRODUCTS AND PROCESSES FINANCIAL ASSISTANCE PROGRAM (VAAPFAP)

CHAPTER 58
NEW JOBS AND INCOME PROGRAM

CHAPTER 59
ENTERPRISE ZONES

CHAPTER 60
ENTREPRENEURIAL VENTURES ASSISTANCE PROGRAM

261—23.12(15) Interim financing program. The objective of the CDBG interim financing program is to benefit persons living in eligible Iowa communities by providing short-term financing for the implementation of projects that create or retain employment opportunities, prevent or eliminate blight or accomplish other federal and state community development objectives. Up to $25 million shall be made available for grants under the CDBG interim financing program during any program year.

23.12(1) *Eligible activities.* Funds provided through the interim financing program shall be used for the following activities:

1. Short-term assistance, interim financing or construction financing for the construction or improvement of a public work.

2. Short-term assistance, interim financing or construction financing for the purchase, construction, rehabilitation or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances or other projects undertaken by a for-profit organization or business or a nonprofit organization.

3. Short-term or interim financing assistance for otherwise eligible projects or programs.

23.12(2) *Restrictions on applicants.*

a. No significant negative land use or environmental impacts shall occur as a result of the project.

b. Applications must provide evidence that the proposed project shall be completed within 30 months of the date of grant award.

c. The amount of funds requested shall not exceed $20 million.

d. Applications must provide evidence of an irrevocable letter of credit or equivalent security instrument from an AA- or better-rated lending institution, assignable to IDED, in an amount equal to the CDBG short-term grant funds requested, plus interest, if applicable.

e. Applications must provide evidence of the commitment of permanent financing for the project.

f. Applications must include assurance that program income earned or received as a result of the project shall be returned to IDED on or before the end date of the grant contract.

23.12(3) *Application procedure.* Applications may be submitted at any time in a format prescribed by IDED. Applications shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. IDED shall make funding decisions within 30 days of a receipt of a completed application. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority.

23.12(4) *Application review.* Applications shall be reviewed and funding decisions made based on the following review criteria:

1. Degree to which CDBG funds would be leveraged by other funding sources.

2. Reasonableness of the project cost per beneficiary ratio.

3. Documented need for the CDBG assistance.

4. Degree of public benefit, as measured by the present value of proposed assistance to direct wages and aggregate payroll lost, indirect wages and aggregate payroll lost, dislocation and potential absorption of workers and the loss of economic activity.

261—23.13(15) Flood recovery fund. The flood recovery fund is reserved for communities that suffered damage from flooding in 1993. Funds are available to repair flood damage and to prevent future threat to public health, safety or welfare. The source of funds is supplemental appropriations from HUD for flood disaster relief efforts.

23.13(1) *Application procedure.* Communities in need of flood recovery funds shall submit a written request to IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds and an explanation of why the problem cannot be remedied through normal CDBG funding procedures.

23.13(2) *Application review.* Upon receipt of a request, IDED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant community of its determination. A project shall be considered eligible only if it meets all of the following criteria:

1. An immediate threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be a result of flooding in 1993.
3. No known alternative project or action would be more feasible than the proposed project.
4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

23.13(3) *Compliance with federal and state regulations.* A community receiving funds under the flood recovery fund shall comply with all laws, rules and regulations applicable to the CDBG competitive program, except those waived by HUD as a result of federal action in conjunction with the flood disaster and those not required by federal law that IDED may choose to waive. IDED shall make available a list of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

261—23.14(15) Disaster recovery fund. The disaster recovery fund is reserved for communities impacted by natural disasters when a supplemental disaster appropriation is made under the community development block grant program. Funds are available to repair damage and to prevent future threat to public health, safety or welfare that is directly related to the disaster for which HUD supplemental funds have been allocated to the state.

23.14(1) *Application procedure.* Communities in need of disaster recovery funds shall submit a written request to IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds, the amount of local funds to be provided and the percent of low- and moderate-income persons benefiting from the project.

23.14(2) *Application review.* Upon receipt of a request, IDED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant community of its determination. A project shall be considered eligible only if it meets all of the following criteria:

1. A threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be a result of a natural disaster receiving a presidential declaration for which IDED received a supplemental HUD appropriation.
3. No known alternative project or action would be more feasible than the proposed project.
4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

23.14(3) *Compliance with federal and state regulation.* A community receiving funds under the disaster recovery fund shall comply with all laws, rules and regulations applicable to the CDBG competitive program, except those waived by HUD as a result of federal action in conjunction with the disaster recovery initiative and those not required by federal law that IDED may choose to waive. IDED shall make available a list of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

261—23.15(15) Administration of a CDBG award. This rule applies to all grant recipients awarded funds from any of the CDBG programs. Recipients shall comply with requirements and instructions set forth in the applicable CDBG management guide.

23.15(1) *Contracts.* After making an award notification to a recipient, IDED will issue a CDBG contract. The contract shall be between the recipient local government and IDED. These rules and applicable federal and state laws and regulations shall be part of the contract.

a. Recipients shall execute and return the contract to IDED within 45 days of the transmittal date from IDED. Failure to do so may be cause for termination of the award.

b. Certain activities require permits or clearances that shall be obtained from other state or federal agencies prior to proceeding with the project. IDED may include securing necessary permits or clearances as conditions to the CDBG contract.

23.15(2) *General financial management standards.* Recipients shall comply with 24 CFR 85, as revised April 1, 1997, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. Allowable costs shall be determined in accordance with OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

23.15(3) *Requests for funds.* Recipients shall submit requests for funds in the manner described and on the forms provided in the CDBG management guide. Individual requests for funds shall be made in whole dollar amounts not less than $500, except for the final request for funds.

23.15(4) *Program income.* If a recipient receives program income before the contract end date, it must be expended before requesting additional funds. If a recipient receives program income on or after the contract end date, the recipient may reuse the program income according to an IDED-approved reuse plan, or the recipient may return the program income to IDED. If a recipient receives less than $25,000 of program income cumulative of all CDBG grants in a program year, it shall be considered miscellaneous revenue and may be used for any purpose.

23.15(5) *Record keeping and retention.* All records related to the project, including the original grant application, reports, financial records and documentation of compliance with state and federal requirements, shall be retained for five years after contract closeout. Representatives of HUD, the Inspector General, the General Accounting Office, the state auditor's office and IDED shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of CDBG funds.

23.15(6) *Performance reports and reviews.* Recipients shall submit recipient performance reports to IDED as prescribed in the CDBG management guide. IDED shall perform project reviews and site inspections deemed necessary to ensure program compliance. When noncompliance is indicated, IDED may require remedial actions to be taken.

23.15(7) *Contract amendments.* Any substantive change to a funded CDBG project, including time extensions, budget revisions and significant alteration to proposed activities, shall be considered a contract amendment. The recipient shall request the amendment in writing. No amendment shall be valid until approved in writing by IDED. IDED shall not approve the addition of a new activity unrelated to the original contract activities, unless all original activities shall also be completed per the contract. In such cases, IDED may allow up to $10,000 of the original CDBG award to be used for a new activity. For projects funded under the economic development set-aside, IDED shall not approve amendments involving the replacement of one activity with another.

23.15(8) *Contract closeout and audit.* Upon completion of project activities and contract expiration, IDED shall initiate closeout procedures. Contracts may be subject to audit before closeout of the contract can be completed. Recipients of federal funds of $300,000 or more within one year must have these funds audited. The audit shall be performed in a manner consistent with the provisions set forth in the Single Audit Act, as revised in 1996, and described in the CDBG management guide.

23.15(9) *Contractors and subrecipients limitation.* CDBG funds shall not be used directly or indirectly to employ, award contracts to, otherwise engage the services of or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by HUD under the provisions of 24 CFR 24, as revised April 1, 1997.

23.15(10) *Compliance with federal and state laws and regulations.* Recipients shall comply with all applicable provisions of the Housing and Community Development Act of 1974 and these administrative rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

23.15(11) *Noncompliance.* At any time before project closeout, IDED may, for cause, find that a recipient is not in compliance with requirements under this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Findings of noncompliance may include the use of CDBG funds for activities not described in the application, failure to complete approved activities in a timely manner, failure to comply with any applicable state or federal rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

23.15(12) *Appeals process for findings of noncompliance.* Appeals shall be entertained in instances where it is alleged that IDED staff participated in a decision that was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals shall be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director shall make the final decision on all appeals.

These rules are intended to implement Iowa Code section 15.108(1)*"a."*

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*See IAB Economic Development Department.

261—28.6(77GA,HF732) Minimum application requirements. To be considered for funding under LHAP, an application must meet the following preliminary review criteria:

28.6(1) A housing needs assessment must have been completed within the five years preceding application for the community in which the activity will be undertaken. Review of applications on this criterion will be coordinated with the IDED staff responsible for overseeing housing needs assessments.

28.6(2) The application must propose a housing development activity designed to position the community to take advantage of economic development opportunities, to meet housing needs arising as a result of previous successful economic development efforts in the area or to meet other unmet housing needs.

28.6(3) There must be demonstrated local support for the proposed activity.

28.6(4) A need for LHAP funds must exist after all other financial resources have been identified for the proposed activity.

28.6(5) Sufficient local, state or federal funds either are not available or cannot be obtained within the time frame required to complete the proposed activity.

261—28.7(77GA,HF732) Application review criteria. IDED shall evaluate applications and make funding decisions using criteria which include the following:

1. Is the proposed activity consistent with the recommendations of the community's housing needs assessment?
2. Did the need for the proposed activity arise as a result of economic development efforts or opportunities not reflected in the housing needs assessment? If so, can the applicant demonstrate that lack of LHAP funding will cause the failure of the economic development efforts necessitating the proposed housing activity?
3. Has a comprehensive housing plan for the community for which the activity is proposed been adopted?
4. To what extent are other financial resources leveraged by the proposed LHAP assistance?
5. Does the application demonstrate the linkages between the proposed housing activity and specific economic development efforts or opportunities in the area?
6. Is there evidence of local administrative capacity?
7. Can the proposed activity be completed in a timely manner?
8. Is there coordination with other housing and economic development efforts in conjunction with the proposed activity?
9. Does the form of assistance requested allow opportunities for reuse of funds?
10. Will the proposed activity have a significant impact on the identified housing need?
11. Have problems related to the proposed activity been resolved or are solutions addressed in the application?
12. Are costs related to the proposed housing activity reasonable?
13. IDED staff may conduct site evaluations of proposed activities.

261—28.8(77GA,HF732) Allocation of funds.

28.8(1) IDED may retain up to 2½ percent of LHAP funds for administrative costs associated with program implementation and operation.

28.8(2) LHAP awards shall be limited to no more than $500,000.

a. Recipients may use up to 5 percent of a total LHAP award for administrative costs.

b. IDED reserves the right to negotiate the amount and terms of an award and the amount of administrative costs proposed.

28.8(3) If LHAP funds remain after awards are made under the annual competition, IDED may announce the availability of remaining funds and award remaining funds through another competition consistent with the application procedures described in this chapter.

261—28.9(77GA,HF732) Administration of awards. Applications selected to receive LHAP awards shall be notified by letter from the IDED director at a date determined by IDED, which shall be no later than 90 days after the application due date.

28.9(1) *A contract shall be executed between the recipient and IDED.* These rules and applicable state laws and regulations shall be part of the contract.

a. The recipient must execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

c. Awards may be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Awards may be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

28.9(2) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in an amount equal to or greater than $500 per request, except for the final draw of funds.

28.9(3) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents and all other records pertinent to the LHAP activities for three years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to LHAP funds.

28.9(4) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

28.9(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

28.9(6) *Contract closeout.* Upon contract expiration, IDED shall initiate contract closeout procedures.

28.9(7) *Compliance with state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

28.9(8) *Remedies for noncompliance.* At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

28.9(9) *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

These rules are intended to implement 1997 Iowa Acts, House File 732, section 4.

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"Project" means the activity, or set of activities proposed by the recipient, resulting in accomplishing the goals of the CEBA program, and which will require state assistance to accomplish.

"Project expiration date" means the date when the recipient must complete all project expenditures and have fulfilled the job attainment goal. In the case of small business gap financing projects, it is three years from the date of award. In the case of venture projects, new business opportunities or new product development projects, it could be up to five years.

"Recipient" means a business which receives assistance through the CEBA program and in return agrees to provide a specified number of new direct jobs, or retain a specified number of direct jobs within the state, or receives assistance through CEBA's comprehensive management assistance.

"Retail business" means a business whose operation consists predominantly of the purchase of a product for sale to the final user or consumer who would not be purchasing for resale.

"Service business" means a business which produces and sells a thing of value which is not a tangible product.

"Small business" refers to a business which meets the size criteria for a small business as defined by the U.S. Small Business Administration and as published from time to time in the Federal Register.

"Twenty-eight E (28E) agreement" means an intergovernmental agreement formed according to Iowa Code chapter 28E.

"Venture project" means an economic activity performed by a start-up company, early-stage company, or existing company developing a new product or new technology.

261—53.3(15) Board and committee. The chairperson of the board shall appoint a five-member project review committee to review applications requesting CEBA funding. The committee shall be composed of five board members, one of whom shall be either the board chairperson or the vice chairperson. The director shall be a nonvoting ex officio member of an active committee. A quorum of three committee members is necessary for taking action and at least three members shall concur before making recommendations to the board.

261—53.4(15) Eligible applicants. Only cities, counties, and merged area schools are eligible to apply to the department for funding under this program. Applicants which are awarded funds will pass those funds on to the recipient or approved recipient's vendor.

261—53.5(15) Provision of assistance.

53.5(1) *Eligible projects.* Projects eligible for CEBA funding include, but are not limited to, the following:

1. Building construction or reconstruction;
2. Acquisition of land;
3. Equipment purchases;
4. Operating and maintenance expenses;
5. Clearance, demolition and removal of buildings to develop sites;
6. Infrastructure improvements directly related to new employment;
7. Road construction projects directly supporting and assisting economic development;
8. Funds for guaranteeing business loans made by commercial lenders; and
9. Technical management assistance for businesses that are applying for or have received CEBA funding.

53.5(2) *Forms of assistance.* Assistance for projects may be provided in any of the following forms:

1. Principal buydowns to reduce the principal of a business loan;
2. Interest buydowns to reduce the interest on a business loan;
3. Forgivable loans;
4. Loans and loan guarantees, including short-term (float) loans. Float loans may only be made for projects where the department obtains an irrevocable letter of credit from an acceptable financial institution on behalf of the company in an amount equal to or greater than the principal amount of the loan;
5. Equity-like investments;
6. Cost reimbursement for technical/professional management services.

261—53.6(15) Application for assistance. The requirements outlined in this rule are applicable to all CEBA program components, except applications under the venture project component. Refer to rule 261—53.10(15) for application requirements for venture projects.

53.6(1) *General policies.*

a. An applicant may submit as many different applications as it wishes at any time. However, if the department is reviewing two or more applications from the same applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant;

b. Only one applicant may apply for any given project;

c. No single project may be awarded more than $1 million unless at least two-thirds of the members of the board approve the award. However, this restriction will not apply after the first $10 million has been credited to the CEBA program in any given year. This restriction does not apply to the float loan described in 53.5(2)"4."

d. No single project may be awarded a forgivable loan of more than $500,000.

e. No single project may be awarded more than $500,000 unless all other applicable CEBA requirements and each of the following criteria is met:

(1) The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

(2) The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan or its equivalent for all full-time employees working at the facility in which the new investment occurred.

(3) The business shall agree to pay a median wage for new full-time jobs of at least 130 percent of the average wage in the county in which the community is located. This requirement may be waived by the department in the case of a float loan described in 53.5(2)"4" if the net value of the award is determined by the department to be less than $500,000.

f. No more than $100,000 may be awarded to a business start-up unless that business's average starting wage equals or exceeds 90 percent of the average county wage, 90 percent of the average regional wage, or $9.50, whichever is lowest, and over 50 percent of the business's employees' wages are at or above the 90 percent level or $9.50, whichever is lower.

g. To be eligible for assistance the business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

h. All applicants for financial assistance shall comply with the requirements of 261—Chapter 80.

i. To be eligible for assistance, applicants shall meet the following wage threshold requirements:

(1) Project positions shall have an average starting wage of at least 90 percent of the average county wage, 90 percent of the average regional wage, or $9.50, whichever is lowest.

(2) Fifty percent or more of the jobs to be created or retained shall have an average starting wage of at least 90 percent of the average county wage, 90 percent of the average regional wage, or $9.50, whichever is lowest.

(3) If the applicant is a business start-up, project positions shall have an average starting wage of at least 80 percent of the average county wage, 80 percent of the average regional wage, or $9.50, whichever is lowest, and over 50 percent of the business's employees' wages shall be at or above the 80 percent level or $9.50, whichever is lower.

(4) The $9.50 wage scale referenced in this rule shall be adjusted annually by calculating the percent increase or decrease in average Iowa hourly earnings level for all production and nonproduction workers in the private sector from the month of June of the previous year to June of the current year. This report is compiled by the Iowa workforce development department.

(5) Where the community can document to the department's satisfaction that a significant differential exists between the actual local county wage (as determined by a local employer survey) and the average county wage or average regional wage, the department may substitute the community survey results for the average county wage or average regional wage for consideration in a specific project. Qualification of a project would not be anticipated unless the starting project wage was clearly above the survey wage.

(6) The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. The starting wage is associated with a training period which is of relatively short duration, as documented by the business; and

2. The wages will exceed 90 percent of the average county wage, 90 percent of the average regional wage, or $9.50 at the conclusion of the training period as documented by the business; and

3. CEBA funds will be released only at the conclusion of the training period when the average county or average regional wage is achieved.

j. A business receiving moneys from the department for the purpose of job creation shall make available 10 percent of the new jobs created for PROMISE JOBS program participants.

53.6(2) *Ineligible applications.* The department will not rate and rank ineligible applications. An application may be ruled ineligible if:

a. It is submitted by an ineligible applicant, or

b. The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability, or

c. CEBA funds comprise more than 50 percent of the project's financing, or

d. The CEBA application is not properly signed by the applicant and the business, or

e. The project fails to meet the wage threshold requirements under subrule 53.6(1), or

f. The business has a record of violations of the law over a period of time that tends to show a consistent pattern. The business shall provide the department with a report detailing violations of law within the most recent consecutive three-year period prior to application. Consistent with Iowa Code section 15A.1(3), violations of environmental protection statutes, regulations or rules shall be reported for the most recent consecutive five-year period prior to application. If the department finds that a business has a record of violations of the law that tends to show a consistent pattern, the business shall not be eligible under this program. Violations of law include, but are not limited to, environmental and worker safety statutes, rules and regulations. A business shall not be ineligible if the department finds that the violations did not seriously affect the public health or safety, or the environment, or if they did, that there were mitigating circumstances.

53.6(3) *Procedures.*

a. Applications may be submitted at any time.

b. Applications should be submitted to: Division of Business Development, Department of Economic Development, CEBA Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address or by calling (515)242-4819.

c. Application contents. Required contents of application will be described within the application package itself.

d. Each eligible application will be reviewed by the department. The department may request additional information from the applicant or the proposed recipient, or perform other activities to obtain needed information.

e. The department will rate and rank applications according to the criteria in rule 53.7(15). Additionally, for small business gap financing applications, the department will use rule 53.8(15). For new business opportunities and new product development applications, the department will use rule 53.9(15). The department will present its recommendations on rating and ranking to the committee. The committee will present its recommendations to the board. The board will have final authority in the rating and ranking of applications. The board will also make the final decision to approve, reject, table, defer, or refer an application to another funding program. The department may negotiate with the applicant or proposed recipient concerning dollar amounts, terms, or any other elements of the application package. The board may offer an award in a lesser amount or structured in a manner different than requested.

53.6(4) *Emergency applications.* Applications are sometimes made for projects which require an immediate decision on CEBA assistance in order to be successful. In the event evidence is presented to the department that this situation exists, the board may hold a telephonic meeting or otherwise process the application in an accelerated manner. If approved, the project must commence within 45 days of the date of approval; failure to begin within 45 days may be grounds for the termination of the award.

261—53.7(15) Selection criteria. In ranking applications for funding submitted under the small business gap financing component, the new business opportunities component, and the new product development component, at least the following criteria shall be considered:

53.7(1) *Relating to local/business involvement:*

a. The proportion of local match to be provided as compared to the local resources.

b. The proportion of private contribution to be provided, including the involvement of financial institutions.

c. The need of the business for financial assistance from governmental sources. More points shall be awarded to a business for which the department determines that governmental assistance is most necessary to the success of the project.

d. The level of need of the political subdivision.

e. The impact of the proposed project on the economy of the political subdivision and the state.

f. The certification of a community builder program for the community.

g. The expected recapture of these funds.

53.7(2) *Relating to job creation/retention:*

a. *The total number of jobs to be created or retained.* When rating a project, the department shall only consider those positions which meet the wage threshold requirements defined in subrule 53.6(1).

b. *The quality of jobs to be created.* In rating the quality of the jobs, the department shall award more points to those jobs that have a higher wage scale, a lower turnover rate, are full-time, career-type positions, or have other related factors. Those applications that have average starting wage scales which are 10 percent or more below that of the average county wage or average regional wage shall be given an overall score of zero. Business start-ups shall be given a score of zero only if their wage scales are 20 percent or more below that of the average county wage or average regional wage.

53.8(4) *Project period.* Projects funded under rule 53.8(15) are considered to have a project period of three years for meeting job attainment goal and other related performance goals.

The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.13(15).

261—53.9(15) New business opportunities and new product development components.

53.9(1) *Additional criteria and targeting for new business opportunities and new product development components.* The criteria in rule 53.7(15) will be used for evaluating applications under these components. Applications for these components must be for businesses with projects that offer a quality economic opportunity to Iowans and meet one of the following characteristics:

a. The industry is one targeted within the state's strategic plan; or

b. The resulting economic activity is underrepresented in the state's overall economic activity mix.

53.9(2) *Applications.* Applicants applying for assistance under these components shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

a. Small business gap financing component of CEBA;

b. EDSA (economic development set-aside program);

c. BDFC (business development finance corporation program); or

d. PFSA (public facilities set-aside program).

53.9(3) *Rating system.* The rating system for proposed projects will be as follows:

a. Local effort (as defined in 53.8(3)*"a"*). Maximum — 20 points;

b. Private contributions as compared to CEBA request (as defined in 53.8(3)*"c"*). Maximum — 20 points;

c. Comprehensive community and economic development plan. Maximum — 10 points;

d. Extra points if small business, as defined by the SBA. Maximum — 10 points;

e. Project impact, as defined in 53.8(3)*"f"* and 53.8(4). Maximum — 120 points;

f. Potential for future expansion of the industry in general. Maximum — 20 points. This factor awards additional points for those projects that tend to show a greater potential for expansion of that industry within Iowa.

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.9(15) will not be recommended for funding by the staff to the committee.

53.9(4) *Project period.* Projects funded under rule 53.9(15) are considered to have up to a maximum five-year project period.

The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.14(15).

261—53.10(15) Venture project components.

53.10(1) *Eligible applicants; projects; coordination with PROMISE JOBS.*

a. *Eligible businesses.* Eligible businesses include start-up companies, early-stage companies, and existing companies that are developing a new product or new technology.

b. *Form and amount of assistance.* The CEBA award will be in the form of an equity-like investment (e.g., royalty agreement or deferred loan). The maximum award amount shall not exceed $250,000.

c. *Eligible applicants.* Applications will be accepted from cities, counties, and community colleges on behalf of eligible businesses. Applications shall be submitted on the CEBA venture project application form provided by the department. If an application is approved, the department will contract directly with the business on whose behalf the application was submitted.

d. *Coordination with PROMISE JOBS.* Businesses receiving assistance shall make available for PROMISE JOBS participants 10 percent of the new jobs created.

53.10(2) *Ineligible applications.* The department will not rate and rank ineligible applications. An application may be determined to be ineligible if:

a. It is submitted by an ineligible applicant; or

b. The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability; or

c. The CEBA application is not properly signed by the applicant and the business; or

d. The business has a record of violations of the law over a period of time that tends to show a consistent pattern. The business shall provide the department with a report detailing violations of law within the most recent consecutive three-year period prior to application. Consistent with Iowa Code section 15A.1(3), violations of environmental protection statutes, regulations or laws shall be reported for the most recent five-year period prior to application. If the department finds that a business has a record of violations of law that tends to show a consistent pattern, the business shall not be eligible under this program. Violations of law include, but are not limited to, environmental and worker safety statutes, rules and regulations. A business shall not be ineligible if the department finds that the violations did not seriously affect the public health, safety, or the environment or, if they did, that there were mitigating circumstances.

53.10(3) *Rating system.* Eligible applications will be reviewed and rated using the following criteria:

a. Jobs associated with the project. Factors considered include, but are not limited to, the following:

(1) The number of jobs created, if any, by the project;

(2) The potential for job creation as a result of the project;

(3) The quality of the wages and benefits for jobs actually or potentially created as a result of the project.

NOTE: For the venture project component, CEBA funds will not be leveraged on a per job basis. Maximum—10 points.

b. Additional funding sources. The amount of the total project costs coming from sources other than CEBA venture funds including, but not limited to, private equity investment, conventional loans, owner equity investment, or other acceptable forms of investment as determined by the department. Maximum—10 points.

c. Strength of the business plan. Factors to be considered include, but are not limited to, the following:

(1) A description of the business and the overall industry;

(2) The experience level of the business management team;

(3) A description of the product and production plan;

(4) Project financial projections;

(5) Feasibility of the product and project;

(6) Market identification and marketing strategy.

Maximum—60 points.

d. Potential return on investment of the CEBA venture award. Maximum—10 points.

e. Potential for future growth of the business. Maximum—5 points.

f. Local financial support. The amount of the total project costs attributable to local funding sources including, but not limited to, city, county, community college, chamber of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. Maximum—10 points.

g. Comprehensive community and economic development plan. A community submitting a comprehensive community and economic development plan meeting the requirements of 261—Chapter 80 will receive 5 extra points.

Applications must receive a minimum of 60 points to be recommended for funding.

53.10(4) *Application review and approval.*

a. *Awards of $100,000 or less.* For awards of $100,000 or less, department staff will review and rate applications and prepare funding recommendations for the director. The director of the department has the authority to approve CEBA venture project awards in an amount up to and including $100,000.

b. *Awards over $100,000.* For awards over $100,000 but not more than $250,000, the department will review and rate applications and present its recommendations to the committee. The committee will present its recommendations to the board. The board will have final decision-making authority. The board may approve, reject, table, defer or refer an application to another funding source.

261—53.11(15) Comprehensive management assistance and entrepreneurial development.

53.11(1) *Eligible applicants.* Application for comprehensive management assistance is limited to:

a. Businesses that have either previously received a CEBA award or have a CEBA application under current review by the department; or

b. Businesses requesting assistance in meeting the regulatory requirements of other government agencies.

53.11(2) *Use of funds.* Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:

a. Entrepreneurial management skills;

b. Employment hiring, recruiting, or personnel assistance;

c. Inventory controls;

d. Financial controls;

e. Marketing plans; or

f. Other related business assistance.

53.11(3) *Determination of assistance.* The administrator for the department's division of financial assistance shall have the authority to approve contracts for management assistance for up to $25,000. Board approval shall be required to approve any contract(s) for assistance which exceeds $25,000 for any one business in any fiscal year.

261—53.12(15) Award process. Every applicant will be notified in writing of the disposition of their application within two weeks of final department action on it. Successful applicants will be required to sign an agreement, along with the recipient, with the department which clarifies the applicant's responsibility to provide funds to the recipient in return for the jobs created by the recipient. Applicants may be requested to obtain mortgages, liens, or other security from the recipient in return for the provision of funds. The agreement will also define the applicant's responsibilities for oversight of the project, reporting to the department, and other responsibilities. Certain other activities may be required of applicants or recipients before funds may be obtained from the department. Requirements will be specified in the agreement between the department, applicant, and recipient.

Prior to the release of funds by the department all known required environmental permits must be granted and regulations met. Also, if the recipient has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, the recipient shall make a good faith effort to hire the workers of the merged or acquired company.

The applicant and the recipient must execute the CEBA agreement within 180 days from the date of award. If the agreement is not signed by that date the department may recommend to the board that the award be rescinded and the funds deobligated, unless the applicant or recipient has received prior written permission from the department to exceed the time frame for an agreed upon time period.

261—53.13(15) Administration of projects—financial management.

53.13(1) *Audits.* All contracts made under the CEBA program are subject to audit in accordance with applicable state and federal laws. Recipients shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor.

53.13(2) *Program income.*

a. Applicants and recipients may be required to return to the department any interest earned on awarded funds.

b. The recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.) as part of the CEBA program expenditures.

53.13(3) *Record-keeping and retention requirements.*

a. Financial records, supporting documents, statistical records, and all other records pertinent to the grant or loan program shall be retained by the applicant. All records shall be retained for three years beyond the grant or loan or longer if any litigation is begun or if a claim is initiated involving the loan or grant covered by the record. In these instances, the records will be retained until the litigation claim has been resolved.

b. Representatives of the department and the state auditor's office shall have access to all books, accounts, documents, records, and other property belonging to or in use by the applicant or recipient pertaining to the receipt of assistance under these rules.

53.13(4) *Performance reports and reviews.*

a. Recipients will be required to submit semiannual performance reports to the department. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with the certifications made in the agreement with the department. Each report must be accompanied by the business's most recent quarterly "Employer's Contribution and Payroll Report," and the business may also be required to submit actual payroll records as part of that report.

b. The department may perform any reviews or field inspections it deems necessary to ensure program compliance, including reviews of recipient performance reports. When problems of compliance are noted, the department may require remedial actions to be taken.

53.13(5) Rescinded, IAB 7/11/90, effective 8/15/90.

261—53.14(15) Default.

53.14(1) At any time prior to or after the project expiration date, the department may, for cause, determine that a recipient is in default under the terms of the agreement. The department may determine that the recipient is in default if any of the following occur:

a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.

b. There is a material change in the business ownership or structure that occurs without prior written disclosure and the permission of the department.

c. There is a relocation or abandonment of the business or jobs created or retained through the project.

d. Expending CEBA funds for purposes not described in the application or authorized in the agreement.

e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.

f. Failure of the recipient to fulfill its job attainment obligation.

g. Failure of the recipient to comply with promised wage or benefit packages.

h. Failure to perform or comply with the terms and conditions of the agreement.

i. Failure to comply with any applicable state rules or regulations.

53.14(2) Agency actions upon default.

a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the department deems necessary.

53.14(3) Penalties for failure to meet job attainment goals.

a. Forgivable loans, grants, buydowns, and interest subsidy awards. If the recipient receives this type of award and at the project expiration date does not provide 100 percent of the pledged FTE jobs, the department may require repayment of program funds using the following criteria:

(1) If the recipient fails to achieve at least 50 percent of the job attainment goal, 100 percent of the award will be due as a loan at an annual interest rate as determined periodically by the board. Interest due will be calculated from the date CEBA funds were disbursed to the recipient.

(2) If the recipient achieves more than 50 percent of the job attainment goal, the award will be prorated between the percentage of jobs attained and the percentage of shortfall. The pro-rata amount of the award associated with the percentage of shortfall will be amortized over a two-year period (beginning at the project expiration date) at an annual interest rate as determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately.

b. Loan awards. If the recipient receives a loan at a rate that is below the annual interest rate for noncompliance as set periodically by the board, the remaining principal amount of the loan will be prorated between the percentage of jobs attained and the percentage of shortfall. The shortfall principal portion will be amortized over the remaining term of the loan, beginning at the agreement expiration date, at an annual interest rate that is determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately. Finally, the pro-rata portion of the loan associated with the percentage of jobs attained will be left at the original rate and term.

c. Loan awards that have a deferred payment period. If the recipient receives a loan at a rate that is below the annual interest rate for noncompliance as set periodically by the board, the remaining principal amount of the loan will be prorated between the percentage of jobs attained and the percentage of shortfall. The shortfall principal portion will be amortized beginning at the agreement expiration date at an annual interest rate that is determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately. Finally, the accomplished portion of the loan will be left at the original rate and term.

53.14(4) Penalties for failure to meet promised wage or benefit packages. If the recipient does not meet the wage or benefit package promised in the CEBA award agreement, the department may require repayment of funds proportional to the number of employees which did not meet the wage or benefit package, compared to the promised number of project positions.

53.14(5) Determination of appropriate repayment plan. Upon determination that the recipient has not met the job attainment goals, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the department may extend the term of the loan to ensure payback, stability, and survival of the recipient. The committee will be notified of penalties imposed in either of these manners.

In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, committee review and approval is necessary before the department may finalize the repayment plan.

261—53.15(15) Standards for negotiated settlements or discontinuance of collection efforts.

53.15(1) The committee may approve negotiated settlements or the discontinuance of collection efforts by IDED if it determines that any of the following conditions exist:

a. The cost of collection would exceed the amount that would be recovered.

b. The claim is not legally feasible, e.g., the claim cannot be substantiated by the evidence, a statute of limitations has run, there is little likelihood of prevailing in a legal proceeding, the claim has been discharged in bankruptcy.

c. The claim has been referred to the Iowa attorney general's office for disposition.

d. Other conditions exist that would not allow the recovery of funds.

53.15(2) Board notification. Before collection efforts may be discontinued or a negotiated settlement accepted, the department will first report to the committee the reasons for recommending the acceptance of a negotiated settlement or the discontinuance of collection efforts. The committee will report periodically to the board those projects for which it has approved negotiated settlements or has determined that collection efforts should be suspended or ceased.

261—53.16(15) Miscellaneous.

53.16(1) *Amendments.* Any substantive change to a funded CEBA program will be considered a contract amendment. Changes could include contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. The amendment must be requested in writing. No amendment will be valid until approved by the department.

53.16(2) *Annual report.* The department shall submit to the governor and the general assembly an annual report setting forth the details of the operation of the program. The report shall cover the operations of the program on a fiscal year basis, from July 1 through June 30.

53.16(3) *Appeals.* Appeals will be accepted in instances where it is alleged that either staff or board members participated in a decision which was unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency. Appeals should be addressed to the board chairperson, either directly or through the department.

53.16(4) *Extension requests for project expiration date.* Extension requests may be approved only when the following conditions apply:

a. The delay in achievement of proposed job attainment goal was caused by events over which the recipient had no control and could not have reasonably predicted; and

b. If the extension is approved, there is a reasonable probability that the originally proposed job attainment goal can be achieved;

c. Projects which do not fit under the above two conditions, and where special consideration can be obtained from the recipient which appear appropriate to the department, may be brought to the committee for disposition.

d. In no case would the accumulative extensions approved on any project exceed 12 months.

53.16(5) *Extensions based on actual performance.* If the recipient achieves the job attainment goal within 90 days after the project expiration date, the department may consider providing up to a 90-day extension to the project expiration date without committee approval.

53.16(6) *Forms.* The following forms will be used by the department in the administration of the CEBA program:

1. Application for business financial assistance;
2. Application for comprehensive management assistance;
3. Loan agreement;
4. Loan subsidy (buydown) agreement;
5. Loan guarantee agreement;
6. Equity-like agreement;
7. Forgivable loan agreement;
8. Comprehensive management assistance agreement;
9. Applicant program budget and schedule;
10. Applicant semiannual performance report;
11. Applicant request for release of funds; and
12. Applicant final expenditure report.

These rules are intended to implement Iowa Code sections 15.315 to 15.320.

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◊ Two ARCs

CHAPTER 101
DEPARTMENT PROCEDURE FOR RULE MAKING

261—101.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

261—101.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department 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 department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

261—101.3(17A) Public rule-making docket.

101.3(1) *Docket maintained.* The department shall maintain a current public rule-making docket.

101.3(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 department. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration to the economic development board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

101.3(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 department determinations with respect thereto.

h. Any known timetable for department 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.
l. Where the rule-making record may be inspected.

261—101.4(17A) Notice of proposed rule making.

101.4(1) *Contents.* At least 35 days before the adoption of a rule, the department 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.
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 department 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 department for the resolution of each of those issues.

101.4(2) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action must file with the department a written request indicating the name and address (including an E-mail address if electronic transmittal is requested) to which the notices shall 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 department shall mail a copy of that notice to subscribers who have filed a written request for mailing with the department for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, if any, which covers 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. If persons have requested that the department electronically transmit a copy of the notice by E-mail, there shall be no charge for this service.

261—101.5(17A) Public participation.

101.5(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 or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the individual identified in the Notice of Intended Action.

101.5(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department 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 department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by a state 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.

The department may waive technical compliance with these procedures.

101.5(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.

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. An employee of the department, or another person designated by the department who will be familiar with the substance of the proposed rules, shall preside at the oral proceeding on the proposed rules. If an employee of the department does not preside, the presiding officer shall prepare a memorandum for consideration by the department summarizing the contents of the presentations made at the oral proceeding unless the department determines that such a memorandum is not necessary because the department 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 the proceeding are encouraged to notify the department 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 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 department 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. These submissions become the property of the department.

(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.

101.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

The department may send notices of proposed rule making and a request for comments to any agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

101.5(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person identified in the Notice of Intended Action in advance to arrange access or other needed services.

261—101.6(17A) Regulatory analysis.

101.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10, subsection 7.

101.6(2) *Distribution list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. 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 via electronic transmission, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department 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 department 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 shall 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.

101.6(3) *Time of distribution.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail or electronically transmit 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 department 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.

101.6(4) *Qualified requesters for regulatory analysis—economic impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"a,"* after a proper request from:

a. The administrative rules coordinator.

b. The administrative rules review committee.

101.6(5) *Qualified requesters for regulatory analysis—business impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"b,"* 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.

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.

101.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10, subsection 4.

101.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 1.

101.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsections 4 and 5.

101.6(9) *Publication of a concise summary.* The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10, subsection 5.

101.6(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, subsection 2, paragraph *"a,"* unless a written request expressly waives one or more of the items listed therein.

101.6(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, subsection 2, paragraph *"b."*

261—101.7(17A,25B) Fiscal impact statement. A 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.

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

261—101.8(17A) Time and manner of rule adoption.

101.8(1) *Time of adoption.* The department 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 department 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.

101.8(2) *Consideration of public comment.* Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

101.8(3) *Reliance on department expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

261—101.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

101.9(1) *Allowable variances.* The department 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 or 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.

101.9(2) *Fair warning.* 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 department 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.

101.9(3) *Petition for rule making.* The department 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 department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

101.9(4) *Concurrent rule-making proceedings.* Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

261—101.10(17A) Exemptions from public rule-making procedures.

101.10(1) *Omission of notice and comment.* To the extent the department 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 department 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 department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

101.10(2) *Categories exempt.* The following narrowly tailored category of rules is 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 federal law, including federal statutes or regulations establishing conditions for federal funding of departmental programs where the department is not exercising any options under federal law.

101.10(3) *Public proceedings on rules adopted without them.* The department 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 101.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 101.10(1). This 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 the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 101.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

261—101.11(17A) Concise statement of reasons.

101.11(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 department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

101.11(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 change.

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

101.11(3) *Time of issuance.* After a proper request, the department 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.

261—101.12(17A) Contents, style, and form of rule.

101.12(1) *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

a. The date the department adopted the rule.

b. A brief explanation of the principal reasons for the rule-making action if the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the 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 the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the reasons.

g. The effective date of the rule.

101.12(2) *Documents incorporated by reference.* The department 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 department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department 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 department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this department, 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 department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

101.12(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 department 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 department. The department shall provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review either electronically or at the state law library.

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

101.12(4) *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

261—101.13(17A) Department rule-making record.

101.13(1) *Requirement.* The department 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 shall be available for public inspection.

101.13(2) *Contents.* The department rule-making record shall contain:

a. Copies of or citations to 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 department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based.

b. Copies of any portions of the department'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 department, 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 department 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 department is authorized by law to keep them confidential; provided, however, that when any materials are deleted because they are authorized by law to be kept confidential, the department 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 subsection 17A.4(4), and any department response to that objection.

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

101.13(3) *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

101.13(4) *Maintenance of record.* The department 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 or the date of the Notice of Intended Action.

261—101.14(17A) Filing of rules. The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall 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 fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

261—101.15(17A) Effectiveness of rules prior to publication.

101.15(1) *Grounds.* The department 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 department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

101.15(2) *Special notice.* When the department 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 department 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 department 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 department 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.

261—101.16(17A) Review by department of rules.

101.16(1) *Request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

101.16(2) *Conduct of review.* In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the department'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 requests for exceptions to the rule received by the department or granted by the department. 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 department's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

261—101.17(17A) Written criticisms of department rules. Any interested person may submit written criticism of a rule adopted by the department.

101.17(1) *Where submitted, form.* Rule criticisms shall be in writing and submitted to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The criticism must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF ECONOMIC DEVELOPMENT

Criticism of Rule: (specify rule)
Reason(s) for Criticism:
Submitted By: Name:_____
Address:_____
_____
Telephone Number:_____
Signature:_____
Date:_____

101.17(2) *Maintenance.* Written criticisms of department rules will be maintained in a separate record for a period of five years from the date of receipt by the department. This record will be open for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

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CHAPTER 102
PETITION FOR RULE MAKING
[Prior to 7/19/95, see 261—Ch 2]

261—102.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the department at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by subrule 102.4(1).

102.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

102.1(2) The department may deny a petition because it does not substantially conform to the required form.

261—102.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

261—102.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

261—102.4(17A) Department consideration.

102.4(1) *Forwarding of petition and meeting.* Within five working days after the filing of a petition, the department shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the department shall schedule a brief and informal meeting between the petitioner and a member of the staff of the department to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

102.4(2) *Action on petition.* Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department shall, 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to petitioner.

102.4(3) *Denial of petition for nonconformance with form.* 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 department's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

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CHAPTER 103
PETITION FOR DECLARATORY ORDER
[Prior to 7/19/95, see 261—Ch 3]

261—103.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers. A request which seeks to change rather than to declare or determine policy will be denied.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 261—103.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

261—103.2(17A) Notice of petition. Within five working days of receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 261—103.6(17A) to whom notice is required by any provision of law. The department may give notice to any other persons.

261—103.3(17A) Intervention.

103.3(1) *Nondiscretionary intervention.* Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time for department action under rule 261—103.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

103.3(2) *Discretionary intervention.* 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 department.

103.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

261—103.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

261—103.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

261—103.6(17A) Service and filing of petitions and other papers.

103.6(1) *Service.* 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 by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

103.6(2) *Filing.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. All documents are considered filed upon receipt.

261—103.7(17A) Consideration. Upon request by the petitioner, the department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

261—103.8(17A) Action on petition.

103.8(1) *Time frames for action.* Within 30 days after receipt of a petition for a declaratory order, the director or the director's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13, subsection 5.

103.8(2) *Date of issuance of order.* The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

261—103.9(17A) Refusal to issue order.

103.9(1) *Reasons for refusal to issue order.* The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13, subsection 1, and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

103.9(2) *Action on refusal.* A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

103.9(3) *Filing of new petition.* 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 the department's refusal to issue an order.

261—103.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, 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.

261—103.11(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.

261—103.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound 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 department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13.

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[Filed 4/28/99, Notice 3/10/99—published 5/19/99, effective 6/23/99]

HUMAN RIGHTS DEPARTMENT[421]

CHAPTER 1
Reserved

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of human rights hereby adopts, with the following exceptions and amendments, uniform rules on agency procedure relating to public records and fair information practices printed in the first volume of the Iowa Administrative Code.

421—2.1(22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert the "Department of Human Rights and the Divisions for Community Action Agencies, Criminal and Juvenile Justice Planning, Deaf Services, Persons with Disabilities, Latino Affairs, Status of Women, and Status of African-Americans."

"Custodian." In lieu of the words "means the agency," insert "means the director of the department of human rights or the administrator of the division within which the records are maintained".

"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.

421—2.3(22) Requests for access to records.

2.3(1) *Location of record.* In lieu of the words "(insert agency head)" insert "director of the department of human rights, or the administrator of the appropriate division within the department". In lieu of the words "(insert agency name and address)" insert the "Department of Human Rights or the appropriate division within the department, Lucas State Office Building, Des Moines, Iowa 50319."

2.3(2) *Office hours.* In lieu of the words "insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4", insert "8 a.m. to 4:30 p.m. Monday through Friday, except legal holidays".

2.3(6) *Copying.* In lieu of the words "A reasonable number of copies", insert "One copy".

2.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour".

421—2.6(22) Procedure by which additions, dissents or objections may be entered into certain records. In lieu of the words "(designate office)" insert "department of human rights".

421—2.9(22) Disclosures without the consent of the subject.

2.9(1) *Open records.* Open records are routinely disclosed without the consent of the subject.

2.9(2) *Confidential records.* 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 2.10(22) or in any notice for a particular record system.

b. To a recipient who has provided the agency 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 agency 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 an individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

421—2.10(22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

2.10(1) Disclosure to those employees of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

2.10(2) 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.

2.10(3) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

2.10(4) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

2.10(5) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

421—2.11(22) Consensual disclosure of confidential records.

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

2.11(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 agency 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.

421—2.12(22) Release to subject.

2.12(1) *One subject.* The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency 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.

2.12(2) *Multiple subjects.* Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

421—2.13(22) Availability of records.

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

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

a. Information pertaining to clients receiving advocacy or referral services. (1988 Iowa Acts, House File 2255);

b. Tax records made available to the agency. (Iowa Code section 422.20 and 422.72);

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

d. Minutes of closed meetings of a government body (Iowa Code section 21.5(4));

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

f. Those portions of agency staff manuals, instructions or other statements excluded from the definition of "rule." (Iowa Code section 17A.2(7)*"f"*);

g. Records which constitute an attorney work product, attorney-client communications, or which are otherwise privileged. (Iowa Code sections 22.7(4), 622.10, 622.11, and chapter 622B);

h. Any other records made confidential by law.

2.13(3) *Authority to release confidential records.* The agency 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 2.4(22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

421—2.14(22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(22). For each record system, this rule describes the legal authority for the collection or maintenance of that information; the means of storage of that information and indicates when applicable; if a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system; and when the record system is confidential, indicates the statutory authority. The record systems maintained within the agency are:

2.14(1) *Personnel records.*

a. The agency maintains files containing information about employees, families and dependents, and applicants for commission members or staff positions within the agency. These files include, but are not limited to, payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports and other information concerning employees and related issues. The files are maintained by department and by division.

b. The legal authority for maintaining the records for state-funded programs in Iowa Code sections 19A.11 and 91A.6, and chapter 601K. The legal authority for maintaining the records for federally funded programs is P.L. 97-35, Subtitle B, Section 675(c), P.L. 93-569, Title 5, U.S.C. 552a, P.L. 93-415, P.L. 98-473, Title II, Chapter 14, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and some parts are on a data processing system that matches, collates or permits the comparison of some personally identifiable information within the state's automated data processing system.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

2.14(2) *Advocacy records.*

a. The agency maintains files containing information pertaining to clients receiving advocacy or referral services to help alleviate or solve a problem. Such information may include, but is not limited to, names and addresses of clients, documents or other material relating to advocacy issues, social or economic conditions or circumstances of particular clients, department or division evaluations of information about clients, medical or psychiatric data provided to the department or division concerning a client, and legal data related to the client. These files are maintained by division and may be indexed by advocacy files, client files, interpreting files or any direct service involving individual client assistance set forth in this rule or by statute.

b. The authority for maintaining these records is Iowa Code chapter 601K and P.L. 97-35, P.L. 93-569, P.L. 93-415, P.L. 98-473, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. Most of the information is maintained on paper; however, some divisions have some records in computer form which are maintained by the respective division.

d. Information contained within this record system is confidential under the authority of Iowa Code subsection 22.7(18) and 1988 Iowa Acts, House File 2255.

2.14(3) *Fiscal records.*

a. The agency maintains files containing fiscal information for state-funded programs and federally funded grants or contracts that may contain personally identifiable information. These records are maintained by department and by division.

b. The authority for maintaining these records is Iowa Code chapter 601K, P.L. 97-35, P.L. 93-569, P.L. 93-415, P.L. 98-473, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. These records are stored on paper and on the state's automated data processing system that matches, collates or permits the comparison of some personally identifiable information.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

2.14(4) *General correspondence, mailing lists, and program or grant data.*

a. The agency maintains correspondence files, grant notices and applications, conference or committee listings and reports, commission meeting minutes, mailing lists, program and grant information including surveys or specialized reports and activities that contain some personally identifiable information that may include names, addresses or other descriptive data. These records are generally collected and maintained by division.

b. The authority for maintaining these records is Iowa Code chapter 601K, P.L. 97-35, P.L. 93-569, P.L. 93-415, P.L. 98-473, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and in computer systems within each respective division.

d. These records are generally open to the public unless otherwise authorized to be confidential by law.

421—2.15(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems retrieved by a personal identifier as defined in rule 2.1(22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 2.13(22). All records are stored both on paper and in automated data processing systems, unless otherwise noted.

2.15(1) *Administrative records.* This includes documents concerning budget, inventory, annual reports, office policies, state forms and reports.

2.15(2) *Publications, resource and library materials.* This includes books, periodicals, newsletters, government documents and public reports. These materials would generally be open to the public; some may be protected by copyright law.

2.15(3) *Office publications.* The divisions distribute to the public a variety of materials including brochures and typed information regarding issues pertinent to their programs or constituent groups. Also included are statistical reports, program reports and news releases.

2.15(4) *Rule-making records.* These include documents generated during the rule-making process, including public comments, and are available for public inspection.

2.15(5) *All other records.* Records are open if not exempted from disclosure by law.

421—2.16(22) Availability to listings of specific record series in the department by division. A detailed listing of records is available to the public in the central administration office in paper or automated data processing form. This listing includes, by division, the record series name, a general description of the record series, record location, maintenance, physical medium, identifier by which the records are accessed, individuals who have routine access, whether the record is entirely public, entirely confidential, or partially public and partially confidential, whether the record has or does not have personally identifiable information, what forms are associated with the record series and whether or not there is computer matching of personally identifiable information.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 22 and 216A.

[Filed emergency 8/19/88, after Notice 5/18/88—published 9/7/88, effective 8/19/88]
[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 3
PETITIONS FOR RULE MAKING

421—3.1(17A) Adoption by reference. The department of human rights hereby adopts the petitions for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "department of human rights".
2. In lieu of the words "(AGENCY NAME)", insert "DEPARTMENT OF HUMAN RIGHTS".
3. In lieu of the words "(designate official by full title and address)", insert "Director, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

421—4.1(17A) Adoption by reference. The department of human rights hereby adopts the agency procedure for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "director".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Director, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the director at (515)281-7300 voice/tty".
5. In lieu of the words "(designate office)", insert "Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "director".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 5
DECLARATORY ORDERS

421—5.1(17A) Adoption by reference. The department of human rights hereby adopts the declaratory orders segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "department of human rights".
2. In lieu of the words "(designate office)", insert "Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DEPARTMENT OF HUMAN RIGHTS".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Director, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "department of human rights".
9. In lieu of the words "(designate agency head)", insert "director".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 6
CONTESTED CASES

421—6.1(17A) Adoption by reference. The department of human rights hereby adopts the contested cases segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(agency name)", insert "department of human rights".
2. In lieu of the words "(designate official)", insert "director".
3. In subrule 7.3(2) delete the words "or by (specify rule number)".
4. In lieu of the words "(agency specifies class of contested case)", insert "division contested cases".
5. In lieu of the words "(specify office and address)", insert "Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(designate office)", insert "department of human rights".
7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "director".
8. In lieu of the words "(board, commission, director)", insert "director".
9. In lieu of the words "(the agency)", insert "department of human rights".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

COMMUNITY ACTION AGENCIES DIVISION[427]

Created by Iowa Code chapter 216A, under the "umbrella" of Department of Human Rights[421]

CHAPTER 22
COMMUNITY SERVICES BLOCK GRANT

CHAPTER 23
EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

CHAPTER 24
COMMUNITY SERVICES BLOCK GRANT
FLOOD RELIEF PROGRAM

CHAPTER 1
Reserved

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

427—2.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

427—2.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapters 17A, 22, and 216A.

[Filed emergency 8/19/88 after Notice 5/18/88—published 9/7/88, effective 8/19/88]

CHAPTER 3
PETITIONS FOR RULE MAKING

427—3.1(17A) Adoption by reference. The division of community action agencies hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF COMMUNITY ACTION AGENCIES".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

427—4.1(17A) Adoption by reference. The division of community action agencies hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Administrator, Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-3268".
5. In lieu of the words "(designate office)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

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

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NOTE: See Energy Policy Council[380], Chapter 15, prior to 9/24/86

CHAPTER 6
DECLARATORY ORDERS

427—6.1(17A) Adoption by reference. The division of community action agencies hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division of community action agencies".
2. In lieu of the words "(designate office)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF COMMUNITY ACTION AGENCIES".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division of community action agencies".
9. In lieu of the words "(designate agency head)", insert "administrator".

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 7
CONTESTED CASES

427—7.1(17A) Adoption by reference. The division of community action agencies hereby adopts the contested cases segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(agency name)", insert "division of community action agencies, department of human rights".
2. In lieu of the words "(designate official)", insert "administrator".
3. In subrule 7.3(2) delete the words "or by (specify rule number)".
4. In lieu of the words "(agency specifies class of contested case)", insert "division contested cases".
5. In lieu of the words "(specify office and address)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(designate office)", insert "division of community action agencies".
7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "administrator".
8. In lieu of the words "(board, commission, director)", insert "administrator".
9. In lieu of the words "(the agency)", insert "division of community action agencies".

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTERS 8 and 9
Reserved

CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]

Created by 1988 Iowa Acts, chapter 1277, sections 14 to 19, under the "umbrella" of the Department of Human Rights[421]

CHAPTER 7
PETITIONS FOR RULE MAKING

428—7.1(17A) Adoption by reference. The division of criminal and juvenile justice planning hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF CRIMINAL AND JUVENILE JUSTICE PLANNING".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 8
AGENCY PROCEDURE FOR RULE MAKING

428—8.1(17A) Adoption by reference. The division of criminal and juvenile justice planning hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Administrator, Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)242-5823".
5. In lieu of the words "(designate office)", insert "Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

LATINO AFFAIRS DIVISION[433]

[Created within the Human Rights Department[421] by Iowa Code sections 601K.11 to 601K.17]
[Renamed Division of Latino Affairs by 1990 Iowa Acts, chapter 1180, section 2]
[Prior to 12/7/94, Spanish-Speaking People Division [433]]

CHAPTER 1
ORGANIZATION

433—1.1(216A) Function. The division of Latino affairs is established within the department of human rights pursuant to Iowa Code chapter 216A and is required to advocate for, coordinate, implement and provide services to, and on behalf of, Latino people within the state of Iowa. The commission of Latino affairs is responsible for establishing the policies for the division of Latino affairs as set forth in Iowa Code chapter 216A.

433—1.2(216A) Organization.

1.2(1) *Location.* The division of Latino affairs is located in the Department of Human Rights, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-4080. Office hours are 8 a.m. to 4:30 p.m.

1.2(2) *History.* This program was originally established as the governor's Spanish-speaking task force through legislative action in April 1974 in which state funding was appropriated from July 1, 1974, through June 30, 1975, with the primary mission of studying the problems of Spanish-speaking persons. The product of this study was a report entitled "Conoceme En Iowa" in which recommendations were made regarding the improvement of the socioeconomic conditions of Spanish-speaking people in Iowa. As a result of this report and the support of Spanish-speaking-related organizations and the Sixty-sixth General Assembly, Governor Robert Ray signed into law the creation of the Spanish-speaking people's commission on July 1, 1976. The new commission was to deal with issues encountered by Spanish-speaking people in the areas of education, employment, health, housing, welfare and recreation. In 1986, an overall reorganization of state government formed a new department of human rights originally consisting of seven divisions. The Spanish-speaking people's commission came under the new division of Spanish-speaking people within the department of human rights. In 1990, the name of the division and commission changed to Latino affairs.

1.2(3) *Method of contacting the division of Latino affairs.* Persons may contact the division of Latino affairs by telephone, mail or personal visits for any of the services provided. Individuals may call the office from within the state, station-to-station collect. Individuals who call may ask the staff to return the call on the division's telephone lines. If a Spanish-speaking staff person is not available at the time the call is received, the individual can leave a message on the voice mail or call again at a later time.

1.2(4) *Composition of division staff.*

a. *Division administrator.* The governor appoints the division administrator, subject to senate confirmation. The division administrator serves at the pleasure of the governor. The division administrator is responsible for the overall administration of the programs. The division administrator is the administrative officer of the commission and serves the commission by gathering and disseminating information, forwarding proposals and evaluations to the governor, the general assembly, and state agencies, carrying out public education programs, conducting hearings and conferences, and performing other duties necessary for the proper operation of the commission. The division administrator carries out programs and policies as determined by the commission.

b. *Other staff.* The commission may employ other personnel qualified to assume the responsibilities of their assigned duties.

433—1.3(216A) Commission of Latino affairs.

1.3(1) *Commission established.* The commission of Latino affairs is established pursuant to Iowa Code section 216A.12, consisting of nine members appointed by the governor. This commission is to be bipartisan and gender-balanced as stipulated in Iowa Code sections 69.16 and 69.16A. In addition, commission members are to be appointed with consideration given to geographic residence and density of the Latino population represented by each member as stipulated in Iowa Code section 216A.12. The members serve for a term of two years, beginning in the summer of each odd-numbered year. Members appointed shall continue to serve until their respective successors are appointed. Members receive actual expenses incurred while serving in their official capacity. Members may also be eligible to receive compensation as provided in Iowa Code section 7E.6. The commission selects from its membership a chairperson and other officers as it deems necessary.

1.3(2) *Meetings.* The commission of Latino affairs meets not less than six times per year. A majority of the members of the commission constitutes a quorum. Notice of a meeting is published at least 24 hours before the meeting and will provide the specific date, time and place of the meeting. Agendas are available to any interested persons prior to or at the meeting. All meetings are open to the public, unless a closed session is voted by two-thirds or more of the membership, pursuant to Iowa Code section 21.5. The operation of the commission meetings will be governed by the following rules of procedure:

a. When a quorum is present, a position is carried by an affirmative vote of a majority of the entire membership.

b. Anyone may speak during the open forum of a commission meeting. Persons are asked to identify themselves and to speak on an issue which provides the commission with necessary information. Time limits will be indicated by the chairperson, based upon the issue presented and the number of persons wishing to speak. Written materials may also be distributed with the consent of the chairperson, after consultation with the commission.

c. Special meetings may be called by the chairperson and shall be held in accordance with Iowa Code chapter 21.

d. At the conclusion of each meeting, the commission will set the time, date and place of the next meeting, if it has not already been set.

e. Cameras and recording devices may be used at open meetings, provided the commission is informed prior to their use and provided they do not obstruct the meeting. An announcement regarding this rule will be made at the beginning of each commission meeting by the chairperson. The chairperson or presiding officer may request a person using such a device to discontinue its use when it is obstructing the meeting or if the person knowingly did not inform the commission prior to its being used. If a person fails to comply with the request to discontinue its use, the presiding officer shall order that person excluded from the meeting.

f. The chairperson or presiding officer may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

g. Closed sessions of meetings may be held when requested according to Iowa Code section 21.5(1)"*g*" for purposes of hearing complaints of concerns by Latino individuals when such communications may subject either the complainant to retaliation by the source of concern or may subject the source of concern to unfair negative publicity. The commission shall comply with all requirements for conducting a closed meeting as provided in Iowa Code section 21.5.

h. Cases not covered by these rules shall be governed by Robert's Rules of Order.

1.3(3) *Minutes.* Minutes of the commission meetings are prepared and sent to commission members at least two weeks before the next regularly scheduled commission meeting. Approved minutes are available at the division office for inspection during business hours. A copy may be obtained without charge by contacting the division office. Minutes shall show the date, time and place of the meeting, the members present, and any action taken at each meeting. In addition, the minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session.

1.3(4) *Duties.* Duties of the commission of Latino affairs are listed in Iowa Code section 216A.15.

1.3(5) *Powers.* The commission may establish advisory committees on special studies, solicit and accept gifts and grants, adopt rules according to Iowa Code chapter 17A for the commission and division, and contract with public and private groups to conduct its business.

1.3(6) *Report.* The commission shall make a report of its activities, studies, findings, conclusions, and recommendations to the general assembly not later than February 15 of each odd-numbered year.

1.3(7) *Executive committee.* The executive committee shall be comprised of the officers of the commission and shall function as the governing body of the commission between commission meetings and shall make recommendations to the commission for new policies. It is empowered to:

a. Take action on behalf of the commission when such action is required between regular meetings and deliberation by the full commission is not feasible, and

b. Work in conjunction with the department director to screen and recommend two or more candidates to the governor for appointment as administrator.

1.3(8) *Nonattendance.* Any person who has been appointed to the commission shall be deemed to have submitted a resignation if:

a. The commission member does not attend three or more consecutive regularly scheduled meetings, or

b. The commission member attends less than one-half of the regular meetings held within any 12-month calendar period.

[Filed 11/10/94, Notice 7/20/94—published 12/7/94, effective 1/11/95]

CHAPTER 2
INTERPRETERS IN LEGAL PROCEEDINGS

433—2.1(622A) Definitions.

"Division" means the division of Latino affairs within the department of human rights.

"Interpreter" means an interpreter who is fluent in the Spanish and English languages, both written and spoken forms.

"Legal proceeding" means any action before any court, or any legal action preparatory to appearing before any court, whether civil or criminal in nature; and any administrative proceeding before any state agency or governmental subdivision which is quasi-judicial in nature and which has direct legal implications to any person.

"Spanish-speaking person" for the purposes of these rules means a person who speaks the Spanish language but has limited or no understanding of the English language.

433—2.2(622A) Who entitled to an interpreter. A Spanish-speaking person who is a party to, or a witness at, any legal proceeding is entitled to an interpreter to assist the person throughout the proceeding.

433—2.3(622A) Costs.

2.3(1) *Without expense to the person.* An interpreter shall be appointed without expense to a Spanish-speaking person requiring interpreter assistance in the following cases:

a. If the person is a witness in a civil legal proceeding.

b. If the person is indigent and financially unable to secure an interpreter.

2.3(2) *Expense to the court, court costs, or to the person.* In a civil case, the court shall tax the costs of an interpreter in the manner as other court costs are taxed. In a criminal case, where the defendant is indigent, the interpreter shall be paid a fee in the same manner a defendant's witness is paid under R. Cr. P. 14, except that a subpoena is not required. If the proceeding is before an administrative agency, the agency shall provide an interpreter but may require a party to the proceeding who is not indigent to pay the costs of the interpreter.

433—2.4(622A) Fees. An interpreter provided according to Iowa Code chapter 622A will be paid a reasonable fee and expenses as determined by the applicable court or administrative agency. The division shall furnish a current listing of qualified interpreters and a schedule of fees to the supreme court on a regular basis, and to any administrative agency upon request.

433—2.5(622A) Oath. An interpreter in any legal proceeding shall take an oath administered by the presiding official in terms appropriate to the interpreting task being performed. This shall be done prior to the proceeding, as is done to any witness prior to giving testimony. The interpreter shall take an oath that the interpreter will interpret all statements in Spanish and English in an understandable and accurate manner, to the best of the interpreter's skill and judgment. The interpreter shall ask the court for clarification anytime it is needed. At any time the interpreter is unable to faithfully or accurately render the message, the interpreter shall so notify the court.

433—2.6(622A) Qualifications.

2.6(1) *Listing.* The division shall prepare and continually update the listing of qualified and available interpreters for the legal setting. This list is to be furnished by the division to the supreme court and is to be maintained by the supreme court.

2.6(2) *Disqualification.* Any court or administrative agency may inquire into the qualifications and integrity of any interpreter. A court or administrative agency may disqualify for good cause any person from serving as an interpreter in a proceeding. If an interpreter is disqualified, the court or administrative agency shall appoint another interpreter.

433—2.7(622A) Rules. The supreme court, after consultation with the division of Latino affairs in regard to Spanish-speaking people, shall adopt rules governing the qualifications and compensations of interpreters appearing in proceedings before a court or grand jury. An administrative agency, which is subject to Iowa Code chapter 17A, may adopt rules governing the qualifications and compensation of interpreters appearing before the agency that may be different from those of the supreme court.

433—2.8(622A) Tape recording. A tape recording of the portion of the proceedings where testimony is given in Spanish and interpreted shall be made and maintained by the court.

[Filed 11/10/94, Notice 7/20/94—published 12/7/94, effective 1/11/95]

CHAPTER 3
PETITIONS FOR RULE MAKING

433—3.1(17A) Adoption by reference. The division of Latino affairs hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF LATINO AFFAIRS".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

433—4.1(17A) Adoption by reference. The division of Latino affairs hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Administrator, Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-4070".
5. In lieu of the words "(designate office)", insert "Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 5
DECLARATORY ORDERS

433—5.1(17A) Adoption by reference. The division of Latino affairs hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division of Latino affairs".
2. In lieu of the words "(designate office)", insert "Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF LATINO AFFAIRS".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division of Latino affairs".
9. In lieu of the words "(designate agency head)", insert "administrator".

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 6
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

433—6.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

433—6.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapters 17A and 22 and sections 216A.11 to 216A.17.

[Filed emergency 8/19/88 after Notice 5/18/88—published 9/7/88, effective 8/19/88]
[Filed 11/10/94, Notice 7/20/94—published 12/7/94, effective 1/11/95]

CHAPTER 7
CONTESTED CASES

433—7.1(17A) Adoption by reference. The division of Latino affairs hereby adopts the contested cases segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(agency name)", insert "division of Latino affairs, department of human rights".
2. In lieu of the words "(designate official)", insert "administrator".
3. In subrule 7.3(2) delete the words "or by (specify rule number)".
4. In lieu of the words "(agency specifies class of contested case)", insert "division contested cases".
5. In lieu of the words "(specify office and address)", insert "Division of Latino Affairs, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(designate office)", insert "Division of Latino Affairs".
7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "administrator".
8. In lieu of the words "(board, commission, director)", insert "administrator".
9. In lieu of the words "(the agency)", insert "division of Latino affairs".

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

STATUS OF WOMEN DIVISION[435]

Created within the Human Rights Department [421] by Iowa Code section 601K.52
Prior to 7/15/87, See Status of Women [800]

CHAPTER 7
DECLARATORY ORDERS

435—7.1(17A) Adoption by reference. The commission on the status of women hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division on the status of women".
2. In lieu of the words "(designate office)", insert "Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION ON THE STATUS OF WOMEN".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division on the status of women".
9. In lieu of the words "(designate agency head)", insert "administrator".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 8
PETITIONS FOR RULE MAKING

435—8.1(17A) Adoption by reference. The commission on the status of women hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION ON THE STATUS OF WOMEN".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 9
AGENCY PROCEDURE FOR RULE MAKING

435—9.1(17A) Adoption by reference. The commission on the status of women hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Administrator, Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-4461".
5. In lieu of the words "(designate office)", insert "Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

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

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

INSPECTIONS AND APPEALS DEPARTMENT[481]

CHAPTER 1
ADMINISTRATION

MISSION STATEMENT

The department of inspections and appeals maintains integrity in state or federal programs and operations through audits, investigations, inspections of designated programs, and through impartial hearings of contested administrative actions to ensure compliance with laws, rules and regulations.

481—1.1(10A) Organization.

1.1(1) The Iowa department of inspections and appeals was established by Iowa Code sections 10A.101 to 10A.601. The chief executive officer of the department is the director of the department of inspections and appeals who shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years.

1.1(2) The director is assisted by a deputy director who is appointed by the director of inspections and appeals.

1.1(3) The department is organized into divisions which are further divided into bureaus and sections.

1.1(4) The director has general supervision over the administration and operation of all divisions. The director also develops statewide programs in compliance with the goals of the department.

1.1(5) The deputy director serves as the principal deputy to the director to assist in the development, implementation, or revision of the policies affecting overall operations and relationships in the agency; confers with staff department heads regarding the progress and problems of specific programs and operations for which they are responsible; reviews activities, reports and records, and determines conformity with policies and procedures and the need for improvements or revisions; determines and ensures that policy required by changes in the law or director action are executed, reports findings and submits recommendations to the director for approval or subsequent actions; supervises divisions requiring administrative coordination, and supervises general administrative matters. The deputy director represents the director in various capacities as directed.

481—1.2(10A) Definitions. For rules of the department of inspections and appeals[481], the following definitions apply:

"Department" means the department of inspections and appeals.

"Department of human services" is referred to as DHS.

"Director" means the director of the department.

481—1.3(10A) Audits division. This division conducts audits, except those conducted by the state auditor's office, including but not limited to the following:

1. Audits of real estate broker trust accounts.
2. Audits relative to the administration of hospitals and health care facilities.
3. Audits relative to the administration and disbursement of funds under the state supplemental assistance program and the state medical assistance program.
4. Audits relative to the administration and disbursement of funds from the energy research and development fund designated for the weatherization program or the energy assistance program.

481—1.4(10A) Investigations division. This division conducts investigations including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.
2. Investigations relative to proposed sales within the state of subdivided land situated outside of the state.
3. Investigations relative to applications for beer and liquor licenses.
4. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.
5. Investigations relative to the liquidation of overpayment debts owed to the department of human services.
6. Investigations relative to the operations of the department of elder affairs.
7. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food stamp program, and the aid to dependent children program.
8. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

481—1.5(10A) Inspections division. This division conducts inspections including but not limited to the following:

1. Land situated outside of the state which is proposed for sale within the state.
2. Food establishments, including groceries, restaurants, hotels, food and beverage vending machines, state educational or charitable institutions for licensing determination, and sanitation inspections in any locality of the state upon the written petition of five or more residents of a particular locality. Correctional and penal institutions are also inspected for sanitary conditions.
3. Licensing procedures relative to the hospice program, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.
4. Hospital and health care facility construction projects and licensing boards established within the department of public health, except the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.
5. Child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.

481—1.6(10A) Administrative hearings division. This division conducts hearings including but not limited to the following:

1. Hearings and appeals relative to foster care facilities, child day care facilities, administration of the state medical assistance program, administration of the state supplementary assistance program, administration of the food stamp program, and administration of the family investment program and other programs administered by the department of human services. Decisions of the division in these areas are subject to review by the department of human services.
2. Hearings and appeals relative to occupational safety and health regulations and the state elevator code. Decisions of the division in these areas are subject to review by the employment appeal board.

3. Hearings and appeals relative to administration of the department of general services. Decisions of the division in this area are subject to review by the department of general services.

4. Hearings and appeals relative to administration of the department of transportation. Decisions of the division in this area are subject to review by the department of transportation.

5. Appeals relative to professional and occupational license denials, suspensions, revocations, and other matters involving professional and occupational discipline except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.

Judicial review of the division's actions in these areas may be sought in accordance with the terms of Iowa Code chapter 17A.

6. Hearings and appeals relative to administration of the department of elder affairs. Decisions of the division in this area are subject to review by the department of elder affairs.

7. Hearings and appeals relative to the licensure or certification of hospitals, hospices, and health care facilities. Decisions of the division in this area are subject to review by the department of inspections and appeals.

8. Hearings and appeals relative to the administration of the department of public health. Decisions of the division in this area are subject to review by the department of public health.

9. Hearings and appeals relative to administration of the department of public safety. Decisions of the division in this area are subject to review by the department of public safety.

10. Hearings and appeals relative to the administration of the department of personnel except those cases within the jurisdiction of the public employment relations board. Decisions of the division in this area shall be determined by the employment appeal board, and the appeal board's decisions shall be considered final agency action under Iowa Code chapter 17A, except for reduction in force appeals which shall be subject to review by the director of the department of personnel.

11. Hearings and appeals relative to the administration of the department of cultural affairs. Decisions of the division in this area are subject to review by the department of cultural affairs.

12. Hearings and appeals relative to administration of the department of natural resources. Decisions of the division in this area are subject to review by the department of natural resources.

13. The administrator shall coordinate the division's conduct of all nonstatutory administrative hearings and appeals provided for in the Iowa administrative code and bulletin.

481—1.7(10A) Administering discretion. Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the director of the department of inspections and appeals.

481—1.8(10A) Employment appeal board. The employment appeal board consists of three members appointed by the governor, subject to confirmation by the senate, to staggered six-year terms. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. This board hears and decides contested cases under Iowa Code chapters 19A, 80, 88, 96, 97B and 104 in accordance with administrative rules promulgated by the employment appeal board.

481—1.9(10A) Foster care review board. The foster care review board consists of seven members appointed by the governor, subject to confirmation by the senate.

This board administers foster care review programs as defined in Iowa Code section 237.19, in accordance with administrative rules promulgated by the foster care review board.

481—1.10(10A) The state appellate defender. The state appellate defender is appointed by the governor and represents indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed by the district court which issued the judgment or order.

481—1.11(10A) Hospital licensing board. This board consists of five individuals who have recognized ability in the field of hospital administration. They are appointed by the governor. The hospital licensing board consults and advises the department of public health on matters of policy affecting Iowa Code chapter 135B. The board reviews and approves rules and standards for the implementation of chapter 135B before they are reviewed and approved by the department of public health and adopted by the department of inspections and appeals.

These rules are intended to implement Iowa Code sections 10A.104, 10A.106, and 17A.3(1), paragraph *"a."*

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CHAPTER 2
PETITIONS FOR RULE MAKING

481—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at the Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by (Name of Original Petitioner) for (the adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by 2.4(17A).

2.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.1(2) The agency may deny a petition because it does not substantially conform to the required form.

481—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

481—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the director of the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

481—2.4(17A) Agency consideration.

2.4(1) Within 14 days after the filing of a petition, the agency 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 agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

2.4(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 agency's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

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[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 3
DECLARATORY ORDERS

The department of inspections and appeals adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

481—3.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "department". In lieu of the words "(designate office)", insert "the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

481—3.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days". In lieu of the words "(designate agency)", insert "department".

481—3.3(17A) Intervention.

3.3(1) In lieu of the words "within ___ days", insert "within 15 days". Strike the words "(after time for notice under X.2(17A))". In lieu of the number "X.8(17A)", insert "3.8(17A)".

3.3(2) In lieu of the words "(designate agency)", insert "the department".

3.3(3) In lieu of the words "(designate office)", insert "the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083". In lieu of the words "(designate agency)", insert "department". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

481—3.4(17A) Briefs. In lieu of the words "(designate agency)", insert "department".

481—3.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083".

481—3.6(17A) Service and filing of petitions and other papers.

3.6(2) In lieu of the words "(specify office and address)", insert "the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083". In lieu of the words "(agency name)", insert "department".

3.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 481—10.12(17A)".

481—3.7(17A) Consideration. In lieu of the words "(designate agency)", insert "department".

481—3.8(17A) Action on petition.

3.8(1) In lieu of the words "(designate agency head)", insert "director".

3.8(2) In lieu of the words "(contested case uniform rule X.2(17A))", insert "rule 481—10.1(10A)".

481—3.9(17A) Refusal to issue order.

3.9(1) In lieu of the words "(designate agency)", insert "department".

481—3.12(17A) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "department".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, section 13.

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[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

[481—Chapter 4 renumbered as 481—Chapter 10, effective 3/16/88.]

The department of inspections and appeals adopts the agency procedure for rule making segment of the Uniform Administrative Rules printed in the first Volume of the Iowa Administrative Code with the following amendments.

481—4.3(17A) Public rule-making docket.

4.3(2) *Anticipated rule making.* In lieu of the words "(commission, board, council, director)" insert "director".

481—4.4(17A) Notice of proposed rule making.

4.4(3) *Notices mailed.* In lieu of the words "(specify time period)" insert "one calendar year".

481—4.5(17A) Public participation.

4.5(1) *Written comments.* Strike the words "(identify office and address) or".

4.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the administrative services bureau at (515)281-6407".

481—4.6(17A) Regulatory analysis.

4.6(2) *Mailing list.* In lieu of the words "(designate office)", insert "Director's Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319".

481—4.10(17A) Exemptions from public rule-making procedures.

4.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"*a.* Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"*b.* Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

"*c.* Rules which confer a benefit or remove a restriction on licensees, the public or some segment of the public;

"*d.* Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"*e.* Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

481—4.11(17A) Concise statement of reasons.

4.11(1) *General.* In lieu of the words "(specify the office and address)" insert "Director's Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319".

481—4.13(17A) Agency rule-making record.

4.13(2) *Contents.* Amend paragraph "*c*" by inserting "director" in lieu of "(agency head)".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

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[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[481—Chapter 5 renumbered as 481—Chapter 11, IAB 2/10/88, effective 3/16/88]

The department of inspections and appeals adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices printed in the first volume of the Iowa Administrative Code.

481—5.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "department of inspections and appeals".

"Custodian" means an agency, which owns and exercises control over public records. The originating agency, if any, is the custodian of records which are used to perform work or a service for the originating agency.

"Originating agency" means any government agency which has requested the department to perform work or a service on its behalf. An originating agency retains custody of all records provided by the originating agency to the department.

481—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "director". In lieu of the words "(insert agency name and address)", insert "Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319".

5.3(2) *Office hours.* In lieu of the words "(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. Monday through Friday except legal holidays."

5.3(7) *Fees.*

c. *Supervisory fee.* In lieu of "(specify time period)" insert "one hour".

481—5.6(17A,22) Procedure by which a subject may have additions, dissents, or objections entered into the record. In lieu of the words "(designate office)" insert "the originating agency, or to the director's office".

481—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(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 5.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency 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 agency 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 fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

481—5.10(17A,22) Routine use. "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.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the department or the originating agency 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 legitimate need to use confidential records.

2. 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.

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

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

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

6. Information transferred to any originating agency when inspections and appeals department has completed the authorized audit, investigation, or inspection.

481—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(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 agency 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.

5.11(3) *Obtaining information from a third party.* The department of inspections and appeals occasionally requests personally identifiable information from third parties during the course of its authorized audits, investigations, hearings or inspections. Requests to third parties for this information involve the release of confidential identifying information. These requests shall be made according to the following rules:

481—21.3(10A) indicates when the department may review trust account records.

481—72.3(10A) describes investigation procedures including forms used by food stamp investigators.

481—73.6(10A) explains audit investigative procedures used in Medicaid provider audits or investigations.

481—74.3(10A) describes procedures used to investigate possible public assistance fraud.

5.11(4) *Child support recovery unit.* Under the provision of Iowa Code Supplement section 252J.2(4), the department may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying licensees or license applicants subject to enforcement under Iowa Code Supplement chapter 252J or 598.

481—5.12(17A,22) Release to subject.

5.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 5.6(17A,22). The department need not release the following records to the subject:

a. The identity of a person providing information to the agency 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 a hearing officer's personal notations to be used by the hearing officer and not intended for public dissemination; or they are otherwise privileged.

c. Investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5).)

d. Others authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject.

The list below indicates rules prohibiting release.

1. 481—21.5(10A). Real estate broker trust account information is governed by Iowa Code section 272C.6(4).
2. 481—22.2(10A). Health care facility audits are confidential under Iowa Code section 217.30.
3. 481—40.4(10A). DHS determines accessibility of foster care inspection records.
4. 481—50.8(22,135B,135C). Survey information is confidential pursuant to Iowa Code sections 135B.12 and 135C.19.
5. 481—71.9(10A). Recoupment records and appeals and hearing records are governed by Human Services rules and Iowa Code section 217.30.
6. 481—72.4(10A). Food stamp investigation records are released only to DHS when an investigation is complete.
7. 481—73.8(10A). Iowa Code sections 10A.105, 17A.2(7)*"f,"* and 22.7(18) describe some of the investigation records as confidential.
8. 481—74.3(1)*"e."* Economic assistance fraud bureau investigative material is not released pursuant to Iowa Code sections 10A.105, 17A.2(7)*"f,"* and 22.7(18).

In all cases, the originating agency shall determine whether records may be released.

481—5.13(17A,22) Availability of records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(1) *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. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency.

c. Exempt records under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

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

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

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3)

g. Confidential records are also described in the rules of each division as follows:

(1) Inspection records—Chapters 50 to 69.

(2) Investigation records—Chapters 70 to 74.

(3) Audit records—Chapters 21 and 22.

(4) Hearing records—Chapters 10 and 11.

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Any other records made confidential by law.

Iowa Code sections 10A.105, 22.7, 135B.12, 135C.19, 217.30, and 272C.6 contain specific authority.

5.13(2) Reserved.

481—5.14(17A,22) Authority to release confidential records. The department 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 5.4(17A,22). If the department initially determines that it will release these records, the department may notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

481—5.15(17A,22) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

481—5.16(17A,22) Personally identifiable information. The department maintains systems of records which contain personally identifiable information.

5.16(1) *Rule making.* Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information. It cannot be retrieved by an individual identifier. It is not stored in a computer system.

During the rule-writing process, committees are occasionally used to gather basic information. Minutes of committee meetings are available for public inspection. The minutes are retained. Minutes of meetings are not retrievable by personal identifier. Minutes collected and stored in the health facilities division are available from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, in compliance with Iowa Code section 135C.14.

5.16(2) *Appeals and fair hearings division.* Contested case records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records.

Records are collected by authority of Iowa Code section 10A.202. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded on magnetic cassette tapes or in written transcripts.

5.16(3) *Appellate defender.* By authority of Iowa Code chapter 13B, the appellate defender maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases, and are maintained in paper files. Case information is not stored in a data processing system and cannot be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the appellate defender shall not disclose the names of child victims. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

Litigation 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's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain material which is 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 copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

5.16(4) *Audits division.* Paper files stored according to a person's or company's name are collected for purposes of auditing gaming, beer, wine, liquor, or real estate licenses. In each case the name of the licensee is part of the record. The list below shows Iowa Code authority for collection of information about those who hold:

Gaming licenses, 99B.2(2)
Beer permits, 123.138
Liquor control licenses, 123.33
Wine permits, 123.185
Real estate broker licenses, 543B.46

The audits division can also access computer records about real estate brokers or sales people by name. The data processing system is owned by the department of commerce. Historical information regarding licensure, audits, and disciplinary action is stored in this system.

All of these records are used to conduct audits according to Iowa Code section 10A.302.

5.16(5) *Investigations division.* Paper and data processing files are stored and are retrievable using a name, social security number, or state identification number. Computer records are also kept on microfiche. Personal computer floppy disks are used to monitor referral information and civil or small claims actions.

All records are collected and stored by the investigations division pursuant to Iowa Code section 10A.402. All records are collected to decrease mispayments in human services programs or to help collect funds paid in error.

Comparisons between record systems are explained in rule 481—71.8(10A).

5.16(6) *Inspections division.*

a. By authority of Iowa Code chapters 232 and 217, child protective investigation records are collected in paper files and may contain names and social security numbers of people involved in child protective investigations. The division does not compare these records with information on a data processing system.

b. Names or social security numbers collected during license processing are stored in paper and computer files pursuant to Iowa Code section 10A.501(2).

c. The records in health facilities are not retrievable by personal identifier. A list of records considered confidential is available in rule 481—50.8(10A).

These rules are intended to implement Iowa Code sections 10A.105, 22.7, 22.11, 135B.12, 135C.19, 217.30 and 272C.6.

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[Filed emergency 11/30/95—published 12/20/95, effective 11/30/95]

CHAPTER 6

481—Chapter 6 amended and transferred to 481—Chapter 73, effective 11/11/87.

CHAPTER 10
CONTESTED CASE HEARINGS

[Prior to 2/10/88, see Inspections and Appeals Department[481],Ch 4]

481—10.1(10A) Definitions.

"Administrative law judge (ALJ)" means the person who presides over contested cases and other proceedings.

"Agency" means the agency as defined in Iowa Code subsection 17A.2(1) which has original subject matter jurisdiction in the contested case.

"Appointing authority" means the appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person's designee or in the case of gubernatorial appointees, the governor.

"Board" means a licensing board as defined in Iowa Code chapter 272C.

"Department" means the department of inspections and appeals (DIA).

"Division" means the division of administrative hearings in the department of inspections and appeals.

"Ex parte" means a communication, oral or written, to an ALJ or other decision maker in a contested case without notice and an opportunity for all parties to be heard.

"Filing" is defined in subrule 10.12(3) except where otherwise specifically defined by law.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means.

"Party" means a party as defined in Iowa Code subsection 17A.2(5).

"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 agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

"Presiding officer" means, as used in the code of administrative judicial conduct, all persons who preside in contested case proceedings under Iowa Code section 17A.11(1) as amended by 1998 Iowa Acts, chapter 1202, section 15.

"Proposed decision" means the administrative law judge's recommended findings of fact, conclusions of law, and decision and order in contested cases where the agency did not preside.

481—10.2(10A,17A) Time requirements. Time shall be computed as provided in Iowa Code subsection 4.1(22). For good cause, the administrative law judge may extend or shorten the time to take any action, except as provided otherwise by rule or law.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.3(10A) Requests for a contested case hearing. Requests for a contested case hearing are made to the agency with subject matter jurisdiction. That agency shall determine whether to initiate a contested case proceeding.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.4(10A) Transmission of contested cases.

10.4(1) In every proceeding filed with the division, the agency shall complete a transmittal form. The following information is required:

a. The name of the transmitting agency;

b. The name, address and telephone number of the contact person in the transmitting agency;

c. The name or title of the proceeding, which may include a file number;

d. Any agency docket or reference number;

e. A citation to the jurisdictional authority of the agency regarding the matter in controversy;

f. Any anticipated special features or requirements which may affect the hearing;
g. Whether the hearing should be held in person or by telephone conference call;
h. Any special legal or technical expertise needed to resolve the issues in the case;
i. The names and addresses of all parties and their attorneys or other representatives;
j. The date the request for a contested case hearing was received by the agency;
k. A statement of the issues involved and a reference to statutes and rules involved;
l. Any mandatory time limits that apply to the processing of the case;
m. Earliest appropriate hearing date; and
n. Whether a petition or answer is required.

10.4(2) The agency and the department determine by agreement whether the agency or the department shall issue the notice of hearing.

a. If agreed by the agency and the department, the agency shall attach a notice of hearing to the transmittal form.

b. If the division by agreement issues the notice of hearing, the agency must provide the information required by Iowa Code section 17A.12(2) (except for the date, time and place of the hearing) for inclusion in the notice.

c. The agency, and not the division, shall prepare:
(1) The citation to the jurisdictional authority of the agency regarding the matter in controversy;
(2) A statement of the issues involved;
(3) A reference to statutes and rules involved; and
(4) The remaining information required by the transmittal form as stated in subrule 10.4(1).

10.4(3) The following documents shall be attached to the completed transmittal form when it is sent to the division:
a. A copy of the document showing the agency action in controversy; and
b. A copy of any document requesting a contested case hearing.

10.4(4) When a properly transmitted case is received, it is marked with the date of receipt by the division. An identifying number shall be assigned to each contested case upon receipt.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.5(17A) Notices of hearing.

10.5(1) Responsibility for issuance of notice of hearing and the manner of service shall be resolved by agreement between the division and the transmitting agency.

10.5(2) Notices of hearing shall contain the information required by Iowa Code subsection 17A.12(2) and any additional information required by statute or rule. Notices shall be served by first-class mail, unless otherwise required by statute or rule, or agreed pursuant to subrule 10.5(1).

This rule is intended to implement Iowa Code sections 17A.12(1) and 17A.12(2).

481—10.6(10A) Waiver of procedures. Unless otherwise precluded, the parties in a contested case may waive any provision of this chapter pursuant to Iowa Code section 17A.10.

This rule is intended to implement Iowa Code section 10A.202(2).

481—10.7(10A,17A) Telephone proceedings. A prehearing conference or a hearing may be held by telephone conference call pursuant to a notice of hearing or an order of the ALJ. The division shall determine the location of the parties and witnesses in telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when location is chosen.

481—10.8(10A,17A) Scheduling. Contested case hearings are scheduled according to the following criteria:

10.8(1) *Agency hearings.* The division shall promptly schedule hearings. The availability of an administrative law judge and any special circumstances shall be considered.

10.8(2) *Board hearings.* Boards are requested to consult with the division prior to scheduling hearings to determine the availability of an administrative law judge. The board shall determine the time and place of hearing.

481—10.26(10A,17A,272C) Board hearings. In scheduling hearings, boards should consult with the division to determine the availability of an ALJ. The board shall determine the time and place of hearing. At the request of the board, an ALJ shall assist in the conduct of a contested case.

10.26(1) The ALJ may rule on preliminary matters, including motions, and conduct prehearing conferences referred by the board.

10.26(2) The ALJ may conduct the hearing for the board, and may, when delegated by the board, perform duties including, but not limited to, the following:

a. Open the record and receive appearances;
b. Administer oaths and issue subpoenas;
c. Enter the notice of hearing into the record;
d. Enter the statement of charges into the record;
e. Receive testimony and exhibits presented by the parties;
f. Rule on objections and motions;
g. Close the hearing; and
h. Prepare findings of fact, conclusions of law and decision and order.

This rule is intended to implement Iowa Code sections 10A.202, 17A.11 and 272C.6.

***481—10.27(10A) Transportation hearing fees.** Any hearing on an application required by Iowa Code Supplement chapter 325A shall require:

10.27(1) The applicant and any persons objecting to the granting of a certificate to submit a hearing fee of $350 to be shared equally to cover payment of all costs and expenses of the hearing. The department may require additional amounts as necessary and shall provide a written itemized account of all additional expenses to the parties. The hearing fee shall be made by check payable to the Iowa Department of Inspections and Appeals.

10.27(2) The hearing fee to be received no later than 14 days after the notice of hearing, unless otherwise ordered. Failure to timely submit the hearing fee may result in cancellation of the hearing and denial of the application.

10.27(3) If a scheduled hearing is canceled, that the hearing fee, less expenses incurred by the department, be refunded to the payers. This shall not be interpreted to authorize a refund to an applicant who fails to appear at a scheduled hearing.

10.27(4) The applicant and any persons objecting to the granting of a certificate to submit a hearing fee of $150 to be shared equally if the hearing is held by a summary proceeding conducted without a personal appearance before the ALJ and where pleadings, affidavits, records, or other documents are submitted to the division for a decision by an ALJ.

481—10.28(10A) Recording costs. The department may provide a copy of the tape-recorded hearing or a printed transcript of the hearing when a record of the hearing is requested. The cost of preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

481—10.29(10A) Code of administrative judicial conduct. The code of administrative judicial conduct is designed to govern the conduct, in relation to their adjudicative functions in contested cases, of all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1) as amended by 1998 Iowa Acts, chapter 1202, section 15. The canons are rules of reason. The canons shall be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The canons must be harmonized with the dictates of the administrative process as established by the legislature. This code is to be construed so as to promote the essential independence of presiding officers in making judicial decisions.

*Hearing fees under jurisdiction of Department of Transportation [761] prior to 5/16/90. See IAB 6/26/91 for rescission of 761—525.5(3) and 528.4(3).

Whether disciplinary action is appropriate, and the degree of discipline to be imposed, shall be determined by the appointing authority through a reasonable and reasoned application of the text and shall depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of improper activity on others or on the administrative system. This code is not designed or intended as a basis for civil liability or criminal prosecution.

10.29(1) *Canon 1.* A presiding officer shall uphold the integrity and independence of the administrative judiciary.

a. An independent and honorable administrative judiciary is indispensable to justice in society.

b. A presiding officer shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved.

c. The provisions of this code are to be construed and applied to further that objective.

10.29(2) *Canon 2.* A presiding officer shall avoid impropriety and the appearance of impropriety in all adjudicative functions in contested cases.

a. A presiding officer shall respect and comply with the law and at all times shall act in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

b. A presiding officer shall not allow family, social, political, or other relationships to influence the presiding officer's judicial conduct or judgment. This provision shall not be construed as prohibiting the development of public policy by contested case adjudication. A presiding officer shall not lend the prestige of the office to advance the private interests of the presiding officer or others; nor shall a presiding officer convey or permit others to convey the impression that they are in a special position to influence the presiding officer.

c. A presiding officer shall not hold membership in any organization that the presiding officer knows practices invidious discrimination on the basis of race, sex, religion or national origin.

10.29(3) *Canon 3.* A presiding officer shall perform the duties of the office impartially and diligently.

a. *Adjudicative responsibilities.* A presiding officer in the performance of adjudicative duties in contested case proceedings shall follow these standards:

(1) A presiding officer shall be faithful to the law, unswayed by partisan interests, public clamor, or fear of criticism.

(2) A presiding officer shall maintain order and decorum in proceedings before the presiding officer.

(3) A presiding officer shall be patient, dignified, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the presiding officer deals in an official capacity, and shall require similar conduct of attorneys, representatives, staff members and others subject to the presiding officer's direction and control.

(4) A presiding officer shall not, in the performance of adjudicative duties by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon sex, race, national origin or ethnicity and shall not permit staff and others subject to the presiding officer's direction and control to do so.

(5) A presiding officer shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte communications as to substantive matters concerning a pending or impending proceeding.

This subparagraph (5) is not applicable to agency heads or members of multimember agency heads when they act as presiding officers.

(6) A presiding officer shall dispose of all adjudicative matters promptly, efficiently and fairly.

(7) A presiding officer shall abstain from public comment about a pending or impending contested case proceeding that might reasonably be expected to affect the outcome or impair the fairness of the proceeding, and shall require similar abstention by agency personnel subject to the presiding officer's direction and control. This subparagraph does not prohibit a presiding officer from making public statements in the course of official duties or from explaining for public information the hearing procedures of agencies.

(8) A presiding officer shall not disclose or use, for any purpose unrelated to adjudicative duties, nonpublic information acquired in an adjudicative capacity.

This subparagraph (8) is not applicable to agency heads or members of multimember agency heads when they act as presiding officers.

(9) A presiding officer shall report any violation of this code to the appropriate authority for any disciplinary proceedings provided by law.

b. Disqualification. 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:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

(3) 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;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) 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;

(6) 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 an attorney 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

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

c. Disclosure on record. In a situation where a presiding officer knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, the presiding officer shall disclose the relevant information on the record and shall state reasons why voluntary withdrawal is unnecessary.

10.29(4) *Canon 4.* A presiding officer shall regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

In general, a presiding officer shall conduct all of the presiding officer's extrajudicial activities so that they do not:

1. Cast reasonable doubt on the presiding officer's capacity to act impartially as a judge;
2. Create the appearance of impropriety or demean the adjudicative office; or
3. Interfere with the proper performance of adjudicative duties.

This subrule, 10.29(4), is not applicable to agency heads or members of multimember agency heads when they act as presiding officers.

These rules are intended to implement Iowa Code sections 10A.104, 10A.202, 17A.10 to 17A.17, 17A.19, 17A.22, 272C.1 and 272C.6.

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[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 11
INVESTIGATIONS AND HEARINGS RELATING TO PROFESSIONAL LICENSURE WITHIN THE DEPARTMENT OF PUBLIC HEALTH

[Prior to 2/10/88, see Inspections and Appeals Department[481]Ch 5]
Rescinded IAB 7/29/98, effective 9/2/98

CHAPTERS 12 to 19
Reserved

**Effective date of first unnumbered paragraph of Ch 10, Scope and applicability, delayed 70 days by the Administrative Rules Review Committee at its 6/13/90 meeting; this paragraph rescinded IAB 8/22/90, effective 8/1/90.

STATE PUBLIC DEFENDER[493]

Created within the Department of Inspections and Appeals[481] by Iowa Code section 13B.2

CHAPTER 2
PETITIONS FOR RULE MAKING

The state public defender adopts the petitions for rule making segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code with the following amendments:

493—2.1(17A) Petition for rule making. In lieu of the words "(designate office)", insert "the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087".

In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

"BEFORE THE STATE PUBLIC DEFENDER"

493—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087.

These rules are intended to implement Iowa Code section 17A.7.

[Filed emergency 10/7/92 after Notice 8/19/92—published 10/28/92, effective 10/7/92]

CHAPTER 3
DECLARATORY ORDERS

The state public defender adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

493—3.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "state public defender". In lieu of the words "(designate office)", insert "the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE STATE PUBLIC DEFENDER

493—3.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days". In lieu of the words "(designate agency)", insert "state public defender".

493—3.3(17A) Intervention.

3.3(1) In lieu of the words "within ___ days", insert "within 15 days". Strike the words "(after time for notice under X.2(17A)". In lieu of the number "X.8(17A))", insert "3.8(17A)".

3.3(2) In lieu of the words "(designate agency)", insert "state public defender".

3.3(3) In lieu of the words "(designate office)", insert "the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087". In lieu of the words "(designate agency)", insert "state public defender". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE STATE PUBLIC DEFENDER

493—3.4(17A) Briefs. In lieu of the words "(designate agency)", insert "state public defender".

493—3.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087".

493—3.6(17A) Service and filing of petitions and other papers.

3.6(2) In lieu of the words "(specify office and address)", insert "the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087". In lieu of the words "(agency name)", insert "state public defender".

3.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 481—10.12(17A)".

493—3.7(17A) Consideration. In lieu of the words "(designate agency)", insert "state public defender".

493—3.8(17A) Action on petition.

3.8(1) In lieu of the words "(designate agency head)", insert "state public defender".

3.8(2) In lieu of the words "(contested case uniform rule X.2(17A))", insert "rule 481—10.1(10A)".

493—3.9(17A) Refusal to issue order.

3.9(1) In lieu of the words "(designate agency)", insert "state public defender".

493—3.12(17A) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "state public defender".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, section 13.

[Filed emergency 10/7/92 after Notice 8/19/92—published 10/28/92, effective 10/7/92]

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 4
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The state public defender adopts the fair information practices segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code with the following amendments:

493—4.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "state public defender".

493—4.3(17A,22) Requests for access to records.

4.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "state public defender". In lieu of the words "(insert agency name and address)", insert "Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087".

4.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays".

4.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "one hour".

493—4.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the office of the state public defender".

493—4.9(17A,22) Disclosures without the consent of the subject.

4.9(1) Open records are routinely disclosed without the consent of the subject.

4.9(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 the consent of the subject:

a. For a routine use as defined in rule 4.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency 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 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.

d. To the legislative fiscal bureau under Iowa Code section 2.52.

e. Disclosures in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

493—4.10(17A,22) Routine use. "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.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the agency 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 legitimate need to use confidential records.

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

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

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

493—4.11(17A,22) Consensual disclosure of confidential records.

4.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 4.7(17A,22).

4.11(2) *Complaints to public officials.* A letter from the 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 agency 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.

493—4.12(17A,22) Release to subject.

4.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 4.6(17A,22). The agency need not release the following records to the subject:

a. The identity of a person providing information to the agency 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. (See Iowa Code section 22.7(5).)

d. Others authorized by law.

4.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the state public defender may take reasonable steps to protect confidential information relating to another subject.

493—4.13(17A,22) Availability of records.

4.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

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

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

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

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

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

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Criminal investigative reports. (Iowa Code section 22.7(5))

h. Any other records considered confidential by law.

493—4.14(22) Personally identifiable information. The state public defender maintains systems of records which contain personally identifiable information.

4.14(1) By authority of Iowa Code chapter 13B, the appellate defender division maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases and are maintained in paper files. Case information is not stored in a data processing system and cannot be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the names of child victims shall not be disclosed. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

4.14(2) *Litigation files.* Litigation files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's 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 copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

4.14(3) *Contracts.* Contractual agreements are maintained by the state public defender. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address, and social security number of the contracting attorney. Other information in these records may include the proposal of the contracting attorney, budget figures, correspondence, and business information. Personally identifiable information is not contained in a data processing system.

4.14(4) *Personnel files.* Personnel files contain 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).

493—4.15(17A,22) Other groups of records. Other groups of records are maintained by the state public defender other than the records described in rule 4.14(22). These records are routinely available to the public; however, the agencies' files may contain confidential information. The records may contain information about individuals. All records are stored on paper and in some cases in automated data processing systems.

4.15(1) *Rule making.* 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 available for public inspection and is not stored in an automated data processing system.

4.15(2) *Commission records.* Agendas, minutes, and materials presented to the indigent defense advisory commission are available from the office of the state public defender, except those records concerning closed sessions exempt under Iowa Code section 21.5(4). Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

4.15(3) *Statistical reports.* Periodic reports on the state public defender system and the delivery of indigent defense services are available from the office of the state public defender.

4.15(4) *Address lists.* The names and mailing addresses of members of the indigent defense advisory commission are maintained by the office of the state public defender.

These rules are intended to implement Iowa Code sections 17A.3, 22.7 and 22.11.

[Filed emergency 10/7/92 after Notice 8/19/92—published 10/28/92, effective 10/7/92]

CHAPTER 5
AGENCY PROCEDURE FOR RULE MAKING

The state public defender adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

493—5.3(17A) Public rule-making docket.

5.3(2) *Anticipated rule making.* In lieu of the words "(commission, board, council, director)", insert "state public defender".

493—5.4(17A) Notice of proposed rule making.

5.4(3) *Copies of notices.* In lieu of the words "(specify time period)", insert "one calendar year".

493—5.5(17A) Public participation.

5.5(1) *Written comments.* Strike the words "(identify office and address) or".

5.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the office of the state public defender at (515)242-6158".

493—5.6(17A) Regulatory analysis.

5.6(2) *Mailing list.* In lieu of the words "(designate office)", insert "the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087".

493—5.10(17A) Exemptions from public rule-making procedures.

5.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"*a.* Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"*b.* Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

"*c.* Rules which confer a benefit or remove a restriction on licensees, the public or some segment of the public;

"*d.* Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"*e.* Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

493—5.11(17A) Concise statement of reasons.

5.11(1) *General.* In lieu of the words "(specify the office and address)", insert "the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087".

493—5.13(17A) Agency rule-making record.

5.13(2) *Contents.*

c. In lieu of the words "(agency head)", insert "state public defender".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTERS 6 to 9
Reserved

MANAGEMENT DEPARTMENT[541]

[Created by 1986 Iowa Acts, chapter 1245, section 103]
Divisions under this "umbrella" include: Appeal Board, State [543], City Finance Committee [545], and County Finance Committee [547].

CHAPTER 1
ORGANIZATION AND OPERATION

541—1.1(8) Purpose. This chapter describes the organization and operation of the department of management (hereafter referred to as the "department"), including the coordination of the policy planning, management of interagency programs, economic reports and program development.

541—1.2(8) Scope of the rules. The rules for the department are promulgated under Iowa Code chapter 8 and 1986 Iowa Acts, chapter 1245, sections 101 to 121 and shall apply to all matters before the department. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the various divisions of the department from any duty under the law of this state.

541—1.3(8) Waiver. The purpose of these rules is to facilitate the business before the department and to promote a just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided for by law, may be waived by the department to prevent undue hardship to a party, to a departmental proceeding, or to a person transacting business with the department. The reasons for granting a waiver of an administrative rule shall be stated in writing and shall be made a part of the record of the proceeding or a part of the departmental file in other matters.

541—1.4(8) Duties of the department. The department of management plans, develops, and recommends policy decisions for management of state government; administers local budget laws (cities, counties, and schools); oversees and ensures compliance with affirmative action; implements policies through coordination and budget processes; and monitors and evaluates the consistent, efficient, and effective operation of state government. The department consists of the director's office, the Iowa Washington, D.C. office, administrative services division, five planning/budgeting divisions, and the following agencies or boards: state appeal board, criminal and juvenile justice planning agency, city finance committee, county finance committee, and the Iowa advisory commission on intergovernmental relations.

541—1.5(8) Definitions.

"City budget" means the budget adopted by city officials which incorporates specified requirements as stated in Iowa Code section 384.16.

"Contract compliance director" means the individual designated to oversee and impose sanctions in connection with state programs emphasizing equal opportunity through affirmative action, contract compliance policies and procurement set-aside requirements.

"County budget" means the budget adopted by the board of supervisors pursuant to Iowa Code chapter 331.

"Department" means the department of management.

"Director" means the director of the department of management as appointed by the governor and subject to senate confirmation.

"Employing agency" means an agency or department of the state of Iowa.

"History of the state employment data" means the agencies, salaries, job classifications, and dates of employment by the state of Iowa of a named individual.

"Individual data" means all personally identifiable information not included in the definition of "history of the state employment data."

"Management director" means the director of designated clusters of state agencies and the director of local budgets, as appointed by the director of the department of management.

"Nonproprietary records" means those records which are in the possession of the department but which are generated for the purposes of other units of government.

"Proprietary records" means all records in the possession of the department which are generated by and are for the primary use of the department's office.

"Summary data" means the information that is presented in such a manner as to preclude the identification of an individual by name or other identifier.

1.5(1) *State appeal board—fees.* The state appeal board considers the protests of local government budgets, as well as all general and tort claims against the state, as interpreted by the three members: treasurer of state, auditor of state and director of the department of management which implements proper procedures as assigned by Iowa Code chapter 24.

The processing fee for filing a general claim with the state appeal board is $5 which shall be billed and paid quarterly by the state agency which incurred the liability of the claim. This fee shall not be reimbursable from the vendor to the state agency.

1.5(2) *Criminal and juvenile justice planning agency.* Rescinded IAB 9/1/93, effective 8/9/93.

1.5(3) *City finance committee.* The city finance committee promulgates rules relating to city budget amendments, establishes guidelines for the capital improvement program, reviews and comments on city budgets and conducts studies of municipal revenues and expenditures as specified in Iowa Code section 384.15.

1.5(4) *County finance committee.* The county finance committee establishes guidelines for program budgeting and accounting, reviews and comments on county budgets, and conducts studies of county revenues and expenditures. In addition, the committee performs other duties as assigned by law pursuant to Iowa Code section 333A.4.

1.5(5) *Iowa advisory commission on intergovernmental relations.* Rescinded IAB 9/1/93, effective 8/9/93.

This rule is intended to implement Iowa Code section 8.6 and section 25.1 as amended by 1993 Iowa Acts, chapter 180, section 72.

541—1.6(8) Central office and communications. Correspondence and communications with the department of management shall be addressed or directed to the department's office located in Room 12, State Capitol Building, Des Moines, Iowa 50319; telephone (515)281-3322.

1.6(1) Correspondence and communication with the state board of appeals shall be addressed to its central office in Room 12, State Capitol Building, Des Moines, Iowa 50319; telephone (515)281-3322.

1.6(2) Correspondence and communications with the criminal and juvenile justice planning agency shall be addressed to Executive Hills East, Suite 205, Des Moines, Iowa 50319; telephone (515)281-3241.

1.6(3) Correspondence and communications with the county finance committee shall be addressed to Room 12, State Capitol Building, Des Moines, Iowa 50319; telephone (515)281-3322.

1.6(4) Correspondence and communications with the advisory commission on intergovernmental relations shall be addressed to Room 12, State Capitol Building, Des Moines, Iowa 50319; telephone (515)281-3322.

1.6(5) Correspondence and communications with the city finance committee shall be addressed to Room 12, State Capitol Building, Des Moines, Iowa 50319; telephone (515)281-3322.

541—1.7(8) Access to official records and information.

1.7(1) *Availability.* Unless prohibited by the Code, the department will provide, upon request, any records in any existing form. The department may require the submission of a written request specifying the records requested. The department will endeavor to supply all requests for records in a timely fashion. In the event that a request cannot be fulfilled within a reasonable time, the requester will be so notified and an estimated completion date will be provided. For nonproprietary records, the department is only a repository and is not the "lawful custodian" of the records under the meaning of Iowa Code chapter 22. Nonproprietary records shall be provided only to the unit of state government which is the lawful custodian of such records under Iowa Code chapter 22.

1.7(2) *Cost.* Records will be provided at the cost to the state of producing or reproducing the records, including an appropriate administrative charge. Payment will be accepted only for records which can be provided at the time of the request. A deposit may be required in advance of actual production.

For nonautomated records, there will be a charge of 20 cents per copy whenever a copy machine is used. A maximum of five copies of each original document will be allowed to be made on the department's copy machine. The copy machine will not be used for documents secured from other than the department's records. The records may not be altered, damaged, resequenced, or otherwise disturbed in the process of copying.

The examination of these records and the use of the copy machine to make copies of these records shall be available for public use during customer business hours (Monday to Friday, 8 a.m. to 4:30 p.m., except legal holidays). The examination and the use of the copy machines shall be done under the supervision of an employee designated by the director of the appropriate division.

1.7(3) *New records.* Requests for records which cannot be reproduced without new programming are considered requests for new records. It may not be possible to honor such requests on a timely basis. If, however, there are existing records which contain the information requested, the requester will be advised of their existence.

Where such records are provided to the lawful custodian to fulfill the request of a third party, the unit of state government which is the lawful custodian of the records shall reimburse the department for the cost of producing or reproducing the records. The lawful custodian must inform the department that a request is being processed for a third party.

541—1.8(8) Access to data in the personnel management information system.

1.8(1) *Organization.* There shall be a personnel management information system board of review consisting of an appointed representative from each of (1) the department of management; (2) the institutions governed by the board of regents; (3) the department of general services; (4) the department of transportation; and (5) the department of revenue and finance; and (6) the department of personnel. This board will recommend an administrator who will be the contact person for securing any information from the system. The price for the production of a requested report will be the cost as determined by the data processing division of the department of general services. Billings will be accomplished under the rules established by the department of general services.

1.8(2) To secure information from the system, requests must be in writing and submitted to the administrator, department of management.

These rules are intended to implement Iowa Code section 8.6 and section 25.1 as amended by 1993 Iowa Acts, chapter 180, section 72.

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CHAPTERS 2 and 3
Reserved

CHAPTER 4
CONTRACT COMPLIANCE

541—4.1(19B) Responsibilities. The department of management is responsible for the administration and promotion of equal opportunity in all state contracts and services. It is also responsible for the prohibition of discriminatory and unfair practices within any program receiving or benefiting from state financial assistance in whole or in part.

4.1(1) The department of management shall:

a. Establish for all state agencies and departments a contract compliance policy applicable to state contracts, services, and programs receiving or benefiting from state financial assistance.

b. Adopt administrative rules to implement the contract compliance policy.

c. Monitor the actions of state agencies to ensure compliance in

(1) The equitable provision of services within state programs;

(2) Nondiscrimination in employment by state contractors and subcontractors;

(3) The utilization of minority and women business enterprises and disadvantaged business enterprises as sources of supplies, equipment, construction, and services.

d. Consider appropriate sanctions on individual state agencies and departments including the state board of regents and its institutions to ensure compliance with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and procurement set-aside programs.

e. Report results of contract compliance to the governor and the general assembly annually.

4.1(2) Reserved.

541—4.2(19B) Purpose and scope. The rules set forth in this part contain the procedures established by the department of management for carrying out the responsibilities stated in Iowa Code section 19B.7 and Executive Order Number 15, Article VIII[1973].

Equal opportunity functions and responsibilities by the director of the department of management are hereby delegated to the appropriate staff.

541—4.3(19B) Policy. It is the policy of the state of Iowa to promote equal opportunity in all state contracts and services and to provide leadership in affirmative action to assure fair and equitable participation within all programs receiving or benefiting from state financial assistance in whole or in part.

4.3(1) Therefore, no individual, except as specifically authorized by law, shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program receiving or benefiting from state financial assistance because of race, creed, color, religion, sex, national origin, age, physical or mental disability as authorized by rule.

4.3(2) Rescinded, IAB 7/27/88, effective 8/31/88.

4.3(3) As authorized by rule, departments utilizing "state financial assistance," as defined in rule 4.4(19B), must develop and submit a plan to utilize women and minority business enterprises in the purchase of supplies, equipment, construction, and services.

541—4.4(19B) Definitions. Words and terms not defined below shall have the ordinary meaning given to them in Iowa Code chapter 4, unless the construction would be inconsistent with the manifest intent of the general assembly.

"Affirmative action" means action appropriate to overcome the effects of past or present practices, policies or other barriers to equal employment opportunity.

"Contract compliance" means to conform with the applicable state equal opportunity rules and laws while performing a state contract or agreement.

"DBE" means disadvantaged business enterprise.

"DOM" means department of management.

"MBE" means minority business enterprise.

"Minority, women's, and disadvantaged business enterprises" shall have the same meaning as the term is used in Iowa Code section 15.102(5): a small business which is 51 percent or more owned, operated, and actively managed by one or more women or minority persons. As used in this subsection, "minority person" means an individual who is a Black, Hispanic, Asian, or Pacific Islander, or American Indian or Alaskan native.

"Protected class" means racial or ethnic minorities, sex, age, creed, color, national origin, religion, or mental and physical disability.

"State financial assistance" means any state moneys which pass through a state department to other entities for the purpose of funding public improvements or programs providing a public service where there may be opportunities for purchasing supplies, equipment, construction, and services.

State financial assistance as defined in this program does not include:

1. Moneys subject to the requirements of Iowa Code sections 73.16 to 73.21.
2. State and federal matching dollars where federal guidelines are more stringent than state requirements.
3. Tax credit, tax replacements and fee refunds.
4. State mandated formula distribution.
5. Benefits paid directly to individuals.

"Subcontractor" means any person (other than a person who is an employee of the contractor) who has agreed or arranged with a contractor to undertake a portion of the contractor's obligations or the performance of work in connection with a state contract.

"WBE" means women business enterprise.

541—4.5(19B) Contract compliance.

4.5(1) Equitable provision of service. Except where authorized by law, no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any state program or any program receiving or benefiting from state financial assistance because of race, creed, color, religion, sex, national origin, age, or disability. Programs and activities affected shall include but not be limited to the following:

State services and facilities,

State employment service,

State contracts and subcontracts,

State licensing and regulatory agencies,

State financial assistance.

4.5(2) Nondiscrimination in employment by contractors and subcontractors.

a. Every official who is authorized to make contracts or subcontracts for public works or for goods or services shall cause to be inserted into every contract or subcontract a clause in which the contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state law, executive orders and rules of the department of management, which pertain to equal employment opportunity and affirmative action.

b. Every state official who is responsible to the governor and who is authorized to make contracts or subcontracts for public works or for goods or services shall cause to be inserted into every contract a clause which states the contractor or subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of them shall be regarded as a material breach of contract.

c. Each state contract shall provide that compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of management prior to the execution of the contract shall be a condition of the contract or agreement binding upon the contractor or service provider, its successors, and assignees. The contract shall further provide that failure to fulfill the nondiscrimination requirements of this contract or any of the rules and orders may cause the contract to be canceled, terminated, or suspended in whole or in part, and the contract or service provider may be declared ineligible for future state contracts in accordance with authorized procedure or the contractor may be subject to other sanctions as provided by law or rule.

d. Contractors, vendors, suppliers doing business with the state in excess of $5,000 annually and employing 50 or more full-time employees may be required to submit to the department of management or the contracting agency a copy of their affirmative action plan containing goals and time specifications.

e. Compliance shall be determined by a comprehensive review and evaluation of a contractor's employment policies and practices and shall depend on an analysis of all relevant factors including the following:

(1) The contractor's publicly stated and posted policy regarding equal employment opportunity.

(2) The contractor's external dealings with unions, employment agencies, newspapers, and other sources of employees.

(3) The methods by which and places where the contractor seeks to recruit employees.

(4) The contractor's use of tests and qualifications for positions which are job related and not culturally biased.

(5) Classification and compensation plans which apply equally to all employees.

(6) Training programs which provide all persons, including those in protected classes, with an equal opportunity to qualify for employment and advancement.

(7) The effectiveness of the contractor's affirmative action program as evidenced, in part, by the number of protected classes employed at all levels, taking into account the geographical location of the contractor's work force.

f. The judgment regarding compliance shall be favorable if it is determined that the contractor is working affirmatively toward extending opportunities for members of the protected classes and is not discriminating against them.

g. Contractors must be able to demonstrate to the satisfaction of the department of management or the contracting agency that their affirmative action program is productive.

4.5(3) Procedures.

a. Contractors may be required to submit reports as requested by the department of management. The report forms shall be as brief as possible and designed to elicit relevant information about employment practices. The department of management may request other relevant information from a contractor at any time.

b. The department of management may solicit and compile additional information about present and prospective contractors from any reliable source including the Iowa civil rights commission, department of economic development, and other state and federal agencies.

c. The department of management may systematically review the reports and all other available information concerning the employment practices of present and prospective contractors. Whenever there is reasonable doubt, based on the reports and information as to whether or not a contractor is discriminating or is failing to take affirmative action in compliance with department of management policy:

(1) The department of management may undertake a compliance review of the contractor.

(2) Every reasonable effort shall be made to secure compliance through conciliation and persuasion.

(3) The burden shall be on the contractor to demonstrate compliance and eligibility to do business with the state.

d. If any investigation or compliance evaluation discloses that a contractor has discriminated or has failed to take affirmative action, the director of the department of management, in consultation with the contract compliance manager, may request the contracting agency to pursue all contract remedies authorized by law.

4.5(4) Utilization of minority and women business enterprises as sources of supplies, equipment, construction and service.

a. Every executive department responsible for "state financial assistance" as defined in rule 4.4(19B), which is spent by other entities to purchase supplies, equipment, construction, and services totaling in excess of $100,000 annually, shall submit a plan to the department of management showing how minority and women businesses will be utilized as sources of these purchases.

b. The plan shall include, but not be limited to:

(1) The combined annual fiscal year dollar value of these purchases.

(2) The combined anticipated annual fiscal year dollar value of minority and women business participation in these purchases.

(3) A description of the means by which minority and women business participation will be measured.

(4) A description of actions the agency and those receiving state financial assistance will take to ensure the utilization of women and minority businesses.

c. The initial plan shall be submitted to the department of management no later than July 1, 1988; updates and adjustments should be submitted as conditions warrant.

541—4.6(19B) Monitoring.

4.6(1) Each agency and department having purchasing authority, except the state board of regents, shall submit to the department of management an annual contract compliance report beginning August 15, 1988, consisting of the names of contractors, vendors, and suppliers, who had done business with the agency in excess of $5,000 during the preceding fiscal year.

4.6(2) Each agency and department submitting a minority and women business utilization plan as required in 4.5(4)*"a"* shall provide the department of management a semiannual plan progress report beginning in January 1989.

4.6(3) DOM shall coordinate monitoring efforts by:

1. Providing a master list to agencies of companies whose affirmative action plans have been received.
2. Informing each agency of the compliance status of all companies that have been reviewed.

541—4.7(19B) Sanctions. The department of management may impose appropriate sanctions on individual state agencies and departments, including the state board of regents and its institutions, in order to ensure compliance with the rules. Any state agency or department, including the state board of regents and its institutions, who commit any of the following offenses shall be subject to the penalties outlined herein.

4.7(1) The offenses include:

a. Falsifying information to the department of management in connection with contract compliance matters.

b. Willfully failing to comply with the regulations and willfully failing to report suspected violations of the rules to the DOM.

c. Aiding, abetting, or assisting a private person in violating any of the provisions of the rules.

d. Failing to report suspected fraudulent activities of MBE/WBEs and failing to disqualify fraudulent MBEs or WBEs.

e. Consistent lack of effort to achieve minority and women business participation goals.

4.7(2) Any one or all of the following actions may be taken by the department of management against a state agency, the state board of regents and its institutions, or against state employees who commit any of the offenses listed or who otherwise violate any provision of the rules.

a. The department of management may recommend disciplinary action against the offending state employee.

b. The department of management may take action, as appropriate, to seek to terminate contracts or funding found to be in violation of the rules.

c. The department of management may seek decertification or disqualification of any person or business from bidding on state contracts in connection with Iowa Code sections 19B.7 and 73.16 to 73.21.

d. The department of management may report the violation to the governor or the appropriate legislative committee.

e. The department of management may impose any other sanctions it deems appropriate to ensure compliance with these rules.

541—4.8(19B) Reporting. The department of management shall report annually to the governor and the general assembly the results under the contract compliance policy and rules. The report shall include but not be limited to:

1. Details of specific efforts to promote equal opportunity through state contracts and services;
2. Details of specific efforts to promote, develop, and stimulate the utilization of minority and women's business enterprises/disadvantaged business enterprises in programs receiving or benefiting from state financial assistance;
3. Recommendations regarding strengthening contract compliance activities by state agencies and departments.

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*Effective date of 4.5(2)"c," 4.5(3), and 4.7(2) delayed until the adjournment of the 1988 session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its January 5, 1988 meeting.

CHAPTER 5
PETITIONS FOR RULE MAKING

The department of management incorporates the petitions for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code with the following amendments.

541—5.1(17A) Petition for rule making. In lieu of the words "designate office," insert "Room 12, State Capitol, Des Moines, Iowa 50319." In lieu of the words "AGENCY NAME," the heading on the petition form should read:

BEFORE THE DEPARTMENT OF MANAGEMENT

541—5.3(17A) Inquiries. In lieu of the words "designate official by full title and address," insert "Director, Department of Management, Room 12, State Capitol, Des Moines, Iowa 50319."

These rules are intended to implement Iowa Code section 8.6 and chapter 17A.

[Filed 10/1/87, Notice 5/20/87—published 10/21/87, effective 11/25/87]

CHAPTER 6
DECLARATORY ORDERS

The department of management incorporates the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

541—6.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "department". In lieu of the words "(designate office)", insert "the Director's Office, Department of Management, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE DEPARTMENT OF MANAGEMENT

541—6.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days". In lieu of the words "(designate agency)", insert "the department".

541—6.3(17A) Intervention.

6.3(1) In lieu of the words "within ___ days", insert "within 15 days". Strike the words "(after time for notice under X.2(17A)". In lieu of the number "X.8(17A))", insert "6.8(17A)".

6.3(2) In lieu of the words "(designate agency)", insert "the department".

6.3(3) In lieu of the words "(designate office)", insert "the Director's Office, Department of Management, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(designate agency)", insert "department". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE DEPARTMENT OF MANAGEMENT

541—6.4(17A) Briefs. In lieu of the words "(designate agency)", insert "department".

541—6.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Director, Department of Management, State Capitol, Room 12, Des Moines, Iowa 50319-0015".

541—6.6(17A) Service and filing of petitions and other papers.

6.6(2) In lieu of the words "(specify office and address)", insert "the Director's Office, Department of Management, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(agency name)", insert "department".

6.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 481—10.12(17A)".

541—6.7(17A) Consideration. In lieu of the words "(designate agency)", insert "department".

541—6.8(17A) Action on petition.

6.8(1) In lieu of the words "(designate agency head)", insert "director".

6.8(2) In lieu of the words "(contested case uniform rule X.2(17A))", insert "rule 481—10.1(10A)".

541—6.9(17A) Refusal to issue order.

6.9(1) In lieu of the words "(designate agency)", insert "department".

541—6.12(17A) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "department".

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13.

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[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

The department of management incorporates the agency procedure for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code with the following amendments.

541—7.5(17A) Public participation.

7.5(1) *Written comments.* In lieu of the words "identify office and address," insert "Department of Management, Room 12, State Capitol, Des Moines, Iowa 50319."

7.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the department of management at (515)281-3322".

541—7.6(17A) Regulatory analysis.

7.6(2) *Mailing list.* In lieu of the words "designate office," insert "Department of Management, Room 12, State Capitol, Des Moines, Iowa 50319."

541—7.10(17A) Exemptions from public rule-making procedures.

7.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"*a.* Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"*b.* Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

"*c.* Rules which confer a benefit or remove a restriction on the public or some segment of the public;

"*d.* Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"*e.* Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

541—7.11(17A) Concise statement of reasons.

7.11(1) *General.* In lieu of the words "specify office and address," insert "Department of Management, Room 12, State Capitol, Des Moines, Iowa 50319."

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

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CHAPTER 8
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of management hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

541—8.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)" insert "department of management".

541—8.3(17A,22) Requests for access to records.

8.3(1) *Location of record.* In lieu of the words "(insert agency head)" insert "Director, Department of Management, State Capitol Building, Des Moines, Iowa 50319", and in lieu of the words "(insert agency name and address)", insert "department of management at the above-stated address".

8.3(2) *Office hours.* In lieu of the words "(insert customary office hours of and, if agency does not have customary office hours at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays".

8.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "thirty minutes".

541—8.9(17A,22) Disclosures without the consent of the subject.

8.9(1) Open records are routinely disclosed without the consent of the subject.

8.9(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 8.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency 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 agency 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 fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

541—8.10(17A,22) Routine use.

8.10(1) Defined. "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.

8.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

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

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

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

541—8.11(17A,22) Consensual disclosure of confidential records.

8.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 8.7(17A,22).

8.11(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 agency 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.

541—8.12(17A,22) Release to subject.

8.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 8.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency 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. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

8.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

541—8.13(17A,22) Availability of records.

8.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

8.13(2) *Confidential records.* The department of management may withhold information reflecting departmental budget recommendations for the following fiscal year until it is made public by the governor.

8.13(3) *Authority to release confidential records.* The agency 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 8.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 8.4(3).

541—8.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in rule 8.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

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

541—8.15(17A,22) Other records. The agency maintains a variety of records which do not generally contain information pertaining to named individuals. The agency maintains the following records, not heretofore listed, which do not generally contain personally identifiable or confidential information: Annual reports, press releases, budget information (following presentation by the governor), receipt statements, revenue information, newsletters, public meeting agendas and minutes, budget information relating to cities, counties or school districts, state revenue forecasts, policy information as recommended to the governor, progress review materials and targeted small business compliance reports.

541—8.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that 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 agency which are governed by the rules 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 agency 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 rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed emergency 8/19/88 after Notice 6/15/88—published 9/7/88, effective 8/19/88]

APPEAL BOARD, STATE[543]

Rules transferred from agency number 60 to 543 under the "umbrella" of Management Department pursuant to 1986 Iowa Acts, chapter 1245, section 107

CHAPTER 1
TORT CLAIMS

[Prior to 5/4/88, see Appeal Board, State[60] Ch 1]

543—1.1(25A) Definitions. As used in these rules, *"state agency," "employee of the state," "claim"* and *"award"* bear the definitions ascribed to them in Iowa Code section 25A.2.

"Board" means *"state approved board"* as defined in section 23.1.

"Executive secretary" means executive secretary of the state appeal board.

543—1.2(25A) Meetings of board. The board shall meet at a time and place fixed by the chairman or a majority of the board.

1.2(1) *Orders of board.* The board shall be considered in continuous session for the purpose of entering orders, issuing determinations and making awards.

1.2(2) *Quorum.* A majority of the membership of the board shall constitute a quorum for the transaction of all business. But the compromise, settlement or allowance of any claim in an amount larger than $5,000 shall require the approval of all members of the board and of the district court of Polk County.

1.2(3) *Executive secretary.* The director of the department of management shall appoint an employee of the office to serve as executive secretary of the board.

543—1.3(25A) Form of claims. All claims should be typewritten, but claims printed by hand will be accepted if legible.

1.3(1) *Place of filing.* Claims shall be filed in triplicate with the Department of Management, State Capitol, Des Moines, Iowa 50319.

1.3(2) *Verification.* Claims shall be verified.

1.3(3) *Names and signatures.* A claim shall state thereon the name, address, telephone number, and age of the person making the claim and the name, address and telephone number of the attorney, if any, preparing the claim, and their signatures.

1.3(4) *Designation by number.* The executive secretary shall assign a number to each claim. Thereafter it may be referred to by such a number.

543—1.4(25A) Content. All claims shall set forth information as follows:

1.4(1) *Type of claim.* A claim shall state whether it is against an employee or the state. If the claim is against an employee the name of the employee and the department where employed shall be stated. A separate claim shall be filed for each type by each claimant.

1.4(2) *Description of accident.* State, in detail, all known facts and circumstances attending the damage or injury, identifying persons and property involved and the cause thereof.

1.4(3) *In connection with personal injuries or death.*

a. A detailed description of the nature, extent and duration of any and all injuries.

(1) The names and addresses of any and all physicians, surgeons, dentists or other medical personnel providing treatment or services.

(2) The dates and places of the treatments or services.

(3) The date of the final treatment or service and the name of the physician or other person providing same.

(4) If treatment or services are continuing, the name and address of each physician or other person rendering said treatment or service, and the nature of the treatment or service.

b. The name and address of any hospital in which claimant is or was confined and the dates of admission and discharge.

c. The name and address of any and all persons who have taken the X-rays of claimant, the dates of such X-rays and a statement as to what the X-rays purportedly established.

d. A statement as to any preexisting injury, illness or condition, the nature of such preexisting injury, illness or condition, and the name and present address of each physician or other person who has rendered or who is rendering treatment for such disability.

e. If employed at the time of the injury or death, the name and address of the employer, the position or job held and nature of the work performed, the average weekly wage or salary for the year immediately past, the period of time lost from employment (dates), and the sum of wages or salary claimed to have been lost, if any, by reason of injuries or death.

f. If other loss of income, profit or earnings is claimed, the amount of such loss or losses and how computed, the source of such loss, the date of deprivation thereof, the period of time and whether it is continuing.

g. Name and address of present employer, if claimant has returned to work, the position or job held, the nature of the work being performed and present weekly wages, earnings, income or profits.

h. Itemization in detail of any and all moneys expended or expenses incurred in connection with said claim.

i. Names and addresses of all persons who have personal knowledge of any facts relating to said claim.

1.4(4) *In connection with property damage or loss.*

a. Motor vehicle.

(1) Make, model, year.

(2) Date of purchase and purchase price.

(3) Cost estimates for repairs or actual costs thereof, with copies of estimates or bills.

(4) Specific part or parts allegedly damaged.

(5) Names and addresses of any and all persons having personal knowledge of any facts relating to the claim.

b. Other property.

(1) Nature and description of such other property or items of property separately listed.

(2) Method by which such property was acquired. If purchased, then the name of the person or place from which purchased, the price, date and usage made of the property.

(3) Depreciated value at date of damage or loss.

(4) Costs estimates for repairs or actual costs thereof with copies of cost estimates made or of bills paid.

(5) Names and addresses of any and all persons having personal knowledge of any facts relating to the claim.

1.4(5) *Forms.* Claims may be in any form, but shall contain the information required by rules 1.3(25A) and 1.4(25A). Printed forms can be obtained from the secretary of the state appeal board.

543—1.5(25A) Amount of claim. All claims shall state the amount of compensation requested from the state appeal board.

543—1.6(25A) Attorney general. The executive secretary shall deliver or cause delivery of two copies of each claim to the special assistant attorney general assigned to claims.

543—1.7(25A) Investigation. Upon receipt of said copy, the special assistant attorney general shall investigate the claim. The special assistant attorney general shall ex officio be empowered to administer oaths or may take testimony in the form of affidavits, depositions or oral or written interrogatories or otherwise. The special assistant attorney general may compel the attendance of witnesses and certify to any district court for contempt.

543—1.8(25A) Notification. The special assistant attorney general shall notify the claimant or the claimant's attorney, in writing, of the board's determination and of the amount of the award, if any.

543—1.9(25A) Release or covenant not to sue. The claimant shall be required to execute a release of the claim or a covenant not to sue in consideration of the amount of the award fixed by the board.

543—1.10(25A) Acceptance. Return of the release or covenant not to sue properly executed by the claimant or the claimant's attorney shall constitute acceptance of the award in full settlement of the claim.

543—1.11(25A) Warrant. If the board determines the claimant's attorney's fees to be reasonable and the release or covenant not to sue properly executed the director of the department of management shall cause the issuance of a warrant in the amount of the award, payable to claimant and to the claimant's attorney.

543—1.12(25A) Withdrawal. Withdrawal of claims shall be by notice in writing addressed to the State Appeal Board, Office of the Department of Management, Des Moines, Iowa 50319.

[Filed June 16, 1967; amended September 26, 1967, August 12, 1970]
[Filed 12/9/77, Notice 7/27/77—published 12/28/77, effective 2/1/78]
[Filed 4/11/78, Notice 2/8/78—published 5/3/78, effective 6/7/78]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]

CHAPTER 2
GENERAL PROVISIONS
[Prior to 5/4/88, see Appeal Board, State[60] Ch 2]

543—2.1(17A) Organization. The state appeal board is an agency of the state having as its purpose the review of objections to public contracts and bonds and to the budgets of counties, school districts, cities, agricultural extension districts, assessors, and county hospitals, and the approval or rejection and payment of claims against the state. The state appeal board consists of the director of the department of management, auditor of state, and treasurer of state and conducts hearings in the above matters. Information may be obtained from and submissions or requests may be made to the Secretary of the State Appeal Board located in the State Capitol Building, Des Moines, Iowa 50319.

543—2.2(17A) Definitions. The following words used in this chapter shall have the meaning hereinafter ascribed to them:

"Board" means the state appeal board as set forth in Iowa Code section 24.26.

"Contested case" has the meaning given it in Iowa Code section 17A.2(2), but does not include proceedings under Iowa Code chapter 24, 25 or 25A.

543—2.3(17A) Request for rule change. An interested person may file with the secretary of the board a written request that the board adopt, amend, or repeal a rule. To be valid, the request shall:

1. Be addressed to the secretary of the board.
2. State the names of those requesting the change.
3. Set forth the proposed rule, or the prior rule as it would be after amendment.
4. Describe specifically the reason for the proposed rule or requested change.
5. Describe the statutory authority for the new rule or requested change. Within 60 days of the receipt by the secretary of the request, the board shall either deny the request stating the reasons for denial in writing or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

543—2.4(17A) Declaratory orders. Any interested person(s) may submit to the secretary of the board a petition for a declaratory order regarding the application of a statute, rule, decision, order, or other written statement of law or policy to a specific factual situation. The petition requesting the order shall contain the name(s) of the person(s) requesting the order, the specific factual background of the question, the statute, rule, decision, order or other written statement of law or policy deemed applicable and the reasons for the request. The board may demand that the request be clarified or that additional facts be set forth. Failure of the person(s) requesting a declaratory order to clarify the request or set forth additional facts to the satisfaction of the board shall be grounds for dismissal of the petition.

543—2.5 and **2.6** Rescinded, effective 4/7/82.

543—2.7(24) Budget appeals. In resolving appeals filed under Iowa Code chapter 24, the board possesses broad discretionary power to determine the manner in which objections are presented and the conduct of hearings and appeals. All proceedings shall be simple and informal and need not conform to technical rules or procedures except to the extent specific administrative rules have been adopted.

This rule is intended to implement Iowa Code sections 24.26 to 24.32.

[Filed 11/23/76, Notice 7/12/76—published 12/15/76, effective 1/19/77]
[Filed 2/12/82, Notice 1/6/82—published 3/3/82, effective 4/7/82]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 5
BUDGET APPEALS

[Prior to 5/4/88, see Appeal Board, State[60] Ch 5]

543—5.1(24) Organization.

5.1(1) The state appeal board by which protests of local government budgets are considered has statutory authority under Iowa Code chapter 24. The three ex officio and voting members are:

Treasurer of State	Telephone (515)281-5366
Auditor of State	Telephone (515)281-5834
Director of the Department of Management	Telephone (515)281-3322

5.1(2) The board is assisted by the executive secretary named by the board [telephone (515)281-5512], one or more special assistant attorneys general for claims and such other staff support as necessary from their respective offices.

5.1(3) It is the intent of these rules that the manner of presentation and the conduct of hearings and appeals shall be simple and informal, subject only to such rules as may be prescribed by the state appeal board.

543—5.2(24) Inquiries.

5.2(1) Inquiries as to procedures may be directed to any appeal board member or the executive secretary at the telephone numbers given.

5.2(2) Written inquiries may be addressed to any one of the members at their respective offices, all of which are located in the State Capitol Building, Des Moines, Iowa 50319.

543—5.3(24) Declaratory orders.

5.3(1) Any interested person(s) may submit to the executive secretary of the board a petition for a declaratory order regarding the application to a specific factual situation of a statute, rule, decision, order, or other written statement of law or policy. The petition requesting the order shall contain the name(s) of the person(s) requesting the order, the specific factual background of the question, the statute, rule, decision, order or other written statement of law or policy deemed applicable and the reasons for the request.

5.3(2) The board may demand that the request be clarified or that additional facts be set forth. Failure of the person(s) requesting a declaratory order to clarify the request or set forth additional facts to the satisfaction of the board shall be grounds for dismissal of the petition.

543—5.4(24) Request for rule change.

5.4(1) Any interested person(s) may file with the executive secretary of the board a written request that the board adopt, amend or repeal a rule. To be valid, the request shall:

a. Be addressed to the executive secretary of the board.

b. State the name(s) of those requesting the change.

c. Set forth the proposed rule, or the prior rule as it would be after amendment.

d. Describe specifically the reason for the proposed rule or requested change.

e. Describe the statutory authority for the new rule or requested change.

5.4(2) Within 60 days of the receipt of the request by the executive secretary, the board shall either deny the request, stating the reasons for denial in writing, or initiate rule-making proceedings.

543—5.5(24) Filings.

5.5(1) The required number of signatures is subject to voting records. Voting record information is obtained from the county auditor (election commissioner). Verification of the required signatures shall be made by the appeal board.

5.5(2) For a budget or amendment appeal for all local governments other than a city, the protest must be signed by a number of persons in the municipality (local government) equal to one-fourth of 1 percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but the number shall not be less than 10, and the number need not be more than 100 persons.

5.5(3) For a city budget or amendment appeal, the protest must be signed by qualified electors equal in number to one-fourth of 1 percent of the votes cast for governor in the last preceding general election in the city, but the number shall not be less than 10 and the number need not be more than 100 persons.

5.5(4) Filings of appeal petitions are to be with the county auditor of the county in which the local government is located or, if more than one county is involved, in that county where the principal administrative offices are located.

5.5(5) It is the responsibility of the county auditor to notify the appeal board and the appropriate local government upon receipt of an appeal petition. Such filing by the auditor is to consist of a copy of the appeal petition, together with a complete copy of the certified budget under appeal. Filing with the appeal board is through its executive secretary.

5.5(6) Any appeal and supporting documents shall be legible. Clear carbon copies or processed copies are acceptable.

5.5(7) Signatures shall be accompanied by legible and full mailing addresses.

5.5(8) Petitioners need not have appeared and entered objection at the public hearing at which the protested budget was considered.

5.5(9) The board shall extend statutory deadlines by the same elapsed time constraints when tardy certification occurs or whenever a different certification date is established by a special charter city.

5.5(10) If more than one appeal with reasonably related issues is filed against the same budget, the board may consolidate or concurrently consider the appeals in a single hearing and may issue a consolidated decision.

5.5(11) There is no required format for an appeal. The content should include:

a. Name of the local government budget being appealed.

b. Statutory authority under which the appeal is taken (Iowa Code chapter 384 for cities, and Iowa Code chapter 24 for all other local governments).

c. Decision being protested, summarizing key objections and basic reasons for such objections. This general statement may be expanded at the formal hearing with oral testimony, written briefs, exhibits or other substantive documentation.

5.5(12) Illustration of appeal format.

To: State Appeal Board
State Capitol
Des Moines, IA 50319

We, the undersigned, protest the action of the officials of __(local government)__ in certification of their 19____–____ budget and request an appeal hearing.

We offer the following objections and reasons in summary form as basis for our appeal under Iowa Code chapter ____ :

Objection 1 (cite)
Reasons: (brief explanation)
Objection 2 (cite)
Reasons: (brief explanation)

(Add such other sections as needed to identify each basic objection and supporting reasons.)

Date Signatures Full mailing address with Zip code.

1.
2. (Additional signature sheets may be attached without the
3. full heading, it being assumed those subscribing their names are fully aware of the stated appeal, objections and
10. reasons. Minimal headings on attached sheets should indicate "Protest to ___(local government)___ Budget, 19 ____–____.")
100.

5.5(13) The burden is upon objectors for any proposed item which was included in the budget of the previous year with proposal for reduction or exclusion of the specific items. These arguments need not be fully developed in the appeal petition.

5.5(14) The burden is on the local government certifying or levying officials (as opposed to staff) to show any new item in the budget, or any increase in any item thereof, is necessary, reasonable and in the interest of the public welfare.

543—5.6(24) Scheduling and notice of hearings.

5.6(1) Dates for hearings shall be set by the appeal board. When a date is set, notice shall be given by certified mail, return receipt requested, to the first ten names on the petition and to the appropriate officials of the local government.

5.6(2) This notice shall be mailed at least five days prior to the hearing.

543—5.7(24) Hearings.

5.7(1) Hearings shall be held at scheduled times within the county where the local government is located or headquartered. All parties assume their own expenses except as may otherwise be specifically provided by rule or law.

5.7(2) The appeal board may conduct the hearing or may appoint a deputy (hearing officer) to conduct the hearing and report findings and recommendations to the board for its decision.

5.7(3) The hearing shall be held in a public place and shall be open to the public. The hearing shall be conducted so as to give all parties a fair opportunity to be heard.

5.7(4) The appeal board secretary shall prepare an official record of all proceedings, including testimony and exhibits. Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. A reasonable amount will be charged to cover the cost of providing a duplicate tape or a copy of the transcription for either party. Tapes will be retained for five years following the decision.

5.7(5) If a party entitled to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is show of good cause for such failure.

5.7(6) Legal counsel shall be at the discretion and expense of either party to the appeal.

5.7(7) Parties appearing before the appeal board should select one or two persons to serve as primary spokespersons for their position.

5.7(8) The appeal board shall exclude evidence which is irrelevant, immaterial or unduly repetitious.

5.7(9) Written or printed materials shall be in sufficient quantity to supply at least three copies for the appeal board and one copy for the other party to the appeal.

5.7(10) Any party requesting a certified shorthand or court reporter shall make arrangements for such attendance and expense.

5.7(11) At the outset of each hearing, the presiding appeal board officer shall indicate disposition of rulings on procedural questions and outline ground rules and time limitations to seek to give equal opportunity to both parties and basically permit:

a. Objectors' basic arguments.

b. Local government officials' basic arguments and rebuttal.

c. Rebuttal by objectors.

d. Presentation by authorized third party intervenors.

e. If desired, closing remarks by objectors.

f. If desired, closing remarks by local government officials.

g. Time permitting, comments by interested citizens.

h. Announcement as to adjournment, filing of additional briefs and the probable timing for the decision.

5.7(12) As deemed necessary, the board may examine the entire budget under appeal including cash reserves (balances), funding sources and expenditures of all types including actual or allowable transfers so those specific items under appeal may be fully examined and evaluated in perspective in arriving at a decision on the appeal.

5.7(13) The board shall listen to testimony and arguments from all those concerned, take the matters under advisement, and make a decision setting out the findings of fact and conclusions of law on which the decision is based.

5.7(14) Appeal board members or the presiding hearing officer shall be free to ask questions of anyone at any point during any hearing.

5.7(15) The parties may agree upon pertinent facts in the proceedings by stipulation in writing filed at any stage in the proceedings or orally made at the hearing.

5.7(16) Any party served notice of hearing may seek to show cause for a continuance to a date certain at or before the time set for hearing.

5.7(17) The appeal board may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the board, for the purpose of a fair hearing.

5.7(18) Upon filing of a request by a third party to intervene, the appeal board chairperson shall determine whether the applicant has a legitimate interest in the proceedings and can contribute materially to the interpretation and settlement of the issues. Both original parties to the appeal shall be advised of participation by a third party. If participation is denied, the written denial shall include reasons.

5.7(19) If a K-12 school budget is appealed, that portion of expenditures attributable to the area education agency shall be defended by a knowledgeable official of the area education agency.

5.7(20) At the conclusion of arguments, each party shall have opportunity to submit written briefs, or additional written briefs if they have already done so. A copy must also be delivered to the other party. The presiding officer shall determine time limits for the additional filings.

5.7(21) Prior to a final decision, the appeal board may reopen a hearing when new pertinent evidence becomes available which could not, with reasonable diligence, have been presented at the original hearing. This hearing need not be held in the county of original jurisdiction.

5.7(22) Any board member who has a possible conflict of interest in any matter resulting in a hearing shall be disqualified from serving during the hearing and from participation in the deliberations and decision resulting from the hearing.

5.7(23) A member of the appeal board does not have a conflict of interest by reason of residency within the geographical boundaries of the local government whose budget is appealed.

543—5.8(24) Decision.

5.8(1) Decisions shall always be in writing and rendered at a time following the hearing.

5.8(2) The decision shall include:

a. Identification of parties and basic issues.

b. Summary of findings of fact.

c. Summary of conclusions of law.

d. Decision.

e. Reasons for decision.

f. Order for implementation of the decision.

5.8(3) The appeal board may approve, disapprove, or reduce items under appeal but in no event may it increase a budget, expenditure, tax levy or assessment or any item contained therein.

5.8(4) The decision is final and binding unless there is a rehearing or appeal to the courts.

5.8(5) Either party may request rehearing, stating the specific grounds theref and the relief sought, within 20 days after the issuance of the final decision. Such requests shall be deemed denied unless the appeal board sets a rehearing date within 20 days after the request is filed. This hearing need not be held in the county of original jurisdiction.

5.8(6) The appeal board shall notify the county auditor and both parties according to names on the original notices for the hearing. Where other county auditors are affected, they should be promptly informed of the decision and order by the auditor receiving the notice of the decision.

543—5.9(24) Amendments.

5.9(1) Protests of amendments to budgets will be considered within the same general procedures and time constraints as are applicable to original budgets.

5.9(2) Any local budget must be amended by May 31 of the current fiscal year to allow time for a protest hearing to be held and decision rendered before June 30. The amendment of a budget after May 31, which is properly appealed but without adequate time for hearing and decision before June 30, shall be ruled null and void.

These rules are intended to implement Iowa Code sections 24.26 to 24.32.

[Filed 2/12/82, Notice 1/6/82—published 3/3/82, effective 4/7/82]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

The state appeal board adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

543—7.3(17A) Public rule-making docket.

7.3(2) *Anticipated rule making.* In lieu of the words "(commission, board, council, director)", insert "board".

543—7.4(17A) Notice of proposed rule making.

7.4(3) *Copies of notices.* In lieu of the words "(specify time period)", insert "one calendar year".

543—7.5(17A) Public participation.

7.5(1) *Written comments.* Strike the words "(identify office and address) or".

7.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the secretary of the state appeal board at (515)281-3078".

543—7.6(17A) Regulatory analysis.

7.6(2) *Mailing list.* In lieu of the words "(designate office)" insert "the State Appeal Board, State Capitol, Des Moines, Iowa 50319-0015".

543—7.10(17A) Exemptions from public rule-making procedures.

7.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"*a.* Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"*b.* Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

"*c.* Rules which confer a benefit or remove a restriction on the public or some segment of the public;

"*d.* Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"*e.* Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

543—7.11(17A) Concise statement of reasons.

7.11(1) *General.* In lieu of the words "(specify the office and address)", insert "the State Appeal Board, State Capitol, Des Moines, Iowa 50319-0015".

543—7.13(17A) Agency rule-making record.

7.13(2) *Contents.* Amend paragraph "*c*" by inserting "state appeal board" in lieu of "(agency head)".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CITY FINANCE COMMITTEE[545]

Rules transferred from agency number 230 to 545 under the "umbrella" of Management Department[541] pursuant to 1986 Iowa Acts, chapter 1245, section 118.

CHAPTER 6
DECLARATORY ORDERS

[Prior to 11/30/88, see City Finance Committee[230] Ch 5]

The city finance committee incorporates the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

545—6.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "committee". In lieu of the words "(designate office)", insert "the City Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE CITY FINANCE COMMITTEE

545—6.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days". In lieu of the words "(designate agency)", insert "committee".

545—6.3(17A) Intervention.

6.3(1) In lieu of the words "within ___ days", insert "within 15 days". Strike the words "(after time for notice under X.2(17A)". In lieu of the number "X.8(17A))", insert "6.8(17A)".

6.3(2) In lieu of the words "(designate agency)", insert "the committee".

6.3(3) In lieu of the words "(designate office)", insert "the City Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(designate agency)", insert "committee". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE CITY FINANCE COMMITTEE

545—6.4(17A) Briefs. In lieu of the words "(designate agency)", insert "committee".

545—6.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the City Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015".

545—6.6(17A) Service and filing of petitions and other papers.

6.6(2) In lieu of the words "(specify office and address)", insert "the City Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(agency name)", insert "committee".

6.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 481—10.12(17A)".

545—6.7(17A) Consideration. In lieu of the words "(designate agency)", insert "committee".

545—6.8(17A) Action on petition.

6.8(1) In lieu of the words "(designate agency head)", insert "city finance committee".

6.8(2) In lieu of the words "(contested case uniform rule X.2(17A))", insert "rule 481—10.1(10A)".

545—6.9(17A) Refusal to issue order.

6.9(1) In lieu of the words "(designate agency)", insert "committee".

545—6.12(17A) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "committee".

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13.

[Filed 9/15/78, Notice 6/14/78—published 10/4/78, effective 11/8/78]
[Filed 11/3/88, Notice 5/4/88—published 11/30/88, effective 1/4/89]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

The city finance committee incorporates the agency procedure for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code, with the following amendments.

545—7.5(17A) Public participation.

7.5(1) *Written comments.* In lieu of the words "(identify office and address)", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319".

7.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the city finance committee at (515)281-3705".

545—7.6(17A) Regulatory analysis.

7.6(2) *Mailing list.* In lieu of the words "(designate office)", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319".

545—7.10(17A) Exemptions from public rule-making procedures.

7.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"*a.* Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"*b.* Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

"*c.* Rules which confer a benefit or remove a restriction on the public or some segment of the public;

"*d.* Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"*e.* Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

545—7.11(17A) Concise statement of reasons.

7.11(1) *General.* In lieu of the words "(specify office and address)", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

[Filed 11/3/88, Notice 5/4/88—published 11/30/88, effective 1/4/89]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

COUNTY FINANCE COMMITTEE[547]

Rules transferred from agency number 292 to 547 under the "umbrella" of Management Department pursuant to 1986 Iowa Acts, chapter 1245, section 116.

CHAPTER 6
PETITIONS FOR RULE MAKING

The County Finance Committee incorporates the petitions for rule making segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code, with the following amendments.

547—6.1(17A) Petition for rule making. In lieu of the words "designate office", insert "Room 12, State Capitol, Des Moines, Iowa 50319." In lieu of the words "AGENCY NAME", the heading on the petition form should read:

BEFORE THE COUNTY FINANCE COMMITTEE

547—6.3(17A) Inquiries. In lieu of the words "designate official by full title and address", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]

CHAPTER 7
DECLARATORY ORDERS

The county finance committee incorporates the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

547—7.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "committee". In lieu of the words "(designate office)", insert "the County Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE COUNTY FINANCE COMMITTEE

547—7.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days". In lieu of the words "(designate agency)", insert "committee".

547—7.3(17A) Intervention.

7.3(1) In lieu of the words "within ___ days", insert "within 15 days". Strike the words "(after time for notice under X.2(17A))". In lieu of the number "X.8(17A))", insert "7.8(17A)".

7.3(2) In lieu of the words "(designate agency)", insert "the committee".

7.3(3) In lieu of the words "(designate office)", insert "the County Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(designate agency)", insert "committee". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE COUNTY FINANCE COMMITTEE

547—7.4(17A) Briefs. In lieu of the words "(designate agency)", insert "committee".

547—7.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the County Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015".

547—7.6(17A) Service and filing of petitions and other papers.

7.6(2) In lieu of the words "(specify office and address)", insert "the County Finance Committee, State Capitol, Room 12, Des Moines, Iowa 50319-0015". In lieu of the words "(agency name)", insert "committee".

7.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 481—10.12(17A)".

547—7.7(17A) Consideration. In lieu of the words "(designate agency)", insert "committee".

547—7.8(17A) Action on petition.

7.8(1) In lieu of the words "(designate agency head)", insert "county finance committee".

7.8(2) In lieu of the words "(contested case uniform rule X.2(17A))", insert "rule 481—10.1(10A)".

547—7.9(17A) Refusal to issue order.

7.9(1) In lieu of the words "(designate agency)", insert "committee".

547—7.12(17A) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "committee".

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13.

[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 8
AGENCY PROCEDURE FOR RULE MAKING

The County Finance Committee incorporates the agency procedure for rule making segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code with the following amendments.

8.5(1) *Written comments.* In lieu of the words "identify office and address", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

8.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the county finance committee at (515)281-5598".

8.6(2) *Mailing list.* In lieu of the words "designate office", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

8.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"*a.* Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"*b.* Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

"*c.* Rules which confer a benefit or remove a restriction on the public or some segment of the public;

"*d.* Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"*e.* Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

8.11(1) *General.* In lieu of the words "specify office and address", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The county finance committee hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

547—9.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "county finance committee". As used in these rules, unless the context otherwise requires, "committee" means the county finance committee and "director" means the director of the department of management.

547—9.3(17A,22) Requests for access to records.

9.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "county finance committee, department of management", and in lieu of the words "(insert agency name and address)", insert "County Finance Committee, Department of Management, State Capitol, Des Moines, Iowa 50319".

9.3(2) *Office hours.* In lieu of the words "(insert customary office hours and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays".

9.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "thirty minutes".

547—9.9(17A,22) Disclosures without the consent of the subject.

9.9(1) Open records are routinely disclosed without the consent of the subject.

9.9(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 9.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the committee 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 agency 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 fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

547—9.10(17A,22) Routine use.

9.10(1) Defined. "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.

9.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and members of the committee 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 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 committee.

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

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

547—9.11(17A,22) Consensual disclosure of confidential records.

9.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to committee disclosure of confidential records as provided in rule 9.7(17A,22).

9.11(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 agency 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.

547—9.12(17A,22) Release to subject.

9.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 547—6.6(17A,22). However, the committee need not release the following records to the subject:

a. The identity of a person providing information to the committee 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 provisions 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. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

9.12(2) Where a record has multiple subjects with interest in the confidentiality of the records, the committee may take reasonable steps to protect confidential information relating to another subject.

547—9.13(17A,22) Availability of records.

9.13(1) *General.* Committee records are open for public inspection and copying unless otherwise provided by rule or law.

9.13(2) *Confidential records.* The county finance committee maintains no records that are considered confidential or that are prohibited from public disclosure.

9.13(3) *Authority to release confidential records.* The committee 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 547—6.4(24,26). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 9.4(3).

547—9.14(17A,22) Personally identifiable information. The county finance committee does not maintain any records that could be considered personally identifiable.

547—9.15(17A,22) Data processing system. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

547—9.16(17A,22) Other records. The committee maintains a variety of records which do not generally contain information pertaining to named individuals. The committee maintains the following records, not heretofore listed, which do not generally contain personally identifiable or confidential information: minutes from the committee meetings, guidelines for program budgeting and accounting and preparation of capital improvement plans, studies of county revenues and expenditures, and advice and recommendations to the governor, annually.

547—9.17(17A,22) Applicability. This chapter does not:

1. Require the committee to index or retrieve records which contain information about individuals by that 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 committee which are governed by the rules 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 committee 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 rules of the committee.

These rules are intended to implement Iowa Code section 22.11.

[Filed emergency 8/19/88 after Notice 6/29/88—published 9/7/88, effective 8/19/88]

21.3(3) *Termination.* Any employing unit which terminates for any reason shall provide IPERS with the following:

a. Complete name and address of the dissolved entity;

b. Assigned IPERS account number;

c. Last date on which wages were paid;

d. Date on which the entity dissolved;

e. Reason for the dissolution;

f. Whether or not the entity expects to pay wages in the future; and

g. Name and address of absorbed employing unit if applicable.

21.3(4) *Reports of dissolved or absorbed employers.* An employing unit that has been dissolved or entirely absorbed by another employing unit is required to file a quarterly or monthly report with IPERS through the last date on which it legally existed. Any wages paid after the legal date of dissolution are reported under the account number assigned to the new or successor employing unit, if any.

21.3(5) *IPERS account number.* Each reporting unit is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

This rule is intended to implement Iowa Code sections 97B.5, 97B.9 to 97B.12, 97B.15 and 97B.41(8)*"a."*

581—21.4(97B) Definition of wages for employment during the calendar quarter—other definitions. Unless the context otherwise requires, terms used in these rules, regulations, interpretations, forms and other official pronouncements issued by IPERS shall have the following meaning:

21.4(1) *"Wages"* means all compensation earned by employees, including vacation pay; sick pay; bonus payments; back pay; dismissal pay; amounts deducted from employee's pay at the employee's discretion for tax-sheltered annuities, dependent care and cafeteria plans; and the cash value of wage equivalents.

a. *Vacation pay.* The amount paid an employee during a period of vacation.

b. *Sick pay.* Payments made for sick leave which are a continuation of salary payments.

c. *Workers' compensation, unemployment, short-term and long-term disability payments.* Wages do not include workers' compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust. Wages include payments for sick leave which are a continuation of salary payments if paid from the employer's general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability.

d. *Compensatory time.* Wages include amounts paid for compensatory time taken in lieu of regular work hours and when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy.

e. *Banked holiday pay.* If an employer codes banked holiday time as holiday or vacation pay, the banked holiday pay will be treated as vacation pay when calculating covered wages. If an employer codes banked holiday pay as compensatory time, it will be combined with other compensatory time and subject to the time limits set forth in paragraph *"d"* above.

f. *Special lump sum payments.* Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. Wages do not include catastrophic leave paid in a lump sum.

g. Other special payment arrangements. Wages do not include amounts paid pursuant to special arrangements between an employer and employee whereby the employer pays increased wages and the employee reimburses the employer or a third-party obligor for all or part of the wage increase. This includes, but is not limited to, the practice of increasing an employee's wages by the employer's share of health care costs and having the employee reimburse the employer or a third-party provider for such health care costs. Wages do not include amounts paid pursuant to a special arrangement between an employer and employee whereby wages in excess of the covered wage ceiling for a particular year are deferred to one or more subsequent years. Wages do not include employer contributions (excluding employee contributions) to a plan, program, or arrangement whereby the amounts contributed are not included in the member's federal taxable income.

Employers and employees that knowingly and willfully enter into the types of arrangements described in this subrule without making the appropriate wage adjustments, thereby causing an impermissible increase in the payments authorized under Iowa Code chapter 97B, may be prosecuted under Iowa Code section 97B.40 for engaging in a fraudulent practice. If IPERS determines that its calculation of a member's monthly benefit includes amounts paid under an arrangement described in this subrule, IPERS shall recalculate the member's monthly benefit, after making the appropriate wage adjustments. IPERS may recover the amount of overpayments caused by the inclusion of the payments described in this subrule from the monthly amounts payable to the member or amounts payable to the member's successor(s) in interest, regardless of whether or not IPERS chooses to prosecute the employers and employees under Iowa Code section 97B.40.

h. Wage equivalents. Items such as food, lodging and travel pay which are includable as employee income, if they are paid as compensation for employment. The basic test is whether or not such wage equivalent was given for the convenience of the employee or employing unit. Wage equivalents are not reportable under IPERS if given for the convenience of the employing unit or are not reasonably quantifiable. Wage equivalents that are not included in the member's federal taxable income shall be deemed to be for the convenience of the employer. A wage equivalent is not reportable if the employer certifies that there was a substantial business reason for providing the wage equivalent, even if the wage equivalent is included in the employee's federal taxable income. Wages paid in any other form than money are measured by the fair market value of the meals, lodging, travel or other wage equivalents.

i. Members of the general assembly. Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary. Wages include per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages do not include expense payments except that, effective July 1, 1990, wages include daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly. Such nontravel expenses of office during a session of the general assembly shall not exceed the maximum established by law for members from Polk County. A member of the general assembly who has elected to participate in IPERS shall receive four quarters of service credit for each calendar year during the member's term of office, even if no wages are reported in one or more quarters during a calendar year.

j. *Wages for certain testing purposes.* Wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include a member's gross wages, excluding nontaxable fringe benefits and all amounts placed in tax-deferred vehicles including, but not limited to, plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457, and excluding IPERS contributions paid after December 31, 1994, by employers on behalf of employees. Effective January 1, 1996, the annual wages of a member taken into account for testing purposes under any of the applicable sections of Internal Revenue Code shall not exceed the applicable amount set forth in Internal Revenue Code Section 401(a)(17), and any regulations promulgated pursuant to that section. The foregoing sentence shall not be deemed to permit the maximum amount of wages of a member taken into account for any other purpose under Iowa Code chapter 97B to exceed the maximum covered wage ceiling under Iowa Code section 97B.1A(25). Effective January 1, 1998, wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include elective deferrals placed in tax-deferred plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457 by employers on behalf of employees.

21.4(2) Wages are reportable in the quarter in which they are actually paid to the employee, except in cases where employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, in which case the employer shall file wage adjustment reporting forms with IPERS allocating said wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 21.4(1) above and shall not be covered.

21.4(3) One quarter of service will be credited for each quarter in which a member is paid covered wages.

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum. Effective January 1, 1997, and for each subsequent calendar year, covered wages shall not exceed $160,000 or the amount permitted for that year under Section 401(a)(17) of the Internal Revenue Code.

b. Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)

c. If a member is employed by more than one employer during the calendar year, the total amount of wages paid shall be included in determining the annual covered wage maximum. If the amount of wages paid to a member by several employers during a calendar year exceeds the covered wage limit, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. See subrule 21.8(1), paragraph *"h."*

This rule is intended to implement Iowa Code section 97B.1A(25).

581—21.5(97B) Identification of employees covered by the IPERS retirement law.

21.5(1) Definition of employee.

a. A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term control refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an "employee" as defined in the agreement between the state of Iowa and the Secretary of Health, Education and Welfare, without the element of direction and control.

Effective July 1, 1994, a person who is employed in a position which allows IPERS coverage to be elected as specified in Iowa Code section 97B.1A(8) must file a one-time election form with IPERS for coverage. If the person was employed before July 1, 1994, the election must be postmarked on or before July 1, 1995. If the person was employed on or after July 1, 1994, the election must be postmarked within 60 days from the date the person was employed. Coverage will be prospective from the date the election is approved by IPERS. The election, once filed, is irrevocable and membership continues until the member terminates covered employment. The election window does not allow members who had been in coverage to elect out.

Effective July 1, 1994, members employed before that date as a gaming enforcement officer, a fire prevention inspector peace officer, or an employee of the division of capitol police (except clerical workers), may elect coverage under Iowa Code chapter 97A in lieu of IPERS. The election must be directed to the board of trustees established in Iowa Code section 97A.5 and postmarked on or before July 1, 1995. Coverage under IPERS will terminate when the board of trustees approves the election. The election, once received by the board of trustees, is irrevocable. If no election is filed by that date, the member will remain covered by IPERS until termination of covered employment. The election window does not allow a member who previously elected out of IPERS to reverse the decision and become covered under IPERS.

Effective January 1, 1999, new hires who may elect out of IPERS coverage shall be covered on the date of hire and shall have 60 days to elect out of coverage in writing using IPERS' forms. Notwithstanding the foregoing, employees who had the right to elect IPERS coverage prior to January 1, 1999, but did not do so, shall be covered as of January 1, 1999, and shall have until December 31, 1999, to elect out of coverage.

Employment as defined in Iowa Code chapter 97B is not synonymous with IPERS membership. Some classes of employees are excluded under Iowa Code section 97B.1A(8)*"b"* from membership by their nature. The following subparagraphs are designed to clarify the status of certain employee positions.

(1) Effective January 1, 1979, members of the Iowa general assembly may elect coverage under IPERS. Effective July 1, 1990, elected officials in positions for which the compensation is on a fee basis, elected officials of school districts, elected officials of townships, and elected officials of other political subdivisions who are in part-time positions are not covered by IPERS unless the elected official makes application to IPERS under this chapter. An elected official who makes application to IPERS to be covered under this chapter may later terminate membership by informing IPERS in writing of the expiration of the member's term of office, or if a member of the general assembly, of the intention to terminate coverage. An elected official does not terminate covered employment with the end of each term of office if the official has been reelected for the same position. If elected for another position, the official must elect coverage if desired.

(2) County and municipal court bailiffs who receive compensation for duties are included.

(3) City attorneys are included.

(4) Judicial magistrates are included unless they elect out of IPERS coverage. Having made a choice to remain in IPERS coverage, a judicial magistrate may not revoke that election and discontinue such coverage.

(5) Office and clerical staff of a county medical examiner's office are included, but county medical examiners and deputy county medical examiners are excluded.

(6) Effective July 1, 1994, police officers and firefighters of a city not participating in the retirement systems established under Iowa Code chapter 410 or 411 are included. Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer, are to be treated as firefighters. Effective January 1, 1995, part-time police officers are covered in the same manner as full-time police officers. In accordance with Iowa Code section 80D.14, reserve peace officers employed under Iowa Code chapter 80D are excluded from coverage. In accordance with Iowa Code sections 384.6(1) and 411.3, a police chief or fire chief who has submitted a written request to the board of trustees created by section 411.36 to be exempt from chapter 411 is also exempt from coverage under IPERS. The city shall make contributions on behalf of such persons to the international city management association/retirement corporation.

(7) County social welfare employees are included.

(8) Members of county soldiers relief commissions and their administrative or clerical employees are included.

(9) Part-time elected mayors, mayors of townships, and mayors that are paid on a fee basis are covered under IPERS unless they elect out of coverage. All other mayors, including appointed mayors and full-time elected mayors, whether elected by popular vote or by some other means, are covered.

(10) Field assessors are included.

(11) Members of county boards of supervisors who receive an annual salary are included. Effective for terms of office beginning January 1, 1999, and later part-time members of county boards of supervisors who receive an annual salary or are paid on a per diem basis are included unless they elect out of coverage.

(12) Temporary employees of the general assembly who are employed for less than six months in a calendar year or work less than 1,040 hours in a calendar year are included unless the employee elects out of coverage. If coverage is elected, the member may not terminate coverage until termination of covered employment.

(13) Persons hired for temporary employment are excluded from IPERS' coverage providing that they have not established an ongoing relationship with an IPERS-covered employer. Effective January 1, 1993, an ongoing relationship with an IPERS-covered employer is established when the employee is paid covered wages of $300 or more per quarter in two consecutive quarters, or if the employee is employed by a covered employer for 1,040 or more hours in a calendar year. Coverage will begin when the permanency of the relationship is established, and shall continue until the employee's relationship with the covered employer is severed. If there is no formal severance, coverage for a person hired for temporary employment who has established an ongoing relationship with a covered employer will continue until that person completes four consecutive calendar quarters in which no services are performed for that employer after the last covered calendar quarter. Notwithstanding the foregoing sentence, no service credit will be granted to a temporary employee who has become a covered employee under this rule for any calendar quarter in which no covered wages are reported unless the employee is on an approved leave of absence. Contributions shall be paid, and service credit accrued, when wages are paid in the quarter after the ongoing relationship has been established.

(14) Drainage district employees who have vested rights to IPERS through earlier participation or employees of drainage districts are included unless they elect out of coverage.

(15) A county attorney is included as an employee whether or not employed on a full- or part-time basis.

(16) Tax study committee employees are included.

(17) Rescinded IAB 7/22/92, effective 7/2/92.

(18) School bus drivers who are considered to be public employees are included. School bus drivers who are independent contractors are excluded. A determination must be made by IPERS on the facts presented on a case-by-case basis.

(19) Persons who are enrolled as students and whose primary occupations are as students are not covered. Full-time and part-time students who are employed by the institutions where they are enrolled as students are not covered. Full-time and part-time students who are employed full-time by a covered employer other than the institution where they are enrolled are covered. Part-time students who are employed part-time by a covered employer other than the institution in which they are enrolled are covered. Full-time students who are employed part-time by a covered employer are not covered. Full-time and part-time student status is as defined by the individual educational institutions. Full-time and part-time employment status is as defined by the individual employers.

(20) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants and specialists in their field of specialized knowledge or skill are all excluded from coverage.

(21) Members of any other retirement system in Iowa maintained in whole or part by public funds are excluded. Effective July 1, 1996, an employee who is employed by a covered employer other than the employer that makes contributions on the member's behalf to such other retirement system in Iowa shall be a covered employee, unless the employee receives credit in such other retirement system for both jobs.

(22) Members who are contributing to the federal civil service retirement system or federal employees retirement system are excluded. Effective July 1, 1996, an employee who is employed by a covered employer other than the employer making contributions to such federal retirement systems shall be a covered employee, unless the employee receives credit in such federal retirement systems for both jobs.

(23) Employees of credit unions without capital stock organized and operated for mutual purposes without profit are excluded.

(24) Members of the ministry, rabbinate or other religious order who perform full- or part-time religious service for a covered employer are included; but members of the ministry, rabbinate or other religious order who have taken the vow of poverty are included, unless they elect out of coverage.

(25) Any physician, surgeon, dentist or member of other professional groups employed full-time by a covered employer is included; but any member of a professional group who performs part-time service for any public agency but whose private practice provides the major source of income is excluded, except for city attorneys and health officials.

(26) Interns and resident doctors in the employ of a state or local hospital, school or institution are excluded.

(27) Professional personnel who acquire the status of an officer of the state of Iowa or a political subdivision thereof, even though they engage in private practice and render government service only on a part-time basis, are included.

(28) Effective July 1, 1994, volunteer firefighters and special police officers are considered temporary employees and will be covered if they meet the requirements of 581 IAC 21.5(1)*"a"*(13).

(29) Residents or inmates of county homes are excluded.

(30) Members of the state transportation commission, the board of parole, and the state health facilities council are included unless they elect out of coverage.

(31) Employees of an interstate agency established under Iowa Code chapter 28E, and similar enabling legislation in an adjoining state if the city had made contributions to the system for employees performing functions which are transferred to the interstate agency shall be considered employees of the city for the sole purpose of membership in IPERS, although the employer contributions for those employees are made by the interstate agency.

(32) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in Iowa Code chapter 372 or 420 are included unless they elect out of coverage.

(33) Employees appointed by the state board of regents are covered unless, at the discretion of the state board of regents, they elect coverage in a retirement system qualified by the state board of regents.

(34) School employees who work in additional positions along with normal duties with the same employer will be considered employees until all of their compensated duties to their employer cease. (Examples include teacher/coach; teacher/summer driver's education instructor; and Phase I, II, and III employment.)

(35) "Adjunct instructors" employed by a community college or university are excluded from coverage. Adjunct instructors are persons employed by a community college or university without a continuing contract and whose teaching load does not exceed one-half time for two full semesters or three full quarters for the calendar year. The determination of whether a teaching load exceeds one-half time shall be based on the number of credit hours or noncredit contact hours that the community college or university considers to be a full-time teaching load for a regular full semester or quarter, as the case may be. In determining whether an adjunct instructor is a covered employee, no credit shall be granted for teaching periods of shorter duration than a regular semester or regular quarter (such as summer semesters), regardless of the number of credit or contact hours assigned to that period. If there is no formal severance, an adjunct instructor who becomes a covered employee will remain a covered employee until that person completes four consecutive calendar quarters in which no services are performed for that covered employer after the last covered calendar quarter. Notwithstanding the foregoing sentence, no service credit will be granted to any adjunct instructor who has become a covered employee under this rule for any calendar quarter in which no covered wages are reported unless the adjunct instructor is on an approved leave of absence.

(36) Effective July 1, 1992, enrollees of a senior community service employment program authorized by Title V of the Older Americans Act and funded by the United States Department of Labor are not covered unless: (a) both the enrollee and the covered employer elect coverage; or (b) the enrollee works for a covered employer for more than eight consecutive quarters; or (c) the enrollee is currently contributing to IPERS. A covered employer is defined as the host agency where the enrollee is placed for training.

(37) Effective July 1, 1994, employees of area agencies on aging are excluded from coverage if the area agency has provided for participation by all of its eligible employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code. If an area agency on aging does not have or terminates participation in an alternative plan, coverage under IPERS shall begin immediately.

(38) Effective July 1, 1994, arson investigators are no longer covered under IPERS. They were transferred to public safety peace officers' retirement, accident and disability system.

(39) Persons who meet the requirements of independent contractor status as determined by IPERS using the criteria established by the federal Internal Revenue Service are not included.

(40) Effective July 1, 1994, a person employed on or after that date for certain public safety positions is excluded from IPERS coverage. These positions are gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, fire prevention inspector peace officers, and employees of the division of capitol police (except clerical workers).

(41) Employees of area community colleges are included unless they elect coverage under an alternative system pursuant to a one-time irrevocable election.

(42) Volunteer emergency personnel, such as ambulance drivers, are considered temporary employees and will be covered if they meet the requirements of 581 IAC 21.5(1)*"a"*(13). Persons who meet such requirements will be covered under the protection occupation requirements of Iowa Code section 97B.49(16) if they are considered firefighters by their employers; otherwise they are covered under Iowa Code section 97B.11.

(43) Employees of the Iowa department of public safety hired pursuant to Iowa Code chapter 80 as peace officer candidates are excluded from coverage.

(44) Persons employed through any program described in Iowa Code section 15.225, subsection 1, and provided by the Iowa conservation corps shall not be covered.

(45) Appointed and full-time elective members of boards and commissions who receive a set salary shall be covered. Effective January 1, 1999, part-time elective members of boards and commissions not otherwise described in these rules who receive a set salary are included unless they elect out of coverage. Members of boards, other than county boards of supervisors, and commissions, including appointed and elective full-time and part-time members, who receive only per diem and expenses shall not be covered.

(46) Persons receiving rehabilitation services in a community rehabilitation program, rehabilitation center, sheltered workshop, and similar organizations whose primary purpose is to provide vocational rehabilitation services to target populations shall not be covered.

(47) Persons who are members of a community service program authorized under and funded by grants made pursuant to the federal National and Community Service Act of 1990 shall not be covered.

(48) Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall be excluded. Notwithstanding the foregoing, persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

b. Each employer shall ascertain the federal social security account number of each employee subject to IPERS.

c. Rescinded IAB 7/5/95, effective 8/9/95.

21.5(2) The employer shall report the employee's federal social security account number in making any report required by IPERS with respect to the employee.

21.5(3) to **21.5(6)** Rescinded IAB 7/22/92, effective 7/2/92.

21.5(7) Effective July 1, 1996, an employee may actively participate in IPERS and another retirement system supported by public funds if the person does not receive credit under both IPERS and such other retirement system for any position held.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.42, 97B.42A, 97B.42B, 97B.49C, and 97B.52A.

581—21.6(97B) Wage reporting and payment of contributions by employers.

21.6(1) Any public employing unit whose combined employer/employee IPERS contribution tax equals or exceeds $100 per month is required to pay the tax on a monthly basis. All other employing units are required to file wage reports and pay the contribution tax on a quarterly basis. When IPERS becomes aware of the correct payment and reporting status of an employing unit, IPERS will send to the reporting official a supply of the employer remittance advice forms.

21.6(2) Each periodic wage reporting form must include all employees who earned reportable wages or wage equivalents under IPERS. If an employee has no reportable wage in a quarter but is still employed by the employing unit, the employee should be listed with zero wages. If the total amount of employer and employee contributions is $1 or less, wages shall be reported as zero for that member in that quarter.

21.6(3) All checks in payment of the total contribution tax shall be made payable to the Iowa Public Employees' Retirement System and mailed with the employer remittance advice to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117.

21.6(4) For employers filing quarterly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the calendar quarter in which the wages were paid.

For employers filing monthly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the month in which wages were paid.

Any employer filing monthly or quarterly employer remittance advice forms for two or more entities shall attach to each remittance form the checks covering the contributions due on that form. The combining of contributions due for payment from two or more entities into one check or multiple checks will not be accepted. Improperly paid contributions are considered as unpaid. Upon the request of the employer, IPERS may grant a waiver of the requirement which prohibits the combining of contributions. A single entity which has several accounts will be required to report all wages under one main account effective January 1, 1995.

21.6(5) A request for an extension of time to pay a contribution may be granted by IPERS for good cause if presented before the due date, but no extension shall exceed 30 days after the end of the calendar quarter. If an employer who has been granted an extension fails to pay the contribution on or before the end of the extension period, interest shall be charged and paid from the original due date as if no extension had been granted.

To establish good cause for an extension of time to pay, the employer must show that the failure to pay was not due to mere negligence, lack of ordinary care or attention, carelessness or inattention. The employer must affirmatively show that it did not pay timely because of some occurrence beyond the control of the employer.

21.6(6) When an employer has no reportable wages or no wages to report during the applicable reporting period, the periodic wage reporting document should be marked "no reportable wages" or "no wages" and returned to IPERS. When no employer's wage report is made, the employing unit's account is considered delinquent for the reporting period until the report is filed.

21.6(7) Substitute forms may be used if they meet all the IPERS reporting requirements and the employing unit receives advance approval from IPERS.

21.6(8) Magnetic tape reporting may be used by an employer after submitting a written request to IPERS. When the request is received, IPERS will send the employer a copy of the specifications for this type of reporting.

21.6(9) Contribution rates. The following contribution rate schedule, payable on the covered wage of the member, is determined by the position or classification and the occupation class code of the member.

a. All covered members, except those identified in 21.6(9)*"b"* and *"c."*

(1) Member's rate—3.7%.

(2) Employer's rate—5.75%.

b. Sheriffs, deputy sheriffs, and airport firefighters, effective July 1, 1998.

(1) Member's rate—6.34%.

(2) Employer's rate—9.51%.

c. Members employed in a protection occupation, effective July 1, 1998.

(1) Member's rate—5.61%.

(2) Employer's rate—8.41%.

d. Members employed in a "protection occupation" shall include:

(1) Conservation peace officers.

(2) Effective July 1, 1994, a marshal in a city not covered under Iowa Code chapter 400, or a firefighter or police officer of a city not participating under Iowa Code chapter 410 or 411. (See definitions of employee in subrule 21.5(1).)

Effective January 1, 1995, part-time police officers will be included.

(3) Correctional officers as provided for in Iowa Code section 97B.49B.

Employees who, prior to December 22, 1989, were in a "correctional officer" position but whose position is found to no longer meet this definition on or after that date, shall retain coverage, but only for as long as the employee is in that position or another "correctional officer" position that meets this definition. Movement to a position that does not meet this definition shall cancel "protection occupation" coverage.

(4) Airport firefighters employed by the military division of the department of public defense. Effective July 1, 1994, airport firefighters employed by the military division of the department of public defense shall pay the same contribution rate, and receive benefits under the same formula, as sheriffs and deputy sheriffs. Service under this subrule includes all membership service in IPERS as an airport firefighter.

(5) Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city of 100,000 population or more.

(6) Rescinded IAB 7/5/95, effective 8/9/95.

(7) Effective July 1, 1990, an employee of the state department of transportation who is designated as a "peace officer" by resolution under Iowa Code section 321.477.

(8) Effective July 1, 1992, a fire prevention inspector peace officer employed by the department of public safety. Effective July 1, 1994, a fire prevention inspector peace officer employed before that date who does not elect coverage under Iowa Code chapter 97A in lieu of IPERS.

(9) Effective July 1, 1994, through June 30, 1998, a parole officer III with a judicial district of the department of correctional services.

(10) Effective July 1, 1994, through June 30, 1998, a probation officer III with a judicial district of the department of correctional services.

e. Prior special rates are as follows:

Effective July 1, 1997, through June 30, 1998:

1. Sheriffs, deputy sheriffs, and airport firefighters—member's rate—5.91%; employer's rate—8.87%.

2. Protection occupation—member's rate—5.64%; employer's rate—8.45%.

f. Pretax.

(1) Effective January 1, 1995, employers must pay member contributions on a pretax basis for federal income tax purposes only. Such contributions are considered employer contributions for federal income tax purposes and employee contributions for all other purposes. Employers must reduce the member's salary reportable for federal income tax purposes by the amount of the member's contribution.

(2) Salaries reportable for purposes other than federal income tax will not be reduced, including IPERS, FICA, and, through December 31, 1998, state income tax purposes.

(3) Effective January 1, 1999, employers must pay member contributions on a pretax basis as provided in subparagraph (1) above for both federal and state income tax purposes.

21.6(10) Effective July 1, 1992, credit memos that have been issued due to an employer's overpayment are void one year after issuance.

This rule is intended to implement Iowa Code sections 97B.49A to 97B.49I.

581—21.7(97B) Accrual of interest. Interest as provided under Iowa Code section 97B.9 shall accrue on any contributions not received by IPERS by the due date, except that interest may be waived by IPERS upon request prior to the due date by the employing unit, if due to circumstances beyond the control of the employing unit.

This rule is intended to implement Iowa Code section 97B.9.

581—21.8(97B) Refunds.

21.8(1) Termination of employment and refund of contributions.

a. A member is eligible for a refund of the member's accumulated contributions 30 days after the member's last paycheck is issued from which IPERS contributions will be deducted. Effective July 1, 1999, a vested member may also receive a refund of a portion of the employer's accumulated contributions. The refundable portion of the employer's accumulated contributions shall be a fraction, the numerator of which is the member's years of service and the denominator of which is the applicable years, 30, 25, or 22, for that member. In no event will this fraction ever exceed one. The last pay date must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year. The employee's "termination date" is the last date on which the employee was paid and certified by the employer on the IPERS refund application. The applicant's signature must be notarized. Upon receiving an eligible member's application for refund, IPERS shall pay to the terminated member the amount of the member's accumulated contributions currently reported to, and processed by, IPERS as of the date of the refund. Upon receipt of the final contributions from the member's employer, a supplemental refund will be paid to the terminated member. Terminated members must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered.

b. To obtain a refund, a member must file a refund application form, which is available from IPERS or the member's employer.

c. IPERS may issue an emergency refund to a member who has terminated covered employment and meets the refund eligibility requirements of Iowa Code section 97B.53, if:

(1) The member files an application for refund on a form provided by IPERS;

(2) The member alleges in writing that the member is encountering a financial hardship or unforeseeable emergency; and

(3) The member provides IPERS with payment instructions either in person or in writing.

d. Financial hardship or unforeseeable emergency includes:

(1) Severe financial hardship to a member resulting from a sudden and unexpected illness or accident of the member or a member's dependent;

(2) Loss of a member's property due to casualty; or

(3) Other similar extraordinary and unforeseeable circumstances which arise as a result of events beyond a member's control.

e. An emergency refund will not be issued by IPERS until the member makes payment in full of an "emergency refund processing fee" by a guaranteed financial instrument, such as a cashier's or certified check. Personal checks and cash are not accepted. This fee is to reflect the actual costs to IPERS associated with processing the refund on an emergency basis, including staff time and cost of materials. IPERS shall develop a policy to set fees for processing in accordance with Iowa Code section 97B.38.

f. Unless otherwise specified by the member, the refund warrant will be mailed to the member at the address listed on the application for refund. If a member so desires, the warrant may be delivered to the member or the member's agent at IPERS' principal office, which is located at 600 East Court Avenue, Des Moines, Iowa. The member must show verification of identification by presenting a picture identification containing both name and social security number. If a member designates in writing an agent to pick up the warrant, the agent must present to IPERS the written designation and a picture identification.

g. Employers who erroneously report wages for employees that are not covered under IPERS may secure a refund or credit, as elected by the employer, for the employer's contributions by filing IPERS' periodic wage reporting adjustment form available from IPERS. An employer that files a periodic wage reporting adjustment form and requests a refund or credit shall receive a refund or credit for both the employer and employee contributions made in error. The employer is responsible for returning the employee's share of refunded or credited amounts and for filing corrected federal and state wage reporting forms. Warrants will not be issued by IPERS if the amount due is less than one dollar. In such cases, the credit will be transferred to the employer's credit memo. Under no circumstance can the employer adjust these wages by underreporting wages on a future periodic wage reporting document. Wages can never be reported as a negative amount. An employer that completes the employer portion of an employee's request for a refund on IPERS Form 56 will not be permitted to file a periodic wage reporting adjustment form for that employee for the same period of time.

h. Effective for wages paid in calendar years beginning on or after January 1, 1995, IPERS shall automatically issue to each affected employer a refund of both employer and employee contributions paid on wages in excess of the annual covered wage maximum for a calendar year. A report will be forwarded to each such employer detailing each employee for whom wages were reported in excess of the covered wage ceiling. Warrants for the excess contributions made will be issued to the employers upon IPERS' receipt of certification from said employers that the overpayment report is accurate. Warrants will not be issued if the amount due is less than one dollar. In such cases, the credit will be transferred to the employer's credit memo. The employer is responsible for returning the employee's share of refunded excess contributions. Where employees have simultaneous employment with two or more employers and as a result contributions are made on wages in excess of the annual covered wage maximum, refunds of excess employer and employee contributions shall be made to each employer in proportion to the amount of contributions paid by the employer.

21.8(2) If an employee hired for permanent employment resigns within six months of the date of employment, the employer may file IPERS' form for reporting adjustments to receive the credit for both the employer's and employee's portion of the contributions. It is the responsibility of the employer to return the employee's share.

21.8(3) Refund of contributions—after reemployment.

a. *Less than six months.* A retired member who returns to permanent covered employment, but who resigns within six months of the date the reemployment began, is eligible to have the member contributions for this period refunded. The contributions made by the employer will be refunded to the employer.

b. *Six months or longer.* A retired member who returns to permanent employment and subsequently terminates the member's employment may elect to receive an increased monthly allowance, or a refund of the member's and, effective July 1, 1998, employer's accumulated contributions accrued during the period of reemployment. A reemployed member who elects a refund under this subrule in lieu of an increased monthly allowance shall forfeit all other rights to benefits under the system with respect to the period of reemployment. If IPERS determines that the reemployment will not increase the amount of a member's monthly benefit, a member can only elect the refund.

21.8(4) Refunds of any kind shall not be issued if the amount due is less than $1.

This rule is intended to implement Iowa Code sections 97B.10, 97B.46 and 97B.53.

581—21.9(97B) Appeals.

21.9(1) *Procedures.*

a. A party who wishes to appeal a decision by IPERS other than a special service classification shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

(1) The name, address, and social security number of the applicant;

(2) A reference to the decision from which the appeal is being made;

(3) The fact that an appeal from the decision is being made; and

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

Upon receipt of the appeal, IPERS shall conduct an internal review of the facts and circumstances involved, in accordance with its appeal review procedure. IPERS shall issue a final agency decision which becomes final unless within 30 days of issuance the member files a notice of further appeal. Upon receipt of notification of further appeal, IPERS shall inform the department of inspections and appeals of the filing of the appeal and of relevant information pertaining to the case in question. In determining the date that an appeal or any other document is filed with IPERS or the department of inspections and appeals, the following shall apply: An appeal or any other document 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. The department of inspections and appeals shall hold a hearing on the case and shall affirm, modify, or reverse the decision by IPERS.

b. Members shall file appeals of their special service classifications with their respective employers, using the appeal procedures of such employers. The appeal procedures for department of corrections employees shall be specified in rules adopted by the personnel division of the Iowa department of personnel. IPERS shall have no jurisdiction over special service classification appeals.

21.9(2) *The determination of appeals.* Following the conclusion of a hearing of an appeal, the administrative law judge within the department of inspections and appeals shall announce the findings of fact. The decision shall be in writing, signed by the administrative law judge, and filed with IPERS, with a copy mailed to the appellant. Such decision shall be deemed final unless, within 30 days after the issuance date of such decision, further appeal is initiated. The issuance date is the date that the decision is signed by the administrative law judge.

21.9(3) *Appeal board.* A party appealing from a decision of an administrative law judge shall file a notice with the employment appeal board of the Iowa department of inspections and appeals, petitioning the appeal board for review of the administrative law judge's decision. In determining the date that a notice of appeal or any other document is filed with the employment appeal board, and subject to applicable exceptions adopted by the employment appeal board in IAC [486], the following shall apply: an appeal or any other document delivered by mail shall be deemed to be filed as of the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed as of the date that it is received.

21.9(4) *Judicial review.* The appeal board's decision shall be final and without further review 30 days after the decision is mailed to all interested parties of record unless within 20 days a petition for rehearing is filed with the appeal board or within 30 days a petition for judicial review is filed in the appropriate district court. The department, in its discretion, may also petition the district court for judicial review of questions of law involving any of its decisions. Action brought by the department for judicial review of its decisions shall be brought in the district court of Polk County, Iowa.

This rule is intended to implement Iowa Code sections 97B.16, 97B.20, 97B.20A, 97B.20B, 97B.27 and 97B.29.

581—21.10(97B) Beneficiaries.

21.10(1) Designation of beneficiaries. To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits is accepted by IPERS in lieu of a completed designation form. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 retiree may name someone other than the member's contingent annuitant as beneficiary, but only for death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member. If a reemployed IPERS Option 4 retiree dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the death benefits awarded in a qualified domestic relations order (QDRO) shall be paid to the contingent annuitant as alternate payee, and the remainder of the death benefits shall be paid to the member's estate, or the member's heirs if no estate is probated.

21.10(2) Change of beneficiary. The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

21.10(3) Payments to a beneficiary. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, together with information establishing the claimant's right to payment. A named beneficiary must complete IPERS' application for death benefits based on the deceased member's account.

21.10(4) Where the designated beneficiary is an estate, trust, church, charity or other like organization, payment of benefits shall be made in a lump sum only.

21.10(5) Rescinded IAB 7/5/95, effective 8/9/95.

21.10(6) Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares unless a different proportion is stipulated.

21.10(7) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary is on file with IPERS shall be made in one of the following ways:

a. Where the estate is open, payment shall be made to the administrator or executor.

b. Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made to the surviving spouse. The following documents shall be presented as supporting evidence:

(1) Copy of the will, if any;

(2) Copy of any letters of appointment; and

(3) Copy of the court order closing the estate and discharging the executor or administrator.

c. Where no estate is probated or the estate is closed prior to filing with IPERS and there is no surviving spouse, payment will be made to the heirs-at-law as determined by the intestacy laws of the state of Iowa.

d. Where a trustee has been named as designated beneficiary and is not willing to accept the death benefit or otherwise serve as trustee, IPERS may, but is not required to, apply to the applicable district court for an order to distribute the funds to the clerk of court on behalf of the beneficiaries of the member's trust. Upon the issuance of an order and the giving of such notice as the court prescribes, IPERS may deposit the death benefit with the clerk of court for distribution. IPERS shall be discharged from all liability upon deposit with the clerk of court.

21.10(8) Where the member dies prior to the first month of entitlement, the death benefit shall include the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the "applicable denominator," as provided in Iowa Code section 97B.52(1). The amount payable shall not be less than the amount that would have been payable on the death of the member on June 30, 1984. The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

When a member who has filed an application for retirement benefits and has survived into the first month of entitlement dies prior to the issuance of the first benefit check, IPERS will pay the death benefit allowed under the retirement option elected pursuant to section 97B.48(1) or 97B.51.

21.10(9) Waiver of beneficiary rights. A named beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would have been entitled. The waiver of the rights shall occur prior to the receipt of a payment from IPERS to the beneficiary. The waiver of rights shall be binding and will be executed on a form provided by IPERS. The waiver of rights may be general, in which case payment shall be divided equally among all remaining designated beneficiaries, or to the member's estate if there are none. The waiver of rights may also expressly be made in favor of one or more of the member's designated beneficiaries or the member's estate. If the waiver of rights operates in favor of the members' estate and no estate is probated or claim made, payment shall be paid to the member's surviving spouse unless there is no surviving spouse or the surviving spouse has waived his or her rights. In that case, payment shall be made to the member's heirs excluding any person who waived his or her right to payment.

21.10(10) Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is $10,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than $10,000.

21.10(11) When a member on benefits returns to covered employment (or remains in covered employment if aged 70 or older), and dies before applying for a recomputation or recalculation of benefits, the death benefit formula will be applied to the wages and years of service reported after benefits begin.

21.10(12) Death benefits shall not exceed the maximum amount possible under the Internal Revenue Code.

21.10(13) IPERS will apply the provisions of the Uniform Simultaneous Death Act, Iowa Code sections 633.523 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

21.10(14) IPERS will apply the provisions of the Felonious Death Act, Iowa Code sections 633.535 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

21.10(15) A completed application must be filed with the department no later than five years after the date of the member's death or the total sum is forfeited. A beneficiary's right to receive a death benefit beyond the five-year limitation shall be extended to the extent permitted under Internal Revenue Code Section 401(a)(9) and the applicable treasury regulations. Notwithstanding the foregoing, the maximum claims period shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for death benefits payable under benefit options described in Iowa Code sections 97B.49A to 97B.49I and 97B.51(6) and for members who die after their required beginning date. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this subrule shall end April 1 of the year following the year of the member's death.

21.10(16) Effective July 1, 1998, a member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. For claims filed prior to July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the third quarter of 1998. For claims filed on or after July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the quarter that the claim is received by IPERS. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

21.10(17) Interest is only accrued if the member dies before the member's retirement first month of entitlement (FME) or, for a retired reemployed member, before the member's reemployment FME, and is only accrued with respect to the retired or retired reemployed member's accumulated contributions account.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.1A(17), 97B.34, 97B.34A, 97B.44 and 97B.52.

581—21.11(97B) Application for benefits.

21.11(1) Form used. It is the responsibility of the member to notify IPERS of the intention to retire. This should be done 60 days before the expected retirement date. The application for monthly retirement benefits is obtainable from IPERS, 600 East Court Avenue, P.O. Box 9117, Des Moines, Iowa 50306-9117. The printed application form shall be completed by each member applying for benefits and shall be mailed or brought in person to IPERS. Option choice and date of retirement shall be clearly stated on the application form and all questions on the form shall be answered in full. If an optional allowance is chosen by the member in accordance with Iowa Code section 97B.48(1) or 97B.51, the election becomes binding when the first retirement allowance is paid. A retirement application is deemed to be valid and binding when the first payment is paid. Members may not cancel their applications, change their option choice, or change an Option 4 contingent annuitant after that date.

21.11(2) Proof required in connection with application. Proof of date of birth to be submitted with an application for benefits shall be in the form of a birth certificate or an infant baptismal certificate. If these records do not exist, the applicant shall submit two other documents or records ten or more years old, or certification from the custodians of these records, which will verify the day, month and year of birth. The following records or documents are among those deemed acceptable to IPERS as proof of date of birth:

a. United States census record;

b. Military record;

c. Naturalization record;

d. A marriage license showing age of applicant in years, months and days on date of issuance;

e. A life insurance policy;

f. Records in a school's administrative office;

g. An official form from the United States Immigration Service, such as the "green card," containing such information;

h. Valid Iowa driver's license; or

i. Adoption papers; or

j. A family Bible record. A photostatic copy will be accepted with certification by a notary that the record appears to be genuine.

21.11(3) Retirement benefits and the age reduction factor.

a. A member shall be eligible for monthly retirement benefits with no age reduction effective with the first of the month in which the member becomes the age of 65, if otherwise eligible.

b. Effective July 1, 1998, a member shall be eligible for full monthly retirement benefits with no age reduction effective with the first of the month in which the member becomes the age of 62, if the member has 20 full years of service and is otherwise eligible.

c. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55.

These benefits are computed in accordance with Iowa Code sections 97B.49A to 97B.49I.

21.11(4) A member shall be eligible to receive monthly retirement benefits effective with the first day of the month in which the member becomes the age of 70, even though the member continues to be employed.

21.11(5) A member shall be eligible to receive benefits for early retirement effective with the first of the month in which the member attains the age of 55 or the first of any month after attaining the age of 55 before the member's normal retirement date, provided the date is after the last day of service.

21.11(6) A member retiring on or after the early retirement or normal retirement date shall submit a written notice to IPERS setting forth the retirement date, provided the date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 21.18(2). A member who does not begin benefits timely in the first month that begins after the member's last day of service may receive up to six months of retroactive payments. The period for which retroactive payments may be paid is measured from the month that a valid contact occurs. For purposes of this subrule, a "contact" means a telephone call, facsimile transmission, E-mail, visit to IPERS at its offices or off-site locations, or a letter or other writing requesting a benefits estimate or application to retire, whichever is received first. A contact is only valid if a completed application to retire is received within six months following the month that a benefits estimate or application to retire form is mailed to the member in response to the contact. If a completed application to retire form is received more than six months after such a benefits estimate or application to retire is mailed, retroactive payments may only be made for up to six months preceding the month that the completed application to retire is received.

Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the appropriate notice. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all covered and noncovered employment with employers covered under Iowa Code chapter 97B.

If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the mandatory options described above if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member what adjustments or repayments are required in order to make the change.

If a member cannot be located so as to commence payment on or before the required beginning date described above, the member's benefit shall be forfeited. However, if a member later contacts IPERS, and wishes to file an application for retirement benefits, the member's benefits shall be reinstated. A member whose benefits are forfeited and then reinstated under this subrule shall only qualify for retroactive payments to the extent provided under Iowa Code section 97B.48(2).

21.11(7) Retirement benefits to a member shall terminate the day on which the member's death occurs. The benefits for the month of the member's death shall be prorated based on the number of days the member lived during that month. Notwithstanding the foregoing, for each death occurring on or after July 1, 1998, a member's retirement benefits shall terminate after payment is made to the member for the entire month during which the member's death occurs. For such deaths, death benefits shall begin with the month following the month in which the member's death occurs.

21.11(8) Upon the death of the retired member, IPERS will reconcile the decedent's account to determine if an overpayment was made to the retiree and if a further payment(s) is due to the retired member's named beneficiary, contingent annuitant, heirs-at-law or estate. If an overpayment has been made to the retired member, IPERS will determine if steps should be taken to seek collection of the overpayment from the named beneficiary, contingent annuitant, estate, heirs-at-law, or other interested parties.

The waiver of the necessary steps to effect collection may occur in cases where recovery of the moneys is not probable and where that action is not deemed prudent administration or cost-effective utilization of the funds of the system.

21.11(9) To receive retirement benefits, a member under the age of 70 must officially leave employment with an IPERS covered employer, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to the member's first month of entitlement, entered into contractual arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

The bona fide retirement period will be waived, however, if the member is elected to public office which term begins during the normal four-month bona fide retirement period. This waiver does not apply if the member was an elected official who was reelected to the same position for another term. The bona fide retirement period will also be waived for state legislators who terminate their nonlegislative employment and the IPERS coverage for their legislative employment and begin retirement but wish to continue with their legislative duties.

A member will have a bona fide retirement if the member returns to work as an independent contractor with a public employer during the four-month qualifying period. Independent contractors are not covered under IPERS.

Effective July 1, 1998, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered by this chapter, with such employer is terminated and the member receives at least four monthly benefit payments. In order to receive retirement benefits, the member must file a completed application for benefits form with the department before returning to any employment with the same employer.

21.11(10) If a member files a retirement application but fails to select a first month of entitlement, IPERS will select by default the earliest month possible. A member may appeal this default selection by sending written notice of the appeal postmarked on or before 30 days after a notice of the default selection was mailed to the member. Notice of the default selection is deemed sufficient if sent to the member at the member's address of record.

This rule is intended to implement Iowa Code sections 97B.5, 97B.15, 97B.48(1), 97B.49A to 97B.49I, 97B.50(1), 97B.51, 97B.52, and 97B.52A.

581—21.12(97B) Service credit. An employee working in a position for a school district or other institution which operates on a nine-month basis shall be credited with a year of service for each year in which three quarters of coverage are recorded, if the employee returns to covered employment the next operating year. The foregoing sentence shall be implemented as follows. A member will receive credit for the third quarter when no wages are reported in that quarter if the member works the following three calendar quarters and had covered wages in the immediately preceding second quarter. An individual employed on a fiscal- or calendar-year basis shall be credited with a year of service for each year in which four quarters of coverage are recorded.

21.12(1) *Prior service.*

a. A member shall receive prior service credit if the member made contributions under the abolished Iowa Old-Age and Survivors' Insurance (IOASI) System and has not qualified for IOASI benefits. If qualified, a member will be granted credit for verified service that occurred during and prior to the IOASI period.

b. Effective July 1, 1990, "public employee" means not only an employee who had made contributions under IOASI, but also includes a member who had service as a public employee prior to July 4, 1953, in another state, or for the federal government, or within other retirement systems established in the state of Iowa and who qualifies for the buy-in programs referenced in 21.24(2). To receive credit for service in another system, however, the public employee who had not made contributions to IOASI but who wishes to receive prior service credit for public employment elsewhere must meet the following conditions:

(1) Have been a public employee;

(2) Waive on a form provided by IPERS all rights to a retirement in another system for that period of employment for the public employer(s), if any; and

(3) Submit verification of service for that other public employer to IPERS.

A qualifying member who decides to purchase IPERS credit for prior service must make employer and employee contributions to IPERS for each year of service or fraction thereof allowed in this buy-in. This contribution shall be equal to the member's covered IPERS wages for the most recent full calendar year of IPERS coverage, using the rates in Iowa Code sections 97B.11, 97B.49B and 97B.49C then applicable to the type of service credit being purchased, and multiplied by the number of years or fraction thereof being purchased from other public employment.

c. Prior to July 1, 1990, public employment must have been for the state of Iowa, or a county, city, township, school district of the state of Iowa, or a political subdivision, provided the employment was not in an elective position, and provided further that the employee is not covered by another retirement plan funded in whole or in part by the state of Iowa or a political subdivision. Effective July 1, 1990, public employment may also include service for a public employer in another state, for the federal government, or for public employment covered by another retirement system within the state of Iowa.

d. For the purposes of this rule, public school teachers are considered to have been in service on July 4, 1953, if they were under contract at the end of the school year 1952-1953 or if they signed a contract for the 1953-1954 school year on or before July 4, 1953.

21.12(2) *Prior service credit for vacation or leave of absence.*

a. Prior service credit shall be given for a period of vacation or leave of absence authorized by the employer not to exceed 12 months. If a period of vacation or leave of absence exceeds 12 months, prior service credit shall be given for the first 12 months only. However, if a period of vacation or leave of absence was granted for 12 months or less, and renewed for 12 months or less, all periods of vacation or leave of absence shall be included as prior service, even though all periods added together exceed 12 months.

b. Reentry into public employment by an employee on leave of absence can be achieved by the employee by accepting employment with any public employer, provided there is no interruption between the end of the period of the leave of absence and reentry into public employment.

c. The employer must verify the inclusive dates of the period of vacation or leave of absence before prior service can be given.

21.12(3) *Prior service credit for military service.*

a. Prior service credit shall be given for the entire period of military service during a war or national emergency, provided the employee was employed by the employer immediately prior to entry into military service and the employee returned to work for the same employer within 12 months after release from service.

b. The employer must verify the inclusive dates of the period of absence from work. A copy of the enlistment and discharge records must also be provided to IPERS to verify enlistment and discharge dates.

21.12(4) *Prior service credit for interruption in service.* Prior service credit shall be given for periods of temporary or seasonal interruption in service where the temporary suspension of service does not terminate the period of employment of the employee. Verification from the employer is needed stating the dates of employment, periods of interruption and that employment was not terminated during those periods.

21.12(5) *Prior service credit for part-time employment.*

a. Effective July 1, 1990, if a member had covered wages reported in any quarter or the custodian of the record certifies service in any quarter, a full quarter of credit will be granted.

b. A teacher will receive credit for a full year in which three quarters of coverage are reported or three quarters of service are certified by the custodian of the records if the teacher had a contract for the following school year. IPERS may require the submission of a copy of that contract.

c. Prior to July 1, 1990, prior service credit for part-time employment was granted on the basis of actual time worked. A ratio determined either by dividing the actual average time worked per day by the normal full-time day or by some other reasonable method was used to calculate the actual time worked.

21.12(6) *Prior service credit for a set period of time.*

a. Effective July 1, 1990, prior service credit will be granted for those quarters in which covered wages were reported or if the custodian of the record certifies service.

b. Prior to July 1, 1990, full prior service credit was given for periods of employment which required the employee to be available for as much work as required, even though the employee may not have actually worked full-time. This includes the employment of town clerks, secretaries of school districts, school bus drivers and school lunch employees.

21.12(7) *Prior service credit for school year.* A public school teacher who worked full-time the entire school year shall be given a full year of prior service credit.

a. Effective July 1, 1990, if a member had covered wages reported in any quarter or the custodian of the record certifies service in any quarter, a full quarter of credit will be granted.

A teacher will receive credit for a full year in which three quarters of coverage are reported or three quarters of service are certified by the custodian of the records if the teacher had a contract for the following school year. IPERS may require the submission of a copy of that contract.

b. Prior to July 1, 1990, school employees may have received less than a full year's credit if they had reportable wages in fewer than four quarters.

21.12(8) *Proof of prior service.*

a. A statement showing the inclusive dates of employment and the position(s) the member held shall be signed by the present custodian of those employment records. IPERS Form 507 or a statement containing similar information may be used for this purpose. This statement does not require notarization.

b. If an employment record is not available for any reason, notarized affidavits of two individuals having knowledge of the employment for which prior service credit is sought shall be submitted. IPERS Form 507-A or an affidavit containing similar information may be used.

c. Proof of prior service will be scrutinized to ensure that:

(1) It refers to covered employment in Iowa;

(2) It is signed by the proper authority;

(3) It refers to the member in question;

(4) The position held is one for which prior service credit can be given;

(5) Any corrections, deletions, or additions in dates of service are initialed by the signer of the document;

(6) Anything on the reverse side of the form is taken into consideration; and

(7) Certification showing the highest gross wage earned in any 12 consecutive month period before July 4, 1953, refers to a period ending before that date. IOASI records may be used for verification of wages if necessary, and this information is noted on the face of IPERS Form 502, application for monthly retirement allowance.

d. Effective July 1, 1990, prior service will be credited by quarters. Service of less than a full quarter shall be rounded up to a full quarter. (Prior to July 1, 1990, the amount of prior service credit due on each proof of service was computed in years, months and days.)

e. If the custodian of the records cannot verify service before July 4, 1953, or if the member disputes the amount of time proven, IPERS may use any records available to supplement the member's proof.

21.12(9) *Prior service credit for service before January 1, 1946.* An active, vested or retired member who was employed prior to January 1, 1946, by an employer may file written verification of the member's dates of employment with IPERS and receive credit for years of prior service for the period of employment. However, a member who is eligible for or receiving a pension or annuity from a local school district for service prior to January 1, 1946, is not eligible to receive credit for the period of service upon which the pension or annuity is based. The member is responsible to obtain sufficient proof of service prior to January 1, 1946, as IPERS may require.

21.12(10) *Membership service.* A member shall receive membership service credit for service rendered after July 4, 1953. Service is counted to the complete quarter calendar year. A calendar year shall not include more than four quarters.

This rule is intended to implement Iowa Code sections 97B.41(12), 97B.43 and 97B.75.

581—21.13(97B) Calculation of monthly retirement benefits.

21.13(1) If a member has four or more complete years of service credit in IPERS, a monthly payment allowance will be paid beginning with the first full month after all employment with all covered employers terminates. This allowance will be paid in accordance with the applicable paragraph of this rule and any option the member may elect pursuant to Iowa Code section 97B.51. IPERS shall determine on the applicable forms which designated fractions of a member's monthly retirement allowance payable to contingent annuitants shall be provided as options under Iowa Code section 97B.51(1). Any option elected by a member under Iowa Code section 97B.51 must comply with the requirements of the Internal Revenue Code that apply to governmental pension plans, including but not limited to Internal Revenue Code Section 401(a)(9). If a member has less than four complete years of service credit, the benefit receivable will be computed on a money purchase basis, with reference to annuity tables used by IPERS in accordance with the member's age. Benefits are not payable before the age of 55, except after July 1, 1990, in accordance with an early distribution in the case of retirement due to disability, as described in rule 581—21.22(97B).

21.13(2) Reduction for early retirement.

a. Effective July 1, 1988, a member's benefit formula will be reduced by one-quarter of 1 percent for each month the member's retirement precedes the normal retirement date, as defined in Iowa Code section 97B.45 excluding section 97B.45(4). The following are situations in which a member is considered to be taking early retirement:

(1) If a member is less than the age of 65 in the member's first month of entitlement and has less than 20 years of service; or

(2) If a member is less than 62 years of age in the month of the member's retirement and has 20 years of service.

b. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55.

c. Effective July 1, 1991, a member qualifying for early retirement due to disability under Iowa Code section 97B.50 shall not be subject to a reduction in benefits due to age.

d. If a member retires with at least 20 years of service but is less than the age of 62, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 62. If a member retires with less than 20 years of service, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 65.

21.13(3) A member's early retirement date shall be the first day of the month of the fifty-fifth birthday or any following month before the normal retirement date, provided that date is after the last day of service.

21.13(4) Members employed before January 1, 1976, and retiring after January 1, 1976, with four or more complete years of membership service shall be eligible to receive the larger of a monthly formula benefit equal to the member's total covered wages multiplied by one-twelfth of one and fifty-seven hundredths percent, multiplied by the percentage calculated in subrule 21.13(2), if applicable, or a benefit as calculated in subrule 21.13(6).

21.13(5) Members employed before January 1, 1976, who qualified for prior service credit shall be eligible to receive a monthly formula benefit of eight-tenths of one percent multiplied by each year of prior service multiplied by the monthly rate of the member's total remuneration during the 12 consecutive months of prior service for which the total remuneration was the highest, disregarding any monthly rate amount in excess of $250, plus three-tenths of one percent of the monthly rate amount not in excess of $250 for each year in which accrued liability for benefit payments created by the abolished system is funded.

21.13(6) Benefit formula.

a. For each active member retiring on or after July 1, 1994, with four or more complete years of service, the monthly benefit will be equal to one-twelfth of an amount equal to 60 percent of the three-year average covered wage multiplied by a fraction of years of service.

b. For all active and inactive vested members, the monthly retirement allowance shall be determined on the basis of the formula in effect on the date of the member's retirement. If the member takes early retirement, the benefit shall be adjusted as provided in subrule 21.13(2).

c. Effective July 1, 1996, in addition to the 60 percent multiplier identified above, members who retire with years of service in excess of their "applicable years" shall have the percentage multiplier increased by 1 percent for each year in excess of their "applicable years," not to exceed an increase of 5 percent. For regular members, "applicable years" means 30 years; for protection occupation members, "applicable years" means 25 years; for sheriffs, deputy sheriffs, and airport firefighters, "applicable years" means 22 years. Effective July 1, 1998, sheriffs, deputy sheriffs, and airport firefighters who retire with years of service in excess of their applicable years shall have their percentage multiplier increased by 1.5 percent for each year in excess of their applicable years, not to exceed an increase of 12 percent.

21.13(7) Average covered wages.

a. "Three-year average covered wage" means a member's covered calendar year wages averaged for the highest three years of the member's service. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, IPERS may determine the wages for the third year by computing the final quarter or quarters of wages to complete the year. The computed year wages shall not exceed the maximum covered wage in effect for that calendar year. Furthermore, for members whose first month of entitlement is January of 1999 or later, the computed year shall not exceed the member's highest actual calendar year of covered wages by more than 3 percent.

For members whose first month of entitlement is January 1995 or later, a full third year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the last year. The value of this average quarter will be computed by selecting the highest covered wage-year not used in the computation of the three high years and dividing the covered salary by four quarters. This value will be combined with the final quarter or quarters to complete a full calendar year. If the member's final quarter of wages will reduce the three-year average covered wage, it can be dropped from the computation. However, if the covered wages for that quarter are dropped, the service credit for that quarter will be forfeited as well. If the final quarter is the first quarter of a calendar year, those wages must be used in order to give the member a computed year. The three-year average covered wage cannot exceed the highest maximum covered wages in effect during the member's service.

If the three-year average covered wage of a member who retires on or after January 1, 1997, and before January 1, 2003, exceeds the limits set forth in paragraph *"b"* below, the longer period specified in paragraph *"b"* shall be substituted for the three-year averaging period described above. No quarters from the longer averaging period described in paragraph *"b"* shall be combined with the final quarter or quarters to complete the last year.

b. For the persons retiring during the period beginning January 1, 1997, and ending December 31, 2002, the three-year average covered wage shall be computed as follows:

(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds $48,000, the member's covered wages averaged for the highest four years of the member's service or $48,000, whichever is greater.

(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds $52,000, the member's covered wages averaged for the highest five years of the member's service or $52,000, whichever is greater.

(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds $55,000, the member's covered wages averaged for the highest six years of the member's service or $55,000, whichever is greater.

(4) For a member who retires on or after January 1, 2000, but before January 1, 2003, and whose three-year average covered wage at the time of retirement exceeds $55,000, the member's covered wages averaged for the highest seven years of the member's service or $55,000, whichever is greater.

For purposes of this paragraph *"b,"* the highest years of the member's service shall be determined using calendar years and may be determined using one computed year. The computed year shall be calculated in the manner and subject to the restrictions provided in paragraph *"a."*

21.13(8) Initial benefit determination.

a. The initial monthly benefit for the retiree will be calculated utilizing the highest three calendar years of wages that have been reported as of the member's retirement. When the final quarter(s) of wages is reported for the retired member, a recalculation of benefits will be performed by IPERS to determine if the "computed year" as described in Iowa Code section 97B.1A(23) and 581 IAC 21.13(7), or the final calendar year, is to be used in lieu of the lowest of the three calendar years initially selected. In cases where the recalculation determines that the benefit will be changed, the adjustment in benefits will be made retroactive to the first month of entitlement. The wages for the "computed year" shall not exceed the highest covered wage ceiling in effect during the member's period of employment.

b. In cases where the member's final quarter's wages have been reported to IPERS prior to retirement, the original benefit will be calculated utilizing all available wages.

c. The option one death benefit amount cannot exceed the member's investment and cannot lower the member's benefit below the minimum distribution required by federal law.

21.13(9) Minimum benefits. Effective January 1, 1997, those members and beneficiaries of members who retired prior to July 1, 1990, and who upon retirement had years of service equal to or greater than 10, will receive a minimum benefit as follows:

a. The minimum benefit is $200 per month for those members with 10 years of service who retired under Option 2. The minimum shall increase by $10 per year or $2.50 per each additional quarter of service to a maximum benefit of $400 per month for members with 30 years of service. No increase is payable for years in excess of 30. The minimum benefit will be adjusted by a percentage that reflects option choices other than Option 2, and a percentage that reflects any applicable early retirement penalty.

b. In determining minimum benefits under this rule, IPERS shall use only the years of service the member had at first month of entitlement (FME). Reemployment periods and service purchases completed after FME shall not be used to determine eligibility.

c. The adjusted minimum benefit amount shall be determined using the option and early retirement adjustment factors set forth below.

1. The option adjustment factor is determined as follows:

Option 1	.94
Option 2	1.00
Option 3	1.00
Option 4 (100%)	.87
Option 4 (50%)	.93
Option 4 (25%)	.97
Option 5	.97

2. The early retirement adjustment factor is determined as follows:

There is no early retirement adjustment if the member's age at first month of entitlement equals or exceeds 65, or if the member's age at first month of entitlement is at least 62 and the member had 30 or more years of service.

The early retirement adjustment for members having 30 years of service whose first month of entitlement occurred before the member attained age 62 is .25 percent per month for each month the first month of entitlement precedes the member's sixty-second birthday.

The early retirement adjustment for members having less than 30 years of service whose first month of entitlement occurred before the member attained age 65 is .25 percent per month for each month the first month of entitlement precedes the member's sixty-fifth birthday.

IPERS shall calculate the early retirement adjustment factor to be used in paragraph *"d"* below as follows: 100% - (minus) early retirement adjustment percentage = early retirement adjustment factor.

The early retirement adjustment shall not be applied to situations in which the member's retirement was due to a disability that qualifies under Iowa Code section 97B.50.

d. IPERS shall use the following formula to calculate the adjusted minimum benefit: unadjusted minimum benefit x (times) option adjustment factor × (times) early retirement adjustment factor = adjusted minimum benefit.

e. IPERS shall compare the member's current benefit to the adjusted benefit determined as provided above. If the member's current benefit is greater than or equal to the adjusted minimum benefit, no change shall be made. Otherwise, the member shall receive the adjusted minimum benefit.

f. Effective January 1, 1999, the monthly allowance of certain retired members and their beneficiaries, including those whose monthly allowance was increased by the operation of paragraphs *"a"* to *"e"* above, shall be increased. If the member retired from the system before July 1, 1986, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 15 percent. If the member retired from the system on or after July 1, 1986, and before July 1, 1990, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 7 percent.

21.13(10) Hybrid formula for members with more than one type of service credit.

a. Eligibility. Effective July 1, 1996, members having both regular and special service credit (as defined in Iowa Code section 97B.1A(21)) shall receive the greater of the benefit amount calculated under this subrule, or the benefit amount calculated under the applicable nonhybrid benefit formula.

(1) Members who have a combined total of 16 quarters of service may utilize the hybrid formula.

(2) Members who have both types of special service under Iowa Code section 97B.1A(21), but do not have any regular service, may utilize the hybrid formula.

(3) The following classes of members are not eligible for the hybrid formula:

1. Members who have only regular service credit.

2. Members who have 22 years of sheriff/deputy sheriff/airport firefighter service credit as defined under Iowa Code section 97B.49C.

3. Members who have 25 years of protection occupation service credit as defined in Iowa Code section 97B.49B.

4. Members who have 30 years of regular service.

5. Members with less than 16 total quarters of service.

b. Assumptions. IPERS shall utilize the following assumptions in calculating benefits under this subrule.

(1) The member's three-year average covered wage shall be determined in the same manner as it is determined for the nonhybrid formula.

(2) Increases in the benefit formula under this subrule shall be determined as provided under Iowa Code section 97B.49D. The percentage multiplier shall only be increased for total years of service over 30.

(3) Years of service shall be utilized as follows:

1. Quarters which have two or more occupation class codes shall be credited as the class that has the highest reported wage for said quarter. A member shall not receive more than one quarter of credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

2. Quarters shall not be treated as special service quarters unless the applicable employer and employee contributions have been made.

c. Years of service fraction not to exceed one.

(1) In no event shall a member's years of service fraction under the hybrid formula exceed, in the aggregate, one.

(2) If the years of service fraction does, in the aggregate, exceed one, the member's quarters of service credit shall be reduced until the member's years of service fraction equals, in the aggregate, one.

(3) Service credit shall first be subtracted from the member's regular service credit and, if necessary, shall next be subtracted from the member's protection occupation service, and sheriff/deputy sheriff/airport firefighter service credit, in that order.

d. Age reduction. The portion of the member's benefit calculated under this subrule that is based on the member's regular service shall be subject to a reduction for early retirement in the same manner as is provided for regular service retirements.

e. Calculations. A member's benefit under the hybrid formula shall be the sum of the following:

(1) The applicable percentage multiplier divided by 22 times the years of sheriff/deputy sheriff/airport firefighter service credit (if any) times the member's high three-year average covered wage, plus

(2) The applicable percentage multiplier divided by 25 times the years of protection occupation class service credit (if any) times the member's high three-year average covered wage, plus

(3) The applicable percentage multiplier divided by 30 times the years of regular service credit (if any) times the member's high three-year average covered wage minus the applicable age reduction (if any).

If the sum of the percentages obtained by dividing the applicable percentage multiplier by 22, 25, and 30 and then multiplying those percentages by years of service credit exceeds the applicable percentage multiplier for that member, the percentage obtained above for each class of service shall be subject to reduction so that the total shall not exceed the member's applicable percentage multiplier in the order specified in paragraph *"c,"* subparagraph (3), of this subrule.

21.13(11) Money purchase benefits.

a. For each vested member retiring with less than four complete years of service, a monthly annuity shall be determined by applying the total reserve as of the effective retirement date (plus any retirement dividends standing to the member's credit on December 31, 1966) to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised 6.5 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used.

b. For each vested member for whom the present value of future benefits under Option 2 is less than the member reserve as of the effective retirement date, a monthly annuity shall be determined by applying the member reserve to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised 6.5 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used.

c. For calculations under paragraph *"a,"* the term "total reserve" means the total of the member's investment and the employer's investment as of the effective retirement date, plus any retirement dividends standing to the member's credit as of December 31, 1966. For calculations under paragraph *"b,"* the term "member reserve" means the member's total investment, excluding all other amounts standing to the member's credit.

d. For calculations under paragraph *"a,"* Options 2, 3, 4, and 5 shall be calculated by dividing the member's total reserve by the applicable Option 2, 3, 4, and 5 annuity factor taken from the department's tables to determine the monthly amount. For calculations under paragraph *"b,"* Options 2, 3, 4, and 5 shall be calculated by dividing the member reserve by the applicable Option 2, 3, 4, and 5 annuity factor taken from the department's tables to determine the monthly amount.

e. For Option 1, the cost per $1,000 of death benefit shall be determined according to the department's tables. That cost shall be subtracted from the Option 3 monthly amount to determine the Option 1 monthly benefit amount. The Option 1 death benefit amount shall be reduced as necessary so that the Option 1 monthly benefit amount is not less than one-half of the Option 2 monthly benefit amount.

f. If the member has prior service (service prior to July 4, 1953), the Option 2 benefit amount calculated under both paragraphs *"a"* and *"b"* shall be calculated by determining the amount of the member's Option 2 benefit based on the member's prior service and the applicable plan formula, plus the amount of the member's Option 2 benefit based on the member's membership service as determined under this subrule. The Option 2 benefit amount based on prior service shall be adjusted for early retirement.

This rule is intended to implement Iowa Code sections 97B.1A(23), 97B.47, and 97B.49A to 97B.51.

581—21.14(97B) Interest on accumulated contributions.

21.14(1) The term interest as used in this rule means statutory interest plus the interest dividend. For calendar years prior to January 1, 1997, statutory interest is a credit to the accumulated contributions of active members and inactive vested members at a rate of 2 percent per annum. The interest dividend is a credit to the accumulated contributions of active members and inactive vested members which equals the excess of the average rate of interest earned on the retirement fund through investment during a calendar year over the statutory interest plus twenty-five hundredths of 1 percent. For calendar years beginning January 1, 1997, a per annum interest rate at 1 percent above the interest rate on one-year certificates of deposit shall be credited to the member's contributions and the employer's contributions to become part of the accumulated contributions. For purposes of this subrule, the interest rate on one-year certificates of deposit shall be determined by the department based on the average rate for such certificates of deposit as of the first business day of each year as published in a publication of general acceptance in the business community. The per annum interest rate shall be credited on a quarterly basis by applying one-quarter of the annual interest rate to the sum of the accumulated contributions as of the end of the previous calendar quarter.

21.14(2) If a member is vested upon termination, interest will continue to accrue through the month preceding the month of payment of the refund or, in the case of retirement benefits, through the month preceding the first month of entitlement. For periods ending prior to July 1, 1995, if a member is not vested upon termination, interest will cease to accrue on termination of covered employment for as long as the member remains inactive. For periods beginning July 1, 1995, interest will cease to accrue if a member is not vested upon termination of employment for as long as the member is inactive or nonvested. A member automatically becomes vested upon the attainment of the age of 55. Interest shall not be credited to a member's account if the wages were reported in error. Effective July 1, 1995, interest will be credited to an inactive nonvested member's account as provided in Iowa Code section 97B.70, beginning on the first date thereafter that such a member becomes vested as provided in Iowa Code section 97B.1A(24).

21.14(3) Interest shall accrue on the undistributed accumulated contributions of all members, including those of inactive nonvested members, and on the undistributed accumulated contributions of deceased members that are payable under Iowa Code section 97B.52(1). No interest shall be credited to any other death benefit payable under Iowa code chapter 97B. The provisions of this subrule crediting interest to the undistributed accumulated contributions of inactive nonvested members shall not become effective until January 1, 1999.

21.14(4) Effective July 1, 1998, interest on the undistributed accumulated contributions described in subrule 21.14(3) shall accrue through the quarter preceding the quarter in which any distribution is made. If IPERS determines that a dispute among alleged heirs exists, the amount of the death benefits shall be placed in a non-interest-bearing account.

This rule is intended to implement Iowa Code sections 97B.52, 97B.53 and 97B.70.

581—21.15(97B) Forgery claims. When a forgery of a warrant issued in payment of an IPERS refund or benefit is alleged, the claimant must complete and sign an affidavit before a notary public that the endorsement is a forgery. A supplementary statement must be attached to the affidavit setting forth the details and circumstances of the alleged forgery.

This rule is intended to implement Iowa Code sections 97B.40, 97B.52 and 97B.53.

581—21.16(97B) Approved leave periods.

21.16(1) Effective July 1, 1998, a member's service is not deemed interrupted while a member is on a leave of absence that qualifies for protection under the Family and Medical Leave Act of 1993 (FMLA), or would qualify but for the fact that the type of employment precludes coverage under the FMLA, or during the time a member is engaged during military service for which the member is entitled to receive credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. Sections 4301 to 4333).

21.16(2) Reentry into public employment by an employee on military leave can be achieved if the individual accepts employment with a covered employer. Reemployment may begin anytime within 12 months of the individual's discharge from military service or, if longer, within the period provided under USERRA. Upon reemployment the member shall receive credit for all service to which the member is entitled pursuant to USERRA.

Notwithstanding any provision of Iowa Code chapter 97B or these rules to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

For reemployments initiated on or after December 12, 1994, a member shall be treated as receiving compensation for each month during the member's period of military service equal to the member's average monthly compensation during the 12-month period immediately preceding the period of military service or, if shorter, the member's average monthly compensation for the period immediately preceding the period of military service. The member's deemed compensation during the period of military service shall be taken into consideration in determining a member's make-up contributions, if any, and the member's high three-year average covered wage.

For reemployments initiated on or after December 12, 1994, make-up contributions shall be permitted with respect to employee contributions that would have been made during the period of military service if the member had actually been in covered employment during the period earning the deemed compensation provided for under this subrule. Make-up contributions shall be permitted during the five-year period that begins on the date of reemployment or, if less, a period equal to three times the period of military service.

The member shall request the foregoing make-up contributions (except contributions for periods prior to January 1, 1995, which shall be made as posttax contributions) on forms to be filed with the employer, which shall forward a copy to the system. Make-up contributions shall be made as pretax contributions under Internal Revenue Code Section 414(h)(2). Employers must comply with a member's request to begin make-up contributions during a period not exceeding that described in the preceding paragraph and shall forward said amounts to the system in the same manner as provided for pick-up contributions under Iowa Code section 97B.11A. An election to make up employee contributions under this rule shall be irrevocable.

21.16(3) Effective for leaves of absence beginning on or after July 1, 1998, an eligible member must make contributions to the system in order to receive service credit for the period of the leave (except for leaves under subrule 21.16(1) above). Contributions may be made in increments of one quarter or more.

21.16(4) Reentry into public employment by an employee on a leave of absence under subrule 21.16(1) can be achieved by the employee by accepting employment with any public employer, provided that any interruption between the end of the period of leave of absence and reentry into public employment meets the requirements of the FMLA, USERRA and this rule.

21.16(5) Credit for a leave of absence shall not be granted and cannot be purchased for any time period which begins after or extends beyond an employee's termination of employment as certified by the employer. This includes a certification of termination of employment made by an employer on a refund application. Employers shall be required to certify all leaves of absence for which credit is being requested using an affidavit furnished by IPERS and accompanied by a copy of the official record(s) which authorized the leave of absence. The provisions of this subrule denying credit for leaves of absence in certain situations shall apply to leaves of absence that begin on or after the effective date of this subrule, which shall be November 27, 1996. The provisions of the subrule requiring employers to certify all leaves of absence using an affidavit furnished by IPERS shall apply to all requests for leave of absence credit filed after November 27, 1996, regardless of when the leave of absence was granted.

21.16(6) For a leave of absence beginning on or after July 1, 1998, and before July 1, 1999, the service purchase cost shall be equal to the employer and employee contributions and interest payable for the employee's most recent year of covered wages, adjusted by the inflation factor used in rule 21.24(97B). For a leave of absence beginning on or after July 1, 1999, the service purchase cost shall be the actuarial cost, as certified by IPERS' actuary. In calculating the actuarial cost of a service purchase under this subrule, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.1A(8A), 97B.1A(19) and 97B.81.

581—21.17(97B) Membership status.

21.17(1) Effective July 1, 1990, a member achieves vested status when the member has served and made contributions in 16 or more quarters of IPERS-covered employment or attains the age of 55. The vested status of a member may also be determined when the member's contribution payments cease. At that time a comparison of the membership date and termination date will be made. If service sufficient to indicate vested status is present, after any periods of interruption in service have been taken into consideration, the member shall be considered a vested member. All vested members receive all the rights and benefits of a vested member in IPERS until or unless the member files for a refund of accumulated contributions.

21.17(2) For the purposes of this rule, four quarters of coverage shall constitute a year of membership service for a member employed on a fiscal- or calendar-year basis. A member working for a school district or other institution which operates on a nine-month basis shall be granted a year of membership service for each year in which the member has three or more quarters of coverage, if the employee remains in covered employment for the next operating year. An employee who terminates covered employment and has no wages paid in the third quarter shall not receive service credit for the third quarter. Only one year of membership service credit shall be granted for any 12-month period.

21.17(3) Rescinded IAB 7/22/92, effective 7/2/92.

21.17(4) Effective July 1, 1988, an inactive member who had accumulated, as of the date of the member's last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this subrule for qualifying as a vested member on the date of termination, shall be considered vested.

21.17(5) In the case of a complete or partial termination of this fund, any affected member shall have a vested interest in the accrued benefit as of the date of such termination, to the extent such benefit is then funded.

This rule is intended to implement Iowa Code section 97B.41.

581—21.18(97B) Retirement dates.

21.18(1) Effective through December 31, 1992, the first month of entitlement of a member who qualifies for retirement benefits is the first month following the member's last day of service or last day of leave, with or without pay, whichever is later.

21.18(2) Effective January 1, 1993, the first month of entitlement of an employee who qualifies for retirement benefits shall be the first month after the employee is paid the last paycheck, if paid more than one calendar month after termination. If the final paycheck is paid within the month after termination, the first month of entitlement shall be the month following termination.

21.18(3) To be eligible for a monthly retirement benefit, the member must survive into the designated first month of entitlement. If the member dies prior to the first month of entitlement, the member's application for monthly benefits is canceled and the distribution of the member's account is made pursuant to Iowa Code section 97B.52. Cancellation of the application shall not invalidate a beneficiary designation. If the application is dated later in time than any other designations, IPERS will accept the designation in a canceled application as binding until a subsequent designation is filed.

21.18(4) The first month of entitlement of a member qualifying under the rule of 88 (see subrule 21.11(3)) shall be the first of the month when the member's age as of the last birthday and years of service equal 88. The fact that a member's birthday allowing a member to qualify for the rule of 88 is the same month as the first month of entitlement does not affect the retirement date.

21.18(5) Notwithstanding anything to the contrary, members shall commence receiving a distribution on or before the minimum distribution required beginning date set forth in the Internal Revenue Code. In general, members must begin distributions on or before April 1 of the calendar year after the calendar year in which they attain age of 70½, or actually terminate employment (if later).

21.18(6) For purposes of determining benefits, the life expectancy of a member, a member's spouse, or a member's beneficiary shall not be recalculated after benefits commence.

This rule is intended to implement Iowa Code sections 97B.45, 97B.47 and 97B.48(1) and (2).

581—21.19(97B) Wage-earning disqualifications for retired members.

21.19(1) Effective July 1, 1998, the monthly benefit payments for a member under the age of 65 who has a bona fide retirement and is then reemployed in covered employment shall be reduced by 50 cents for each dollar the member earns in excess of the amount of remuneration permitted for a calendar year for a person under the age of 65 before a reduction in federal Social Security retirement benefits is required, or $12,000, whichever is greater. The foregoing reduction shall apply only to IPERS benefits payable for the applicable year that the member has reemployment earnings, and after the earnings limit has been reached. Said reductions shall be applied as provided in subrule 21.19(2) below.

Effective January 1, 1991, this earnings limitation does not apply to covered employment in an elective office. A member aged 65 or older who has completed at least four full calendar months of bona fide retirement and is later reemployed in covered employment shall not be subject to any wage-earning disqualification.

21.19(2) Beginning on or after July 1, 1996, the retirement allowance of a member subject to reduction pursuant to subrule 21.19(1) shall be reduced as follows:

a. A member's monthly retirement allowance in the next following calendar year shall be reduced by the excess amounts earned in the preceding year divided by the number of months remaining in the following calendar year after the excess amount has been determined. A member may elect to make repayment of the overpayments received in lieu of having the member's monthly benefit reduced. Elections to make installment payments must be accompanied by a repayment agreement signed by the member and IPERS. If the monthly amount to be deducted exceeds a member's monthly retirement allowance, the member's monthly allowance shall be withheld in its entirety until the overpayment is recovered. If a member dies and the full amount of overpayments determined under this subrule has not been repaid, the remaining amounts shall be deducted from the payments to be made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which there are no remaining amounts to be paid, or the remaining amounts are insufficient, the unrecovered amounts shall be a charge on the member's estate.

b. Employers shall be required to complete IPERS wage reporting forms for reemployed individuals which shall reflect the prior year's wage payments on a month-to-month basis. These reports shall be used by IPERS to determine the amount which must be recovered to offset overpayments in the prior calendar year due to reemployment wages.

c. A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this rule in lieu of receiving a reduced retirement allowance under paragraph *"a"* of this subrule. If the member's retirement allowance is not suspended timely, the overpayment will be recovered pursuant to paragraph *"a"* of this subrule. The member's retirement allowance shall remain suspended until the earlier of January of the following calendar year or the member's termination of covered employment. The member's election shall remain binding until revoked in writing.

21.19(3) A member who is reemployed in covered employment after retirement may, after again retiring from employment, request a recomputation of benefits. The member's retirement benefit shall be increased if possible by the addition of a second annuity, which is based on years of reemployment service, reemployment covered wages and the benefit formula in place at the time of the recomputation. A maximum of 30 years of service is creditable to an individual retiree. If a member's combined years of service exceed 30, a member's initial annuity may be reduced by a fraction of the years in excess of 30 divided by 30. The second retirement benefit will be treated as a separate annuity by IPERS. Any contributions that cannot be used in the recomputation of benefits shall be refunded to the employee and the employer.

Effective July 1, 1998, a member who is reemployed in covered employment after retirement may, after again terminating employment, elect to receive a refund of the employee and employer contributions made during the period of reemployment in lieu of a second annuity. If a member requests a refund in lieu of a second annuity, the related service credit shall be forfeited.

21.19(4) In recomputing a retired member's monthly benefit, IPERS shall use the following assumptions.

a. The member cannot change option or beneficiary with respect to reemployment period.

b. If the reemployment period is less than four years, the money purchase formula shall be used to compute the benefit amount.

c. If the reemployment period is four or more years, the benefit formula in effect as of the first month of entitlement (FME) for the reemployment period shall be used. If the FME is July 1998 or later, and the member has more than 30 years of service, including both original and reemployment service, the percentage multiplier for the reemployment period only will be at the applicable percentage (up to 65 percent) for the total years of service.

d. If a period of reemployment would increase the monthly benefit a member is entitled to receive, the member may elect between the increase and a refund of the employee and employer contributions without regard to reemployment FME.

e. If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least $1,000. The amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original retirement. Notwithstanding the foregoing, if the member's investment for the period of reemployment is less than $1,000, the benefit formula for a member who originally elected new IPERS Option 1 shall be calculated under IPERS Option 3.

f. A retired reemployed member whose reemployment FME precedes July 1998 shall not be eligible to receive the employer contributions made available to retired reemployed members under Iowa Code section 97B.48A(4) effective July 1, 1998.

This rule is intended to implement Iowa Code sections 97B.1A, 97B.45 and 97B.48A.

581—21.20(97B) Identification of agents.

21.20(1) Recognition of agents. When a claimant before IPERS desires to be represented by an agent in the presentation of a case, the claimant shall designate in writing the name of a representative and the nature of the business the representative is authorized to transact. Such designation on the part of the claimant shall constitute for IPERS sufficient proof of the acceptability of the individual to serve as the claimant's agent. An attorney in good standing may be so designated by the claimant.

21.20(2) Payment to incompetents. When it appears that the interest of a claimant or retiree would be served, IPERS may recognize an agent to represent the individual in the transaction of the affairs with IPERS. Recognition may be obtained through the filing with IPERS of a copy of the guardianship, trusteeship, power of attorney, conservatorship or Social Security representative payee documents by the individual so designated. Such persons have all the rights and obligations of the member. Notwithstanding the foregoing, none of the foregoing representatives shall have the right to name the representative as the member's beneficiary unless approved to do so by a court having jurisdiction of the matter, or unless expressly authorized to do so in a power of attorney executed by the member.

21.20(3) An individual serving in the capacity of an agent establishes an agreement with IPERS to transact all business with IPERS in such a manner that the interests of the retiree or claimant are best served. Payments made to the agent on behalf of the individual will be used for the direct benefit of the retiree or claimant. Failure to adhere to the agreement will cause discontinuance of the agency relationship and may serve as the basis for legal action by IPERS or the member.

This rule is intended to implement Iowa Code sections 97B.34 and 97B.37.

581—21.21(97B) Actuarial equivalent (AE) payments.

21.21(1) If a member aged 55 or older requests an estimate of benefits which results in any one of the options having a monthly benefit amount of less than $50, the member may elect, under Iowa Code section 97B.48(1), to receive a lump sum actuarial equivalent (AE) payment in lieu of a monthly benefit. Once the AE payment has been paid to the member, the member shall not be entitled to any further benefits based on the contributions included in the AE payment and the employment period represented thereby. Should the member later return to covered employment, any future benefits the member accrues will be based solely on the new employment period. If an estimate of benefits based on the new employment period again results in any one of the options having a monthly benefit amount of less than $50, the member may again elect to receive an AE payment.

21.21(2) If a member, upon attaining the age of 70 or later, requests a retirement allowance without terminating employment and any one of the options results in a monthly benefit amount of less than $50, the member may elect to receive an AE payment based on the member's employment up to, but not including, the quarter in which the application is filed. When the member subsequently terminates covered employment, any benefits due to the member will be based only on the period of employment not used in computing the AE paid when the member first applied for a retirement allowance. If an estimate of benefits based on the later period of employment again results in any of the options having a monthly benefit amount of less than $50, the member may again elect to receive another AE payment. A member who elects to receive an AE payment without terminating employment may not elect to receive additional AE payments unless the member terminates all covered employment and completes a bona fide retirement as provided in these rules.

21.21(3) An AE payment shall be equal to the sum of the member's and employer's accumulated contributions and the retirement dividends standing to the member's credit before December 31, 1966.

This rule is intended to implement Iowa Code sections 97B.4, 97B.15 and 97B.48(1).

581—21.22(97B) Disability.

21.22(1) The following standards apply to the establishment of a disability under the provisions of IPERS:

a. The member must inform IPERS at retirement that the retirement is due to an illness, injury or similar condition. The member must also initiate an application for federal Social Security disability benefits or federal Railroad Retirement Act disability benefits.

b. To qualify for the IPERS disability provision, the member must be awarded federal Social Security benefits due to the disability which existed at the time of retirement.

c. Effective July 1, 1990, the member may also qualify for the IPERS disability provision by being awarded, and commencing to receive, disability benefits through the federal Railroad Retirement Act, 45 U.S.C. Section 231 et seq., due to a disability which existed at the time of retirement.

21.22(2) If a member returns to covered employment after achieving a bona fide retirement, the benefits being provided to a member under Iowa Code section 97B.50(2)*"a"* or *"b"* shall be suspended or reduced as follows. If the member has not attained the age of 55 upon reemployment, benefit payments shall be suspended in their entirety until the member subsequently terminates employment, applies for, and is approved to receive benefits under the provisions of Iowa Code chapter 97B. If the member is aged 55 or older upon reemployment, the member shall continue to receive the monthly benefit payable to the member on the member's initial retirement date based on the member's age at the initial retirement date, years of membership service not to exceed 30, and benefit option, and subject to the applicable reductions for early retirement in place at the time of the initial retirement. The member's benefit shall also be subject to the applicable provisions of Iowa Code section 97B.48A pertaining to reemployed retirees.

21.22(3) Rescinded IAB 7/22/92, effective 7/2/92.

This rule is intended to implement Iowa Code section 97B.50.

581—21.23(97B) Confidentiality of records.

21.23(1) Records established and maintained by IPERS containing personal information are not public records under Iowa Code chapter 22. Records may be released to the member or the beneficiary (if the beneficiary is entitled to funds) or to a person designated by the member or beneficiary in writing. Records may also be released to an executor, administrator or attorney of record for an estate of a deceased member or beneficiary.

21.23(2) Summary information concerning the demographics of the IPERS membership and general statistical information concerning the system and its activities is made available in accordance with Iowa Code section 97B.17.

21.23(3) Notwithstanding any provisions of Iowa Code chapter 22 or 97B to the contrary, the department's records may be released to any political subdivision, instrumentality, or other agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this subrule. To obtain the records, the political subdivision, instrumentality, or agency shall, in writing, certify that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The department shall not be civilly or criminally liable for the release or rerelease of records in accordance with this subrule.

This rule is intended to implement Iowa Code sections 97B.15 and 97B.17.

581—21.24(97B) Service buy-in/buy-back.

21.24(1) *Prior service buy-back.*

a. Effective July 1, 1990, a member who was active, vested or retired on or after July 1, 1978, and who made contributions to IOASI between January 1, 1946, and June 30, 1953, and took a refund of those contributions, may buy back the amount of that refund plus interest in order to establish quarters of service covered by the refund. Less than a full quarter of service will be considered equivalent to a full quarter of service. A teacher who has three quarters of service and a contract for the following year will be granted four quarters of service. IPERS may require the submission of a copy of the contract.

b. Prior to July 1, 1990, a member who was active, vested or retired as of July 1, 1978, and who made contributions to IOASI between January 1, 1946, and June 30, 1953, and who took a refund of those contributions, was able to buy back the amount of that refund and establish years of service covered by the refund.

c. A member cannot participate in the prior service buy-back if the member had taken an IPERS refund (contributions made after July 4, 1953) unless the member first participated in the IPERS buy-back in accordance with this rule.

If a member decides to buy back prior service credit, the member must repay the entire refunded amount plus the accumulated interest and interest dividends on that amount.

If a member participating in a prior service buy-back had years of public service within Iowa prior to January 1, 1946, those years of service will also be added to the member's account at no cost, subject to the member's providing verification of public service.

21.24(2) *Purchase IPERS credit for service in other public employment.*

a. Effective July 1, 1992, a vested or retired member may make application to IPERS for purchasing credit for service rendered to another public employer. In order to be eligible, a member must:

(1) Have been a public employee in a position comparable to an IPERS covered position at the time the application for buy-in is processed. Effective July 1, 1990, "public employee" includes members who had service as a public employee in another state, or for the federal government, or within other retirement systems established in the state of Iowa;

(2) Waive on a form provided by IPERS all rights to a retirement in another system for that period of employment sought to be purchased, if any; such a waiver must be accepted by the other retirement system before the member can proceed with a buy-in of that service time into IPERS; and

(3) Submit verification of service for that other public employer to IPERS.

A quarter of credit will be given for each quarter the employee was paid. If no pay dates are shown, credit will be given if the employee had service of at least 15 days in the quarter.

b. A qualifying member who decides to purchase IPERS credit must make employer and employee contributions to IPERS for each calendar quarter of service allowed in this buy-in. This contribution shall be determined using the member's covered IPERS wages for the most recent full calendar year of IPERS coverage, the applicable rates established in Iowa Code sections 97B.11, 97B.49B and 97B.49C, and multiplied by the number of quarters being purchased from other public employment. "Applicable rates" means the rates in effect during the most recent full calendar year for the types of service being purchased. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.

c. If a vested or retired member does not have wages in the most recent calendar year, the cost of the buy-in will be calculated using the member's last calendar year of reported wages, adjusted by an inflation factor based on the Consumer Price Index as published by the United States Department of Labor.

d. Members eligible to complete the buy-in may buy the entire period of service for a public employer or may buy credit in increments of one or more calendar quarters. The quarters need not be specifically identified to particular calendar quarters. A period of service is defined as follows: (1) if a member was continuously employed by an employer, the entire time is one period of employment, regardless of whether a portion or all of the service was covered by one or more retirement systems; and (2) if a member is continuously employed by multiple employers within a single retirement system, the entire service credited by the other retirement system is a period of employment. A member with service credit under another public employee retirement system who wishes to transfer only a portion of the service value of the member's public service in another public system to IPERS, must provide a waiver of that service time to IPERS together with proof that the other public system has accepted this waiver and allowed partial withdrawal of service credit. Members are allowed to purchase time credited by the other public employer as a leave of absence in the same manner as other service credit. Notwithstanding the foregoing, members wishing to receive free credit for military service performed while in the employ of a qualifying non-IPERS covered public employer must purchase the entire period of service encompassing the service time for that public employer or in the other retirement system, excluding the military time. Veterans' credit originally purchased in another retirement system may be purchased into IPERS in the same manner as other service credit.

e. The total amount paid will be added to the member's contributions and the years of service this amount represents will be added to the member's IPERS years of service. Effective January 1, 1993, the purchase will not affect the member's three-year average covered wage.

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-in, as certified by IPERS' actuary. In calculating the actuarial cost of a buy-in, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.

21.24(3) *IPERS buy-back.* Effective July 1, 1996, only vested or retired members may buy back previously refunded IPERS credit. For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.

Effective July 1, 1996, buy-backs may be made in increments of one or more calendar quarters. Prior to July 1, 1996, the member was required to repurchase the entire period of service and repay the total amount received plus accumulated interest and interest dividends.

21.24(4) *Prior service credit prior to January 1946.* A member who had service before January of 1946 but no service between January 1, 1946, and June 30, 1953, is eligible to receive credit for that service at no cost, subject to the member's providing verification of that service. If the member was employed after July 4, 1953, and took a refund of contributions, that member must first participate in the membership service buy-back (see subrule 21.24(3)) before receiving credit for service prior to 1946.

A member must submit proof of service in order to qualify.

21.24(5) *Veterans' credit.*

a. Effective July 1, 1992, a vested or retired member, in order to receive service credit under the IPERS system, may elect to make employer and employee contributions to IPERS for a period of active duty service in the armed forces of the United States, in increments of one or more calendar quarters, provided that the member:

(1) Produces verification of active duty service in the armed forces of the United States; and

(2) Is not receiving, or is not eligible to receive, retirement pay from the United States government for active duty service in the armed forces including full retirement disability compensation for this period of service. Disability payments received by the member as compensation for disability incurred while in service of the armed forces, which are not in lieu of military retirement compensation, will not disqualify a member from participating in this program.

A quarter of credit will be given when the date indicated on the DD214 shows service of at least 15 days in the quarter.

b. Prior to July 1, 1990, a person had to be an active member of IPERS as of July 1, 1988, and had to have covered wages during the 1987 calendar year in order to be eligible to apply. Partial buy-ins of allowable service time were not permitted until July 1, 1990.

c. The member must pay IPERS the combined employee and employer contribution amount determined using the member's covered wages for the most recent full calendar year at the applicable rates in effect for that year under Iowa Code sections 97B.11, 97B.49B and 97B.49C for each year of the member's active duty service. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.

d. If a vested or retired member does not have wages in the most recent calendar year, the cost of the buy-in will be calculated using the member's last calendar year of reported wages, adjusted by an inflation factor based on the Consumer Price Index as published by the United States Department of Labor. Between July 1, 1990, and July 1, 1992, members who did not have reported wages in the most recent calendar year were not permitted to purchase their otherwise eligible service time. Effective January 1 , 1993, the purchase will not affect the member's high three-year average wage.

e. Members eligible to complete the veterans' buy-in may buy the entire period of service or may buy credit in increments of one or more calendar quarters. If the entire period is not purchased, IPERS will calculate the proportionate cost of this period of service in accordance with this subrule. Fractional years of active service shall qualify a member for the equivalent quarters of credited IPERS covered service.

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.

21.24(6) *Legislative members.*

a. *Active members.* Persons who are members of the Seventy-first General Assembly or a succeeding general assembly during any period beginning July 4, 1953, may, upon proof of such membership in the general assembly, make contributions to the system for all or a portion of the period of such service in the general assembly. The contributions made by the member shall be determined in the same manner as provided in subrule 21.24(6)*"b."*

b. *Vested or retired former members of the general assembly.*

(1) A vested or retired member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly.

(2) The contributions made by the member shall be equal to the accumulated contributions as defined in Iowa Code section 97B.41(2), which would have been made if the member of the general assembly had been a member of the system during the period of service in the general assembly being purchased.

(3) The member shall submit proof to IPERS of membership in the general assembly for the period claimed.

(4) Upon determining a member eligible and receiving the appropriate contributions from the member, IPERS shall credit the member with the period of membership service for which contributions are made.

c. *Incremental purchases.* Service purchased under this subrule must be purchased in increments of one or more calendar quarters.

d. *Actuarial cost.* Effective July 1, 1999, an eligible member must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a legislative service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.

21.24(7) *Vocational school (area college) employees may elect coverage under another retirement system.*

a. Effective July 1, 1990, a person newly entering employment with an area vocational school or area community college may choose to forego IPERS coverage and elect coverage under an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees. This option is available only to those newly hired persons who are already members of the alternative retirement system. Such an election by a newly employed person is irrevocable.

b. Effective July 1, 1994, and providing that the board of directors of the area vocational school or area community college have approved participation in an alternative retirement system pursuant to Iowa Code section 260C.23, a member employed by an area vocational school or an area community college may elect coverage under an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees, in lieu of continuing or commencing contributions to IPERS.

c. Rescinded IAB 7/22/92, effective 7/2/92.

d. Effective July 1, 1994, a person who is employed before that date with an area community college may file a one-time irrevocable election form with IPERS and the employer electing participation in an alternative plan. The election must be postmarked by December 31, 1995. If a person is employed July 1, 1994, or later, the person may file a one-time election with IPERS and the employer electing participation in the alternative plan. The election must be postmarked within 60 days from the date employed. The employee will be a member of IPERS unless an election is filed within the specified time frames. An employee vested with IPERS retains all of the rights of any vested member for as long as the contributions remain with the fund. Members who elect out of IPERS coverage but remain with the same employer are eligible to apply for and receive a refund of their contributions plus interest. Such members may not, however, apply for retirement benefits until attaining the age of 70, or until they terminate employment with all public employers.

21.24(8) *Refunds of service purchase amounts.* A member may request and receive a refund without interest of all or a portion of amounts paid to IPERS to buy back prior service credit or to purchase credit for other service pursuant to Iowa Code chapter 97B. Such refund requests must be made in writing within 60 days after the date of the receipt issued by IPERS to the member for such amounts. Such refunds shall be in increments representing one or more quarters. Notwithstanding the foregoing, no refund shall be made if a member has made a service purchase under this rule and one or more monthly retirement allowance payments have been made thereafter. Furthermore, this subrule shall not limit IPERS' ability to refund service purchase amounts when required in order to meet the provisions of the Internal Revenue Code that apply to IPERS. This subrule shall be effective for refund requests received by IPERS on or after May 3, 1996.

21.24(9) *Leaves of absence.* Service credit for leaves of absence that begin on or after July 1, 1998, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under subrule 21.24(2) above. In addition, a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase.

21.24(10) *Service credit under Iowa Code section 97B.42A(4).* Service credit for periods of time prior to January 1, 1999, when the member was employed in a position for which coverage could have been elected, but was not, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under subrule 21.24(2) above. In addition, a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase. A member shall not be able to purchase service under this rule that was not eligible for optional coverage at the time of the employment.

21.24(11) *IRC Section 415(n) compliance.* Effective for service purchases made on or after January 1, 1998, service purchases made under this rule and other posttax contributions shall not exceed $30,000 per calendar year. In addition, the amounts contributed for service purchases under this rule shall not exceed the amount required to purchase the service according to the current cost schedules. In implementing these and the other requirements of IRC Section 415(n), IPERS shall use the following procedures.

a. If the member's total benefit at retirement passes the fully reduced IRC Section 415(b) dollar limit test, IPERS shall pay the total benefit.

b. If the member's total benefit at retirement fails the fully reduced IRC Section 415(b) dollar limit test, and the member made one or more service purchases, IPERS shall perform the applicable IRC Section 415 tests, with adjustments for posttax service purchases and other posttax contributions, and pay excess amounts, if any, under a qualified benefits arrangement authorized under Iowa Code section 97B.49I.

c. IPERS shall not permit the purchase of nonqualified service, as defined under IRC Section 415(n), unless such service is specifically authorized by the Iowa legislature. If so authorized, a member must have five years of existing service to make such a purchase, and the quarters of service purchased cannot exceed 20.

d. The limitations of this rule shall not apply to buybacks of prior refunds. In addition, the $30,000 annual limit under this rule shall not apply to service purchases grandfathered under the provisions of the Iowa Code and Section 1526 of the Taxpayer Relief Act of 1997.

e. If IPERS adopts rules and procedures permitting service to be purchased on a pretax basis, the amounts contributed will not be combined with posttax service purchases and other posttax contributions in applying the foregoing procedures.

f. The provisions of this subrule shall apply to all vested members who have an account balance and retirees.

g. IPERS reserves the right to apply the limitations of IRC Section 415(n) on a case-by-case basis to ensure that such limits are not exceeded.

This rule is intended to implement Iowa Code sections 97B.42, 97B.43, 97B.72A, 97B.73 to 97B.75, and 97B.80.

581—21.25(97B) South Africa restrictions. Rescinded IAB 7/5/95, effective 8/9/95.

581—21.26(97B) Garnishments and income withholding orders. For the limited purposes of this rule, the term "member" includes IPERS members, beneficiaries, contingent annuitants and any other third-party payees to whom IPERS is paying a monthly benefit or a lump sum distribution.

A member's right to any payment from IPERS is not transferable or assignable and is not subject to execution, levy, attachment, garnishment, or other legal process, including bankruptcy or insolvency law, except for the purpose of enforcing child, spousal, or medical support.

Only members receiving payment from IPERS, including monthly benefits and lump sum distributions, may be subject to garnishment, attachment, or execution against funds that are payable. Such garnishment, attachment, or execution is not valid and enforceable for members who have not applied for and been approved to receive funds from IPERS.

Upon receipt of an income withholding order issued by the Iowa department of human services or a court, IPERS shall send a copy of the withholding order to the member. If a garnishment has been issued by a court, the party pursuing the garnishment shall send a notice pursuant to Iowa law to the member against whom the garnishment is issued.

(2) Specify that the alternate payee shall be entitled to a fixed dollar amount or percentage of dividend payments, as follows:

1. If the court order awards a fixed dollar amount of benefits to the alternate payee, the dollar amount of dividend payments to be added or method for determining said dollar amount shall be stated in the court order or an award of a share of dividend payments shall be given no effect; and

2. If the court order awards a specified percentage of benefits to the alternate payee, IPERS shall add dividends to the alternate payee's share of the retirement allowance as necessary to keep the alternate payee's share of payments at the percentage specified in the court order;

(3) Bar a vested member from requesting a refund of the member's accumulated contributions without the alternate payee's written consent; and

(4) Name a successor alternate payee to receive the amounts that would have been payable to the member's spouse or former spouse under the order, if the alternate payee dies before the member. The designation of a successor alternate payee in an order shall be void and be given no effect if the order does not provide the successor's name, Social Security number, and last-known mailing address.

21.29(3) *Administrative provisions.*

a. Payment to an alternate payee shall be made in a like manner and at the same time that payment is made to the member. Payment to the alternate payee shall be in a lump sum if benefits are paid in a lump sum distribution or as monthly payments if a retirement option is in effect. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member's and alternate payee's respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee.

b. If a domestic relations order does not so provide, the alternate payee shall not be entitled to any portion of the death benefit payable with respect to a member, but the failure to award an alternate payee a share of the member's death benefits in a qualified domestic relations order shall not negate a proper beneficiary designation on file with IPERS.

c. If an alternate payee has been awarded a share of the member's benefits and dies before the member, the entire account value shall be restored to the member unless otherwise specified in the order and in the manner required under this rule.

d. An alternate payee shall not receive a share of dividends or other cost-of-living increases, unless so provided in a qualified domestic relations order.

e. The chief benefits officer, or a designee thereof, shall have exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A final determination by the chief benefits officer, or a designee thereof, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

f. A person who attempts to make IPERS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to a member shall be liable to IPERS for its costs and attorney's fees.

g. A domestic relations order shall not become effective until it is approved by IPERS. If a member is receiving a retirement allowance at the time a domestic relations order is received by the system, the order shall be effective only with respect to payments made after the order is determined to be a qualified domestic relations order. If the member is not receiving a retirement allowance at the time a domestic relations order is received by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS.

h. IPERS and its staff shall have no liability for making or withholding payments in accordance with the provisions of this rule.

i. Alternate payees must notify IPERS of any change in mailing address. IPERS shall contact the alternate payee in writing at the last-known mailing address on file with IPERS, notifying the alternate payee that an application for a distribution has been received with respect to the member and providing the alternate payee with an application to be completed and returned by the alternate payee. The written notice shall provide that if the alternate payee does not return said application to IPERS within 60 days after such written materials are mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies) until a valid application is received, and IPERS shall have no liability to the alternate payee with respect to such amounts. IPERS has no duty or responsibility to search for alternate payees. If distributions have already begun at the time that an order determined by IPERS to be a qualified domestic relations order, the qualified domestic relations order shall be deemed to be the alternate payee's application to begin receiving his or her payments under the QDRO.

j. If an alternate payee's application is received less than two weeks before the member's first or next monthly payment is to be made, payments to the alternate payee shall begin the next following month.

k. For both lump sum and monthly payments, the alternate payee's tax withholding and rollover (if eligible) elections must be received not less than two weeks in advance of the alternate payee's first payment, or IPERS will use the applicable default elections.

This rule is intended to implement Iowa Code sections 97B.4, 97B.15 and 97B.39.

581—21.30(97B) Favorable experience dividend under Iowa Code section 97B.49F(2).

21.30(1) *Allocation of favorable experience.* The department shall annually allocate the system's favorable actuarial experience, if any, between the reserve account created under Iowa Code section 97B.49F(2) and the remainder of the retirement fund according to the following schedule.

Years to Amortize Unfunded Liability	Percentage to FED Reserve	Years to Amortize Unfunded Liability	Percentage to FED Reserve
20	0	9	27
19	5	8	31
18	6	7	36
17	7	6	42
16	8	5	49
15	9	4	57
14	11	3	66
13	14	2	77
12	17	1	90
11	20	0	100
10	23		

The portion of the favorable actuarial experience, if any, that is not initially credited to the reserve account using the foregoing table, but which, if applied to the retirement fund, would result in the actuarial valuation of assets exceeding the actuarial accrued liability of the system based on the most recent annual actuarial valuation of the system, shall be credited to the reserve account.

21.30(2) *Determination of applicable percentage.* The department shall have sole discretion to determine the applicable percentages that will be used in calculating favorable experience dividends payable under this rule, if any, subject to the actuary's certification that the resulting favorable experience dividends meet the requirements of Iowa Code section 97B.49F(2) and this rule.

a. The department's annual applicable percentage target for calculating dividends under Iowa Code section 97B.49F(2) shall be equal to the applicable percentage used in calculating dividends payable to retirees under Iowa Code section 97B.49F(1). Notwithstanding the foregoing, the department may set a greater or lesser applicable percentage for calculating dividends under this rule depending on the funding adequacy of the reserve account. In no event shall the applicable percentage exceed 3 percent.

b. In determining the annual applicable percentage, the department shall consider, but not be limited to, the value of the reserve account, distributions made from the reserve account in previous years, and the likelihood of future credits to and distributions from the reserve account. The department shall make its annual applicable percentage decisions using at least a rolling five-year period.

c. If for any year the department cannot afford an applicable percentage equal to that payable to retirees under Iowa Code section 97B.49F(1), the department may use applicable percentages in succeeding years that are higher than those used in calculating dividends for retirees under Iowa Code section 97B.49F(1) (but not in excess of 3 percent).

d. An applicable percentage in excess of the applicable percentage declared under Iowa Code section 97B.49F(1) made for catch-up purposes shall not reduce the funding of the reserve account below the amount the system's actuary determines is necessary to pay the maximum favorable experience dividend for each of the next five years, based on reasonable actuarial assumptions.

21.30(3) *Calculation of FED for individual members and beneficiaries.* A member must be retired for one full year to qualify for a favorable experience dividend. In determining whether a member has been retired one full year, the department shall count the member's first month of entitlement as the first month of the one-year period. The month in which the favorable experience dividend is payable shall be included in determining whether a member meets the eligibility requirements.

An eligible member's favorable experience dividend shall be calculated by multiplying the total monthly benefit payments received in the prior calendar year by the number of complete years the member has been retired or would have been retired if living on the date the dividend is payable, and by the applicable percentage set by the department. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

This rule is intended to implement Iowa Code section 97B.49F(2).

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CHAPTER 101
BOARD OF MORTUARY SCIENCE EXAMINERS
[Prior to 9/21/88, see Health Department[470] Ch 147]

645—101.1(147,156) College educational requirements.

101.1(1) Rescinded IAB 7/10/91, effective 8/14/91.

101.1(2) Rescinded IAB 7/10/91, effective 8/14/91.

101.1(3) *College educational requirements.* An applicant shall successfully complete:

a. A minimum of 60 semester hours as indicated on the transcript from a regionally accredited college or university with a minimum of a 2.0 or "C" grade point average. The 60 semester hours shall not include any technical mortuary science courses; and

b. A course in mortuary science from a school accredited by the American Board of Funeral Service Education.

101.1(4) Rescinded IAB 7/6/94, effective 8/10/94.

This rule is intended to implement Iowa Code section 156.3.

645—101.2(147,156) Requirements for licensure.

101.2(1) All applications for licensure must be made upon the official forms supplied by the Department of Public Health, Lucas Building, Des Moines, Iowa 50319-0075.

101.2(2) These completed applications shall be filed with the department of public health, together with satisfactory evidence of completion of the educational requirements. The application fee must be enclosed with the application, and the fee and application must be filed with the department of public health before beginning the internship.

101.2(3) Applicants must present an official transcript of grades to the department of public health with their application, showing the completion of training in a college of mortuary science approved by the Iowa state board of mortuary science examiners.

101.2(4) Rescinded IAB 9/9/98, effective 10/14/98.

101.2(5) The board of mortuary science examiners shall accept a certificate of examination issued by the International Conference of Funeral Service Examining Boards, Inc. indicating a passing score on the examination as prescribed at Iowa Code sections 156.4(4) and 156.13.

Applicants will be required to pass an examination covering the Iowa law and rules for mortuary science prior to being licensed in Iowa. A 75 percent score shall be required for passing of this examination.

101.2(6) to **101.2(8)** Rescinded IAB 9/15/93, effective 10/20/93.

101.2(9) Rescinded effective 10/21/82.

101.2(10) An applicant detected seeking or giving help during the hours of examination will be dismissed and the applicant's papers canceled, but the applicant will be entitled to return for examination after 12 months from the examination date.

101.2(11) Applications for licensure shall be retained by the board office for two years from the date the application was received. To keep the application active beyond two years, the applicant must submit a written request to the board 60 days prior to expiration.

101.2(12) License renewal. Beginning July 1, 1999, a license to practice as a funeral director shall expire every two years on the fifteenth day of the licensee's birth month. Continuing education requirements shall be completed within the same renewal period for each license holder. An application and a continuing education report form for renewal of license to practice as a funeral director shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

101.2(13) Beginning July 1, 1999, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 101.98(147). Licensees who were issued their initial license within six months of their birth month will not be required to renew their license until the fifteenth day of their birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license was originally issued. Licensees will be required to report 24 hours of continuing education for every renewal thereafter.

101.2(14) If the renewal fees are received by the board within 30 days after the renewal expiration date, a penalty fee is charged. If renewal fees are received more than 30 days after the renewal expiration date, the license is lapsed. An application for reinstatement must be filed with the board with the reinstatement fee, the renewal fee and the penalty fee as outlined in rule 101.98(147). Licensees who fail to submit the renewal application and complete documentation of continuing education hours shall be required to pay a penalty fee and shall be subject to an audit of their continuing education report.

101.2(15) Funeral directors who have not fulfilled the requirements for license renewal or an exemption in the required time frame will have a lapsed license and shall not engage in the practice of mortuary science.

645—101.3(147,156) Internship and preceptorship.

101.3(1) *Internship.*

a. The intern applicant must serve a minimum of one year of internship in Iowa under the direct supervision of a board-certified preceptor. The beginning and ending dates of the internship shall be indicated on the internship certificate. The intern applicant shall only engage in the practice of mortuary science during the time indicated on the internship certificate. The intern applicant must be approved and licensed following a successful internship before the intern applicant may practice mortuary science.

b. The intern applicant shall, during this internship, embalm not less than 25 dead human bodies and direct or assist in the direction of not less than 25 funerals under the direct supervision of the certified preceptor and report on forms furnished by the department of public health. Work on the first 5 embalming cases and funeral cases must be completed in the physical presence of the preceptor. The first 12 embalming cases and first 12 funeral case reports must be completed and submitted by the completion of the sixth month of the internship.

c. Before being eligible for licensure, the intern must have filed the 25 completed embalming and funeral directing case reports and a 6-month and a 12-month evaluation form with the department of public health.

d. No licensed funeral director shall permit any person, in the funeral director's employ or under the funeral director's supervision or control, to serve an internship in funeral directing unless that person has a certificate of registration as a registered intern from the department of public health.

e. No licensed funeral director or licensed funeral establishment shall have more than one intern funeral director for the first 100 human remains embalmed or funerals conducted per year, and with a maximum of two interns per funeral establishment.

f. Registered interns shall not advertise or hold themselves out as funeral directors or use the degree F.D. or any other title or abbreviation indicating that the intern is a funeral director.

g. The length of an internship may be extended if the board determines that the intern applicant requires additional time or supervision in order to meet the minimum proficiency in the practice of mortuary science.

h. Every person who is registered as an intern or preceptor with the department of public health shall have a registration certificate posted in a conspicuous place in the preceptor's place of business.

i. Internship begins upon approval and due notification by the board. Application for change of preceptor or any other alteration must be made in writing and approval granted by the board before the status of the intern is altered.

j. When, for any valid reason, the board feels that the education of a registered intern being received under the supervision of the present preceptor might be detrimental to the intern or the profession at large, the intern will be required to serve the remainder of the internship under the supervision of a licensed funeral director meeting the approval of the board.

k. The intern shall complete a confidential evaluation of the preceptorship program at the end of the internship on a form provided by the board. This shall be submitted before the funeral director's license can be issued to the intern.

101.3(2) *Preceptorship.*

a. A prospective preceptor must have a valid preceptor certificate. A preceptor must have completed a training course within five years of accepting an intern. If the certification is older than five years, the director must recertify as specified by the board.

b. Any duly Iowa licensed and practicing funeral director in good standing for a minimum of five years with the board of mortuary science examiners will be eligible to be certified as a preceptor. This certificate is awarded after completion of a training course as prescribed by the board covering the subjects specified by the board. The training course may be counted toward the continuing education hours required for that licensing period.

c. The preceptor is required to file a six-month progress report of the intern on a board-prescribed form. This form is to be signed by the preceptor and the intern before submission to the board by the end of the seventh month.

d. The preceptor will complete a confidential evaluation of the intern at the end of the internship which must be filed within two weeks of the end of the internship.

e. Certify that the intern shall engage in the practice of mortuary science only during the time frame designated on the official intern certificate.

f. A preceptor's duties shall include the following:

(1) Be physically present and supervise the first five embalmings and first five funeral cases.

(2) Familiarize the intern in the areas specified by the preceptor training outline.

(3) Read and sign each of the 25 embalming and the 25 funeral directing reports done by the intern.

(4) Complete a written six-month report of the intern on a form provided by the board. This report is to be reviewed with and signed by the intern and submitted to the board before the end of the seventh month.

(5) At the end of the internship, complete a confidential evaluation of the intern on a form provided by the board. This shall be submitted within two weeks of the end of the internship.

g. Failure of a preceptor to fulfill the requirements set forth by the board, including failure to remit the required six-month progress report, as well as the final evaluation, shall result in an investigation of the preceptor by the board.

h. If a preceptor does not serve the entire year, the board will evaluate the situation; and if a certified preceptor is not available, a licensed director may serve with the approval of the board.

645—101.4(147,156) Endorsement rules.

101.4(1) Any person holding a valid license as a funeral director in another state having requirements substantially equal to those in Iowa may apply for a license to practice in this state by filing an application to practice by endorsement.

101.4(2) The following shall be required:

a. An application fee.

b. Official verification of license status mailed directly from the endorsing state to the board office.

c. An official transcript of grades showing the completion of a mortuary science program accredited by the American Board of Funeral Service Education.

d. Official transcript of grades showing 60 semester hours from a regionally accredited college or university with a minimum of a 2.0 or "C" grade point average.

e. Successful passage of the Iowa law and rules examination with a score of at least 75 percent.

101.4(3) Rescinded IAB 9/9/98, effective 10/14/98.

101.4(4) All applicants for endorsement licenses shall hold original license in good standing obtained upon examination in the state from which the endorsement was received. The examination shall have covered substantially the same subjects in which an examination is required in Iowa, showing the applicant has attained a passing grade. Applicants licensed before 1980 are exempt from showing a passing grade on an examination. The applicant shall have met the educational requirements of the state of Iowa for a funeral director.

101.4(5) Each applicant must furnish certified evidence of two or more years of actual practice as a licensed funeral director in the state from which the applicant desires to endorse.

101.4(6) Rescinded, effective 7/1/80.

101.4(7) Licensees who were issued their initial license by endorsement within six months of their birth month will not be required to renew their license until the fifteenth day of their birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license was originally issued.

101.4(8) Rescinded, effective 7/1/80.

645—101.5(272C) Reinstatement of lapsed license. Application for reinstatement of a lapsed license may not preclude disciplinary actions by the board as provided in this chapter.

101.5(1) A licensee who allows a license to lapse by failing to renew it within 60 days of renewal date may apply for reinstatement as follows:

a. Submit a completed application for reinstatement of a license to practice funeral directing.

b. Pay the renewal fee(s).

c. Rescinded IAB 9/9/98, effective 10/14/98.

d. Provide evidence of completion of 12 hours of continuing education for each lapsed year, not to exceed 72 hours.

e. Must successfully pass the state law and rules examination with a score of at least 75 percent.

101.5(2) Rescinded IAB 9/9/98, effective 10/14/98.

645—101.6(147,272C) Inactive practitioners.

101.6(1) *Exemptions.* A licensee who is not engaged in the practice of mortuary science in the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of mortuary science in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

101.6(2) *Reinstatement of inactive practitioners.* Inactive practitioners who have been granted a waiver of compliance with these rules and have obtained a certificate of exemption shall, prior to engaging in the practice of mortuary science in the state of Iowa, satisfy the following requirements for reinstatement:

a. Submit a written application for reinstatement on a form provided by the board with the reinstatement fee.

b. Furnish, in addition to the application, evidence of one of the following:

(1) The full-time practice of mortuary science in another state of the United States or District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

(2) Completion of 24 hours of board-approved continuing education and successful completion of the state law and rules examination administered by the board.

645—101.7(17A) Mandatory disclosure. Rescinded IAB 9/9/98, effective 10/14/98.

645—101.8 to **101.97** Reserved.

645—101.98(147) Fees. All fees are nonrefundable.

101.98(1) The application fee for a license to practice mortuary science issued upon the basis of examination or endorsement is $50.

101.98(2) Rescinded IAB 9/15/93, effective 10/20/93.

101.98(3) Fee for renewal of a funeral director's license for a biennial period is $100. Biennial renewal fee for a license to practice mortuary science for the 1999 renewal cycle only is as follows:

Birth Month	Prorated Fee
July 1999	$100
August 1999	$104
September 1999	$108
October 1999	$112
November 1999	$117
December 1999	$121
January 2000	$125
February 2000	$129
March 2000	$133
April 2000	$137
May 2000	$142
June 2000	$146

101.98(4) Penalty fee for failure to renew a funeral director's license within 30 days following its expiration is $100.

101.98(5) Penalty fee for failure to obtain required continuing education within the compliance period is $100.

101.98(6) Rescinded IAB 5/15/91, effective 6/19/91.

101.98(7) Fee for a certified statement that a licensee is licensed in this state is $10.

101.98(8) Fee for a duplicate license if the original is stolen or lost is $10.

101.98(9) Application fee for reinstatement of a funeral director's license is $50.

101.98(10) Fee for retake of the state examination is $50.

101.98(11) Fee for a board member to unofficially review a transcript prior to the individual applying for licensure in Iowa is $10.

101.98(12) Fee for returned check for insufficient funds is $15.

101.98(13) Fee for funeral establishment is $75.

101.98(14) Fee for three-year renewal of funeral establishment is $75.

101.98(15) Fee for reinstatement of a funeral establishment is $50.

These rules are intended to implement Iowa Code sections 147.10, 147.29, 147.36, 147.80, 156.8 and 156.9.

645—101.99 Reserved.

CONTINUING EDUCATION FOR FUNERAL DIRECTORS

645—101.100(147) Definitions. For the purpose of these rules, the following definitions shall apply:

"Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

"Board" means the board of mortuary science examiners.

"Hour" of continuing education means a clock-hour of at least 50 minutes spent by a licensee in actual attendance at an approved continuing education activity.

"Licensee" means any person licensed to practice as a funeral director in the state of Iowa.

645—101.101(272C) Continuing education requirements.

101.101(1) Each licensee shall complete during the biennium a minimum of 24 hours of continuing education approved by the board. Compliance with the requirements of continuing education is a prerequisite for license renewal in each subsequent license renewal period.

101.101(2) The continuing education compliance period shall be each biennium beginning the fifteenth day of the licensee's birth month and ending two years later on the fifteenth day of the birth month. Approved continuing education programs attended during this time period shall be used as evidence of fulfilling continuing education requirements.

101.101(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously accredited by the board or which otherwise meets the requirement herein and is approved by the board pursuant to rule 101.103(272C).

101.101(4) Carryover credit of continuing education hours will not be permitted. Continuing education credit will only be allowed once for the same course in the renewal cycle.

101.101(5) It is the responsibility of each licensee to finance the costs of continuing education.

101.101(6) When an initial license is issued via examination, the new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license was originally issued.

101.101(7) For the 1999 renewal cycle only, 30 hours of continuing education will be due. Continuing education hours will return to 24 hours each biennium at the end of this prorated compliance period.

101.101(8) Continuing education credit earned from January 1, 1999, through June 30, 1999, may be used for either the July 1999 compliance or the following biennium period. The licensee may use the continuing education credit hours earned only once. Credit may not be duplicated for both compliance periods. This subrule applies only for the renewal biennium of 1999 and the following renewal biennium.

This rule is intended to implement Iowa Code section 272C.2.

PROCEDURES FOR USE OF CAMERAS AND
RECORDING DEVICES AT OPEN MEETINGS

645—101.300(21) Conduct of persons attending meetings.

101.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

101.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board member presiding at the meeting.

These rules are intended to implement Iowa Code section 21.7.

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◊Two ARCs
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DENTAL EXAMINERS BOARD[650]

[Prior to 5/18/88, Dental Examiners, Board of[320]]

CHAPTERS 35 to 50
Reserved

CHAPTER 51
CONTESTED CASES

CHAPTER 7
RULES
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—7.1(153) Petition for rule making.

7.1(1) An interested person may petition the board for the adoption, amendment or repeal of administrative rules.

7.1(2) The petition shall be in writing, signed by or on behalf of the petitioner, and contain the following information:

a. A general statement of the rule the petitioner is requesting the board to adopt, amend, or repeal. Where amendment or repeal of an existing rule is sought, the rule number should be included but is not required. The petitioner is not required to enclose a draft of the proposed rule or proposed amendment being requested.

b. A statement of sufficient detail setting forth reasons for adoption, amendment, or repeal.

c. A statement showing how the petitioner would be affected by the requested action.

d. Name and address of petitioner.

7.1(3) The petition is filed when it is received by the board.

7.1(4) Upon receipt of the petition, the board shall take the petition under advisement. The board may request additional information from the petitioner or the board office.

7.1(5) If the petition raises an issue regarding the practice of dental hygiene, the petition shall be referred to the dental hygiene committee for review. The dental hygiene committee shall review the petition and timely submit its recommendations to the board. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

7.1(6) The board shall deny the petition or initiate rule-making procedures within 60 days after filing of the petition. In the case of a denial, the board shall state in writing its reasons for the denial. The petitioner shall be notified by mail of the board action taken.

This rule is intended to implement Iowa Code sections 17A.3(1) and 17A.7.

650—7.2(153) Oral presentations for rule making.

7.2(1) Oral presentations may be made to the board when requested in writing not later than 20 days after notice of intended action is published in the Iowa Administrative Bulletin, by five interested persons, a governmental subdivision, the administrative rules review committee, an agency, or an association having not less than 25 members or upon discretion of the board.

7.2(2) The board shall give the public not less than 20 days' notice of the time and place where oral presentations may be made.

7.2(3) Persons wishing to speak shall notify the board prior to start of the oral presentations.

7.2(4) Oral presentations may be limited to ten minutes at the discretion of the board.

This rule is intended to implement Iowa Code sections 17A.3(1) and 17A.4(1).

650—7.3(153) Declaratory rulings. Rescinded IAB 5/19/99, effective 6/23/99. See 650—Chapter 9.

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CHAPTER 8
SALE OF GOODS AND SERVICES

650—8.1(68B) Selling of goods or services by members of the board. The board members shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department of public health except as authorized by this chapter.

650—8.2(68B) Conditions of consent for members.

8.2(1) *Consent shall be given by a majority of the members of the board.* Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department of public health unless all of the following conditions are met:

a. The official requesting consent does not have authority to determine whether consent should be given.

b. The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department of public health.

d. The selling of the good or service does not result in the official selling a good or service to the department on behalf of the individual, association, or corporation.

8.2(2) *Authorized sales.*

a. A member of the board may sell goods or services to any individual, association, or corporation regulated by any division within the department of public health, other than the board on which that official serves. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board.

b. A member of the board may sell goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board. In the event an individual, association, or corporation regulated by the board, to whom a board member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board, or would otherwise present a conflict of interest.

8.2(3) *Application for consent.* Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the department of public health, an official must obtain prior written consent unless the sale is specifically allowed in subrule 8.2(2). The request for consent must be in writing signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

8.2(4) *Limitation of consent.* Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this chapter does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule.

It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules.

These rules are intended to implement Iowa Code section 68B.4.

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CHAPTER 9
DECLARATORY ORDERS

650—9.1(17A) Petition for declaratory order. Any person may file a petition with the board (which for purposes of this chapter means the board of dental examiners or as to matters exclusively involving dental hygiene or dental hygienists means the dental hygiene committee of the board of dental examiners) for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The board of dental examiners shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF DENTAL EXAMINERS

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 650—9.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

650—9.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board of dental examiners shall give notice of the petition to all persons not served by the petitioner pursuant to 650—9.6(17A) to whom notice is required by any provision of law. The board of dental examiners may also give notice to any other persons.

650—9.3(17A) Intervention.

9.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

9.3(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 board of dental examiners.

9.3(3) A petition for intervention shall be filed at Executive Hills West, 1209 East Court, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The board of dental examiners will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF DENTAL EXAMINERS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

650—9.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board of dental examiners may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

650—9.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

650—9.6(17A) Service and filing of petitions and other papers.

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

9.6(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 Board of Dental Examiners, Executive Hills West, 1209 East Court, 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 board of dental examiners.

9.6(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 650—Chapter 51.

650—9.7(17A) Consideration. Upon request by petitioner, the board of dental examiners must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board of dental examiners, a member of the board of dental examiners, or a member of the staff of the board of dental examiners, to discuss the questions raised. The board of dental examiners may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board of dental examiners by any person.

650—9.8(17A) Action on petition.

9.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board of dental examiners or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

9.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 650—Chapter 51.

650—9.9(17A) Refusal to issue order.

9.9(1) The board of dental examiners shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board of dental examiners to issue an order.
3. The board of dental examiners does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. 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.

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

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

8. 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 agency decision already made.

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the board of dental examiners to determine whether a statute is unconstitutional on its face.

9.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

9.9(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 the refusal to issue an order.

650—9.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

650—9.11(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.

650—9.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board of dental examiners, the petitioner, and any intervenors (who consent to be bound) 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 board of dental examiners. The issuance of a declaratory order constitutes final agency action on the petition.

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

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TITLE V
PROFESSIONAL STANDARDS

CHAPTER 25
CONTINUING EDUCATION
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—25.1(153) Definitions. For the purpose of these rules on continuing education, definitions shall apply:

"Advisory committee." An advisory committee on continuing education shall be formed to review and advise the board with respect to applications for approval of sponsors or activities and requests for postapproval of activities. Its members shall be appointed by the board and consist of a member of the board, two licensed dentists with expertise in the area of professional continuing education, and two licensed dental hygienists with expertise in the area of professional continuing education. The advisory committee on continuing education may tentatively approve or deny applications or requests submitted to it pending final approval or disapproval of the board at its next meeting.

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules which has received advanced approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such person or organization may be deemed automatically approved provided they meet the continuing education guidelines of the board.

"Board" means the board of dental examiners.

"Continuing dental education" consists of education activities designed to review existing concepts and techniques and to update knowledge on advances in dental and medical sciences. The objective is to improve the knowledge, skills, and ability of the individual to deliver the highest quality of service to the public and professions.

Continuing dental education should favorably enrich past dental education experiences. Programs should make it possible for practitioners to attune dental practice to new knowledge as it becomes available. All continuing dental education should strengthen the skills of critical inquiry, balanced judgment and professional technique.

"Hour" of continuing education means one unit of credit which shall be granted for each hour of contact instruction and shall be designated as a "clock hour." This credit shall apply to either academic or clinical instruction.

"Licensee" means any person licensed to practice dentistry or dental hygiene in the state of Iowa.

650—25.2(153) Continuing education requirements for licensees.

25.2(1) Beginning January 1, 1979, each person licensed to practice dentistry or dental hygiene in this state shall complete during each calendar year a minimum of 15 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal year.

Beginning January 1, 1984, each person licensed to practice dentistry or dental hygiene in this state shall complete during the biennium ending December 31, 1985, and each biennium thereafter a minimum of 30 hours of continuing education approved by the board.

25.2(2) For the license renewal period beginning July 1, 1992, the continuing education compliance period shall extend from January 1, 1990, through June 30, 1992. For all subsequent license renewal periods the continuing education compliance period shall be the 24-month period ending on the June 30 immediately preceding the July 1 commencement date of the license renewal period.

25.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously approved by the board or which otherwise meets the requirement herein and is approved by the board pursuant to subrule 25.3(5).

25.2(4) It is the responsibility of each licensee to finance the costs of continuing education. All fees for continuing education courses shall be remitted by licensee directly to the sponsor or as the board may otherwise direct.

25.2(5) Every licensee shall maintain a record of all courses attended by keeping the certificates of attendance for four years after the end of the year of attendance. The board reserves the right to require any licensee to submit the certificates of attendance for the continuing education courses attended as further evidence of compliance for any year no more than four years previously.

25.2(6) Licensees are responsible for obtaining proof of attendance forms when attending courses. Clock hours must be verified by the sponsor with the issuance of proof of attendance forms to the licensee.

25.2(7) Each licensee shall file a signed continuing education reporting form reflecting a minimum of 30 continuing education credit hours in compliance with this chapter. Such report shall be filed with the board at the time of application for renewal of a dental or dental hygiene license.

25.2(8) No carryover of credits from one biennial period to the next will be allowed.

25.2(9) Licensees shall complete training relating to the identification and reporting of child abuse and dependent adult abuse pursuant to the requirements set forth by Iowa Code section 232.69(3) and chapter 235B.

25.2(10) A licensed dental hygienist shall furnish evidence of a valid annual certification for cardiopulmonary resuscitation which shall be credited toward the dental hygienist's continuing education requirement for renewal of a license. Such evidence shall be filed at the time of renewal of the license. Credit hours awarded shall not exceed six continuing education credit hours per biennium. Valid annual certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the hygienist has been properly certified for each year covered by the license renewal period.

650—25.3(153) Approval of programs and activities. A continuing education activity shall be qualified for approval if the board determines that:

25.3(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

25.3(2) It pertains to common subjects or other subject matters which relate integrally to the practice of dentistry or dental hygiene which are intended to refresh and review, or update knowledge of new or existing concepts and techniques; and

25.3(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program. The program must include a manual or written outline which substantively pertains to the subject matter of the program.

25.3(4) Activity types acceptable for continuing dental education credit may include:

a. Attendance at a multiday convention-type meeting. A multiday, convention-type meeting is held at a national, state, or regional level and involves a variety of concurrent educational experiences directly related to the practice of dentistry. Attendance shall receive five hours credit with the maximum allowed ten hours credit per biennium. Four hours credit shall be allowed for presentation of an original table clinic at a convention-type meeting as verified by the sponsor when the subject matter conforms with 25.3(7). Attendance at the table clinic session of a dental or dental hygiene convention shall receive two hours credit as verified by the sponsor.

650—25.7(153) Waivers, extensions and exemptions. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application shall be made on forms provided by the board and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of the waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by methods prescribed by the board.

Extensions or exemptions of continuing education requirements will be considered by the board on an individual basis.

A dentist or dental hygienist licensed to practice in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person practices dentistry or dental hygiene in another state or district having a continuing education requirement for dentistry or dental hygiene and meets all requirements of that state or district for practice therein, or for periods that the dentist or dental hygienist is a government employee working in the person's licensed specialty and assigned to duty outside the United States, or for other periods of active practice and absence from the state approved by the board.

650—25.8(153) Exemptions for inactive practitioners. A licensee who is not engaged in the practice in the state of Iowa, residing in or out of the state of Iowa, may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of dentistry or dental hygiene in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

650—25.9(153) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of dentistry or dental hygiene in the state of Iowa, satisfy the following requirements for reinstatement:

25.9(1) Submit written application for reinstatement to the board upon forms provided by the board; and

25.9(2) Furnish in the application evidence of one of the following:

a. The full-time practice of dentistry or dental hygiene in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under the rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of CRDTS or other Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement; or

d. The licensee may petition the board to determine the continuing education credit hours required for reinstatement of their Iowa license.

25.9(3) Applications must be filed with the board along with the following:

a. Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of dentistry or dental hygiene that the applicant has not been the subject of final or pending disciplinary action.

b. Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dentist or dental hygienist.

650—25.10(153) Noncompliance with continuing dental education requirements. It is the licensee's personal responsibility to comply with these rules. The license of individuals not complying with the continuing dental education rules may be subject to disciplinary action by the board.

Inquiries relating to acceptability of continuing dental education activities, approval of sponsors, or exemptions should be directed to: Advisory Committee on Continuing Dental Education, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

650—25.11(153) Dental hygiene continuing education. The dental hygiene committee, in its discretion, shall make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The dental hygiene committee may utilize the continuing education advisory committee as needed. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5. The following items pertaining to dental hygiene shall be forwarded to the dental hygiene committee for review.

1. Dental hygiene continuing education requirements and requests for approval of programs, activities and sponsors.
2. Requests by dental hygienists for waivers, extensions and exemptions of the continuing education requirements.
3. Requests for exemptions from inactive dental hygiene practitioners.
4. Requests for reinstatement from inactive dental hygiene practitioners.
5. Appeals of denial of dental hygiene continuing education and conduct hearings as necessary.

These rules are intended to implement Iowa Code section 147.10.

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CHAPTER 31
COMPLAINTS AND INVESTIGATIONS
[Prior to 5/18/88, Dental Examiners, Board of [320]]

650—31.1(272C) Complaint review. The board shall, upon receipt of a complaint, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline. All complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee. The committee shall review the complaint and make a recommendation to the board.

650—31.2(153) Form and content. A written complaint should include the following facts:
1. The full name, address, and telephone number of the complainant.
2. The full name, address, and telephone number of the licensee.
3. A statement of the facts concerning the alleged acts or omissions.

650—31.3(153) Address. The written complaint may be delivered personally or by mail to the executive director of the board. The current office address is Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

650—31.4(153) Investigation. In order for the board to determine if probable cause exists for a hearing on the complaint, the executive director or authorized designee shall cause an investigation to be made into the allegations of the complaint.

650—31.5(153) Issuance of investigatory subpoenas.

31.5(1) The executive director or designee may, upon the written request of a board investigator or on the director's own initiative, subpoena books, papers, records, and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

31.5(2) A written request for a subpoena or the director's written memorandum in support of the issuance of a subpoena shall contain the following:

a. The name and address of the person to whom the subpoena will be directed;

b. A specific description of the books, papers, records or other real evidence requested;

c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in 31.5(1) have been satisfied.

31.5(3) Each subpoena shall contain:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production or inspection and copying;

d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address and telephone number of the executive director or designee;
f. The date of issuance; and
g. A return of service attached to the subpoena.

31.5(4) Any person who is aggrieved or adversely affected by compliance with 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 board 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.

31.5(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

31.5(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

31.5(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified the investigation has been concluded with no formal action, or there is a final decision in the contested case.

650—31.6(153) Board appearances. The board may request a licensee to appear before the board to discuss a pending investigation. By electing to participate in the board appearance, the licensee waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds of a personal investigation and a combination of investigative and adjudicative functions. If the executive director participates in the appearance, the licensee further waives any objection to having the executive director assist the board in the contested case proceeding.

650—31.7(153) Peer review. A complaint may be assigned to a peer review committee for review, investigation and report.

31.7(1) The board shall determine which peer review committee will review a case involving a dentist and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board. The board may use the peer review committee system organized under the dental care programs council of the Iowa dental association or a specifically constituted peer review committee designated by the board for matters involving dentists.

31.7(2) The dental hygiene committee shall determine which peer review committee will review a case involving a dental hygienist and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the dental hygiene committee. The dental hygiene committee may use the peer review system organized under the ethics committee of the Iowa dental hygienists' association or a specifically constituted peer review committee designated by the dental hygiene committee for matters involving dental hygienists.

31.7(3) The Iowa dental association and the Iowa dental hygienists' association shall register yearly and keep current their peer review systems with the board. Board- or dental hygiene committee-appointed peer review committee members shall be registered with the board when appointed.

31.7(4) Members of the peer review committees shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, immunity from civil liability shall not apply if the act is done with malice.

650—31.8(272C) Duties of peer review committees.

31.8(1) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

31.8(2) The board may provide investigatory and related services to peer review committees.

31.8(3) A peer review committee shall thoroughly investigate a complaint as assigned and make written recommendations to the board in accordance with the board's direction.

31.8(4) Written recommendations shall contain a statement of facts, the recommendation for disposition and the rationale supporting the recommendation. The peer review should consider relevant statutes, board rules, ethical standards and standards of care in making its recommendations.

31.8(5) Written recommendations shall be signed by the members of the peer review committee concurring in the report.

31.8(6) Upon completion all investigative reports prepared by peer review committees or staff together with any recommendations shall be submitted to the board.

650—31.9(272C) Board review. The board shall review all investigative reports and proceed pursuant to 650—Chapter 51.

650—31.10(272C) Confidentiality of investigative files. Complaint files, investigation files, all other investigation reports, and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relate to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

650—31.11(272C) Reporting of judgments or settlements. Each licensee shall report to the board every adverse judgment in a malpractice action to which the licensee is a party and every settlement of a claim against the licensee alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

650—31.12(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of complaints.

650—31.13(272C) Reporting acts or omissions. Each licensee having knowledge of acts or omissions set forth in rule 650—30.4(153) shall report to the board those acts or omissions when committed by another person licensed by the board. The report shall include the name and address of the licensee and the date, time and place of the incident.

650—31.14(272C) Failure to report licensee. Upon obtaining information that a licensee failed to file a report required by rule 31.13(272C) within 30 days from the date the licensee acquired the information, the board may initiate a disciplinary proceeding against the licensee who failed to make the required report.

650—31.15(272C) Immunities. A person shall not be civilly liable as a result of filing a report or complaint with the board, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, immunity from civil liability shall not apply if the act is done with malice.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 153.33, 272C.3, and 272C.4.

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CHAPTER 51
CONTESTED CASES

[Ch 6 renumbered as Ch 51, IAC 9/20/78]
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—51.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of dental examiners.

650—51.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means the state or the respondent.

"Presiding officer" means the board of dental examiners or a panel of the board. In a disciplinary contested case proceeding, the board may request that an administrative law judge make initial rulings on prehearing matters, and assist and advise the board in presiding at the disciplinary contested case hearing.

"Proposed decision" means the hearing panel's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

650—51.3(17A) Probable cause. In the event the board finds there is probable cause for taking disciplinary action against a licensee following investigation of a complaint, the board shall order a contested case hearing be commenced by the filing of a statement of charges and notice of hearing.

650—51.4(17A) Legal review. Every statement of charges and notice of hearing prepared by the board shall be reviewed by the office of the attorney general before they are filed.

650—51.5(17A) Time requirements.

51.5(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

51.5(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

650—51.6(17A) Statement of charges and notice of hearing.

51.6(1) *Delivery.* Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Restricted certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

51.6(2) *Contents.* The statement of charges and notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the board as the presiding officer; and

i. Notification of the time period in which a party may request pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 51.9(17A) that the presiding officer be an administrative law judge.

650—51.7(17A) Legal representation. Following the filing of the statement of charges and notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board.

650—51.8(17A) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board or a panel of the board. However, the board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 51.25(17A). In addition, an administrative law judge may assist and advise the board in presiding at the contested case hearing.

650—51.9(17A) Presiding officer in a nondisciplinary contested case.

51.9(1) Any party in a nondisciplinary contested case 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 board.

51.9(2) The board may deny the request only upon a finding that one or more of the following apply:

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

b. An administrative law judge with the qualifications identified in subrule 51.9(4) is unavailable to hear the case within a reasonable time.

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

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

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

f. The request was not timely filed.

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

51.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 51.9(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

51.9(4) An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

51.9(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling, but no later than the time for compliance with the order or the date of hearing, whichever is first.

650—51.10(17A) Disqualification.

51.10(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.

51.10(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:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information which is relayed to assigned investigators;

c. Review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 51.10(3) and 51.23(9).

51.10(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.

51.10(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 51.10(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board shall determine the matter as part of the record in this case.

650—51.11(17A) Consolidation—severance.

51.11(1) *Consolidation.* The presiding officer may 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.

51.11(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

650—51.12(17A) Pleadings.

51.12(1) *Pleadings.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

51.12(2) *Answer.* An answer shall be filed within 20 days of service of the statement of charges and notice of hearing.

a. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the statement of charges. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. 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.

c. Any allegation in the statement of charges not denied in the answer is considered admitted.

51.12(3) *Amendment.* Amendments to the statement of charges and to an answer may be allowed with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

650—51.13(17A) Service and filing.

51.13(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as prosecutor for the state or the board, 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.

51.13(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

51.13(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

51.13(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

51.13(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Board of Dental Examiners, Executive Hills West, 1209 East Court, 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).

(Date) (Signature)

650—51.14(17A) Discovery.

51.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

51.14(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 51.14(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

650—51.15(17A,272C) Issuance of subpoenas in a contested case.

51.15(1) Subpoenas issued in a contested case may compel the attendance of witnesses at depositions 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 may be issued separately. Subpoenas shall be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm that the conditions described in 650—subrule 31.5(1) have been satisfied prior to the issuance of the subpoena.

51.15(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, 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, 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;

f. The date, time and location for production, or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 650—subrule 31.5(1) have been satisfied.

51.15(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, 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 executive director or designee;

j. The date of issuance;

k. A return of service which shall be attached to the subpoena.

51.15(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director 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.

51.15(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 board 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.

51.15(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct the hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

51.15(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

51.15(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

650—51.16(17A) Motions.

51.16(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.

51.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

51.16(3) The presiding officer may schedule oral argument on any motion.

51.16(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

650—51.17(17A) Prehearing conference.

51.17(1) Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date.

51.17(2) The parties at a prehearing conference shall be prepared to discuss the following subjects, and the executive director or administrative law judge may issue appropriate orders concerning:

a. The possibility of settlement.

b. The entry of a scheduling order to include deadlines for completion of discovery.

c. Stipulations of law or fact.

d. Stipulations on the admissibility of exhibits.

e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the hearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Exhibits, other than rebuttal exhibits, that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

g. Stipulations for waiver of any provision of law.

h. Identification of matters which the parties intend to request be officially noticed.

i. Consideration of any additional matters which will expedite the hearing.

51.17(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.

650—51.18(17A) Continuances. Unless otherwise provided, applications for continuances shall be filed with the board. In the event the application for continuance is not contested, the executive director shall serve as presiding officer and issue the appropriate order. In the event the application for continuance is contested, the matter shall be heard by the board as presiding officer or may be delegated by the board to an administrative law judge.

51.18(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than five working days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within two 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.

51.18(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;

d. The likelihood of informal settlement;

e. The existence of an emergency;

f. Any objection;

g. Any applicable time requirements;

h. The existence of a conflict in the schedules of counsel, parties, or witnesses;

i. The timeliness of the request; and

j. Other relevant factors.

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

650—51.19(17A) Settlements.

51.19(1) A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, the respondent, the board or its designee. Neither the board nor the respondent is required to participate in the informal settlement process. The executive director and chairperson of the board, or the chairperson's designee(s), shall have authority to negotiate on behalf of the board.

51.19(2) The full board shall not be involved in negotiation until a written proposed settlement is submitted to the full board for approval, unless both parties waive this prohibition.

51.19(3) Consent to negotiation by the respondent during informal settlement negotiation constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chairperson or designee(s).

51.19(4) Negotiations for a proposed settlement shall be completed at least ten days prior to the hearing date set by the order for hearing. However, after consultation with the board chairperson or designee, the executive director shall have the power to grant additional time for continued negotiations in instances where additional time will likely lead to a satisfactory settlement prior to the hearing date.

51.19(5) No proposed settlement shall be presented to the board for approval until it is in final, written form signed by the respondent.

51.19(6) All proposed settlements are subject to approval of a majority of the full board. If the board fails to approve a proposed settlement, it shall be of no force or effect to either party. The proposed settlement shall be binding if approved by the board and signed by both the chairperson or the chairperson's designee and the respondent.

51.19(7) A board member who participates in the negotiation of a proposed settlement is not disqualified from participating in the adjudication of the contested case.

51.19(8) Consent to settlement negotiations by the respondent constitutes a waiver of any objection to the participation in the adjudication of the contested case of any board member who participated in the review of a settlement agreement which was not approved by the board.

650—51.20(17A) Hearing procedures.

51.20(1) A hearing may be conducted before the board or a panel of not less than three members of the board at least two of whom are licensed by the board.

51.20(2) Hearings by the dental hygiene committee. In the event the licensee who is the subject of the contested case is a dental hygienist, the hearing shall be held before the dental hygiene committee, which shall constitute a panel of the board. The dental hygiene committee may in its discretion recommend to the board that the hearing be held instead before a panel of the board or full board.

51.20(3) When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

51.20(4) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions, and may be assisted and advised by an administrative law judge.

51.20(5) All objections shall be timely made and stated on the record.

51.20(6) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at their own expense.

51.20(7) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

51.20(8) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

51.20(9) Witnesses may be sequestered during the hearing.

51.20(10) The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

51.20(11) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

51.20(12) The board members and administrative law judge have the right to question a witness. Examination of witnesses by board members is subject to properly raised objections.

51.20(13) The hearing shall be open to the public unless the licensee requests that the hearing be closed.

650—51.21(17A) Evidence.

51.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

51.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

51.21(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

51.21(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 should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

51.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

51.21(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.

650—51.22(17A) Default.

51.22(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.

51.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

51.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action 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 51.26(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

51.22(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.

51.22(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.

51.22(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 236.

51.22(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 51.25(17A).

51.22(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.

51.22(9) 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 effective immediately, subject to a request for stay under rule 51.28(17A).

650—51.23(17A) Ex parte communication.

51.23(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. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 51.10(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.

51.23(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 before the board.

51.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

51.23(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 51.13(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

51.23(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.

51.23(6) The executive director may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating under rule 51.10(17A).

51.23(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 51.18(17A).

51.23(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.

51.23(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.

51.23(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, suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board and its executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

650—51.24(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

650—51.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive director, administrative law judge, or hearing panel. In determining whether to do so, the board shall consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and

2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

650—51.26(17A) Proposed and final decision.

51.26(1) When a quorum of the board presides over the reception of the evidence at the hearing, the decision is a final decision.

51.26(2) When a panel of three specialists presides over the hearing, the panel shall issue a proposed decision which shall include proposed findings of fact but shall not include conclusions of law. A proposed decision of a hearing panel of specialists, together with a transcript of the proceedings and exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued. The parties shall have the opportunity to submit briefs and arguments to the board. The decision of the board is a final decision.

51.26(3) When a panel of three board members or the dental hygiene committee presides over the hearing, the panel shall issue a proposed decision which shall include proposed findings of fact, conclusions of law, and order. A proposed decision, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued. A proposed decision of a board hearing panel becomes a final decision without further proceedings unless appealed in accordance with the following provisions:

a. The board may review a proposed decision on its own motion by serving a notice of appeal on the parties within 30 days after issuance of the proposed decision.

b. A proposed decision may be appealed to the board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party.

c. Following receipt of a notice of appeal, the board shall enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail.

d. Oral argument shall be heard by the board unless waived by both parties. The time granted each party for oral argument shall be established by the board.

e. The record on appeal shall be the entire record made before the hearing panel or administrative law judge. Costs associated with the appeal shall be paid by the appealing party.

51.26(4) At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

51.26(5) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that:

a. The evidence is material; and

b. The evidence arose after completion of the original hearing; or

c. Good cause exists for failure to present the evidence at the original hearing; and

d. The party has not waived the right to present the additional evidence.

A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.

650—51.27(17A) Applications for rehearing.

51.27(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

51.27(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 51.27(5), the applicant requests an opportunity to submit additional evidence.

51.27(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

51.27(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

51.27(5) *Additional evidence.* A request that additional evidence be considered on rehearing shall be governed by subrule 51.26(5).

51.27(6) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

650—51.28(17A) Stays of board actions.

51.28(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

51.28(2) *When granted.* In determining whether to grant a stay, the board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c). The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay.

650—51.29(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.

650—51.30(17A) Emergency adjudicative proceedings.

51.30(1) 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 board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

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

51.30(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 board's decision to take immediate action. The order is a public record.

b. The written emergency adjudicative order shall be immediately delivered to the person who is 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 board;

(3) Certified mail to the last address on file with the board; or

(4) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

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

51.30(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

51.30(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board 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 board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing, unless the person who is required to comply with the order is the party requesting the continuance.

650—51.31(153) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 153.33(4)*"g"* and *"h."*

650—51.32(17A) Notification of decision. All parties to a contested case shall be promptly furnished with a copy of any decision or order either by personal delivery or by certified or first-class mailing. Delivery or first-class mailing of any decision or order to an attorney of record in a contested case hearing shall constitute notification of the respondent. Service by mail is complete upon mailing.

650—51.33(17A) Publicizing disciplinary action.

51.33(1) Final decisions of the board relating to licensee discipline shall be transmitted to the appropriate state and national professional associations and news media, which may include a newspaper(s) of general circulation, and to other news media, person or organization upon request.

51.33(2) The board shall notify other boards of dentistry in states where the respondent is also licensed of disciplinary action taken against the Iowa licensee.

51.33(3) The board shall notify the American Association of Dental Examiners of disciplinary action taken against an Iowa licensee.

51.33(4) The board shall, in accordance with federal law, notify the National Practitioners Data Bank of disciplinary action taken against an Iowa licensee.

650—51.34(153) Reinstatement.

51.34(1) Any person whose license has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

51.34(2) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered pursuant to disciplinary action, an initial application for reinstatement may not be made until one year has elapsed from the date of the final order.

51.34(3) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the license. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other disciplinary matters before the board.

51.34(4) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

51.34(5) An application for reinstatement may include a request for a hearing on the issues raised on the application or any other information furnished to the board. The hearing on an application for reinstatement shall be a contested case proceeding within the meaning of Iowa Code section 17A.2(2).

51.34(6) The order to grant or deny reinstatement shall include findings of fact and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed. Such terms and conditions may include restrictions on the licensee's practice. This order will be published as provided for in rule 51.33(153).

51.34(7) A person whose license to practice dentistry or dental hygiene was revoked or suspended must successfully complete the examination required at the time of reinstatement for dental or dental hygiene licensure. The board may in its discretion require remedial training in addition to or in lieu of the examination requirements.

650—51.35(272C) Disciplinary hearings—fees and costs.

51.35(1) Definitions. As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee:

"Deposition" means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

"Expenses" means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

"Medical examination fees" means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

51.35(2) The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. In addition to the fee, the board may recover from the licensee costs for the following procedures and personnel:

a. Transcript.

b. Witness fees and expenses.

c. Depositions.

d. Medical examination fees incurred relating to a person licensed under Iowa Code chapter 147.

51.35(3) Fees and costs assessed by the board pursuant to subrule 51.35(2) shall be calculated by the board's executive director and shall be entered as part of the board's final disciplinary order. The board's final disciplinary order shall specify the time period in which the fees and costs shall be paid by the licensee.

51.35(4) Fees and costs collected by the board pursuant to subrule 51.35(2) shall be allocated to the expenditure category of the board in which the hearing costs were incurred. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

51.35(5) Failure of a licensee to pay the fees and costs assessed herein in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 272C.5 and 272C.6.

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◊Two ARCs

MEDICAL EXAMINERS BOARD[653]

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]

c. Grant proposals and applications submitted by, on behalf of, or in conjunction with the agency for the purpose of performing the agency's function or furthering its goals and objectives. This information is stored on paper only.

d. A record inventory of all categories of information and records maintained by or on behalf of the board. This inventory is stored on paper only.

653—1.16(17A,22) Data processing system. The agency does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

653—1.17(17A,22) Applicability.

1.17(1) This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records.

1.17(2) This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that 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 agency which are governed by rules of another board or agency.
4. Apply to guarantees, including local governments or subdivisions thereof, administering state-funded programs.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative disciplinary 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 constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 2
IMPAIRED PHYSICIAN REVIEW COMMITTEE

653—2.1(272C) Impaired physician review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the board establishes the impaired physician review committee.

653—2.2(272C) Definitions.

"Impaired physician recovery contract" or *"contract"* means the written document establishing the terms for participation in the impaired physician recovery program prepared by the impaired physician review committee.

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychiatric or physical disorder or disability.

"Initial agreement" means the written document establishing the initial terms for participation in the impaired physician recovery program.

"IPRC" or *"committee"* means the impaired physician review committee.

"IPRP" or *"program"* means the impaired physician recovery program.

"Self-report" means the licensee providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

653—2.3(272C) Purpose. The impaired physician review committee evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of physicians who self-report impairments.

653—2.4(272C) Composition of the committee. The chairperson of the board shall appoint the members of the IPRC. The membership of the IPRC includes, but is not limited to:

1. Executive director of the board or the director's designee from the board's staff;
2. One physician who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program and board-ordered probation for drug or alcohol dependency, addiction, or abuse;
3. One practitioner with expertise in substance abuse/addiction treatment programs;
4. One physician with expertise in the diagnosis and treatment of neuropsychiatric disorders and disabilities; and
5. One public member.

653—2.5(272C) Eligibility. To be eligible for participation in the impaired physician recovery program, a licensee must self-report an impairment or suspected impairment directly to the office of the board. A licensee is deemed ineligible to participate in the program if the board or committee finds evidence of any of the following:

1. The licensee engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third party or for personal profit or gain;

2. At the time of self-reporting, the licensee is already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

3. The licensee has caused harm or injury to a patient;

4. There is currently a board investigation of the licensee that concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

5. The licensee has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of medicine; or

6. The licensee failed to provide truthful information or to fully cooperate with the board or committee.

653—2.6(272C) Type of program. The impaired physician recovery program is an individualized recovery or rehabilitation program designed to meet the specific needs of the impaired physician. The committee, in consultation with the licensee and upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery or rehabilitation program required to treat the licensee's impairment. The committee shall prepare an impaired physician recovery contract, to be signed by the licensee, that shall provide a detailed description of the goals of the program, the requirements for successful completion, and the licensee's obligations therein.

653—2.7(272C) Terms of participation. A licensee shall agree to comply with the terms for participation in the IPRP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

2.7(1) *Duration.* The length of time a licensee shall participate in the program shall be determined by the committee in accordance with the following:

a. Participation in the program for licensees impaired as a result of chemical dependency or alcohol or substance abuse or addiction is set at a minimum of four years.

b. Length of participation in the program for licensees with impairments resulting from neuropsychiatric or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified evaluator designated by the committee to establish an appropriate treatment protocol.

2.7(2) *Noncompliance.* A licensee participating in the program is responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the licensee, any person responsible for providing or monitoring treatment, or another party shall result in the following:

a. *First instance.* Upon receiving notification of a first instance of noncompliance including, but not limited to, a relapse, the IPRC shall make a report to the board that includes recommendations as to whether treatment should be augmented or formal charges should be filed.

b. *Second instance.* Upon receiving notification of a second instance of noncompliance including, but not limited to, a relapse, the IPRC shall nullify the contract and refer the case to the board for the filing of formal charges or other appropriate action.

2.7(3) *Practice restrictions.* The IPRC may impose restrictions on the license to practice medicine as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the initial agreement or contract, the committee shall refer the licensee to the board for appropriate action.

653—2.8(272C) Limitations. The IPRC establishes the terms of and monitors a participant's compliance with the program specified in the initial agreement and contract. The IPRC is not responsible for participants who fail to comply with the terms of or successfully complete the IPRP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of medicine by a participant shall be referred to the board for appropriate action.

653—2.9(272C) Confidentiality. The IPRC is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the IPRP under the auspices of the IPRC is not a matter of public record.

These rules are intended to implement Iowa Code section 272C.3.

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CHAPTERS 3 to 9
Reserved

653—10.10(17A) Declaratory orders.

10.10(1) *Petition for declaratory order.* Any person may file a petition with the board of medical examiners for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Board of Medical Examiners, at 1209 East Court, Executive Hills West, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The board of medical examiners shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICAL EXAMINERS

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 10.10(7).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

10.10(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the board of medical examiners shall give notice of the petition to all persons not served by the petitioner pursuant to 10.10(6)*"c"* to whom notice is required by any provision of law. The board of medical examiners may also give notice to any other persons.

10.10(3) *Intervention.*

a. 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.

b. 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 board of medical examiners.

c. A petition for intervention shall be filed at 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The board of medical examiners will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICAL EXAMINERS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

10.10(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The board of medical examiners may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

10.10(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, Board of Medical Examiners, 1209 East Court, Executive Hills West, Des Moines, Iowa 50319.

10.10(6) *Service and filing of petitions and other papers.*

a. *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 their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. *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 Board of Medical Examiners, 1209 East Court, Executive Hills West, 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 board of medical examiners.

c. *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 653—12.19(17A).

10.10(7) *Consideration.* Upon request by petitioner, the board of medical examiners must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board of medical examiners, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

10.10(8) *Action on petition.*

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board of medical examiners or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 653—subrule 12.11(1).

10.10(9) *Refusal to issue order.*

a. The board of medical examiners shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form.

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

(3) The board does not have jurisdiction over the questions presented in the petition.

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

(5) 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.

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

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

(8) 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 agency decision already made.

(9) 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the board to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. 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 the refusal to issue an order.

10.10(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

10.10(11) *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.

10.10(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board of medical examiners, the petitioner, and any intervenors who consent to be bound 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 board of medical examiners. The issuance of a declaratory order constitutes final agency action on the petition.

This rule is intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 12
MANDATORY REPORTING AND GROUNDS FOR DISCIPLINE

[Prior to 5/4/88, see 470—135.201 to 470—135.215, and 470—135.301]

653—12.1(272C) Mandatory reporting—judgments or settlements. Each licensee, including licensees holding lapsed licenses, shall report to the board every adverse judgment in a malpractice action to which the licensee is a party and every settlement of claim against the licensee alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

653—12.2(272C) Mandatory reporting—wrongful acts or omissions.

12.2(1) *Definitions.* For the purposes of this rule, the following definitions apply.

"Knowledge" means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

"Reportable conduct" means wrongful acts or omissions that may constitute a basis for disciplinary action under this chapter or any state law or administrative rule that gives the board jurisdiction over the conduct of a licensee.

12.2(2) *Reporting requirement.* A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

a. The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

b. The report shall contain the name and address of the licensee who may have engaged in the reportable conduct, the date, time, place and circumstances in which the conduct occurred, and a statement explaining how knowledge of the reportable conduct was acquired.

c. The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

d. No licensee is required to report information deemed to be a confidential communication as a result of a physician-patient relationship or which is prohibited by state or federal statute.

653—12.3(272C) Failure to report. Failure to report knowledge of wrongful acts or omissions in accordance with rule 12.1(272C) or 12.2(272C) within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

653—12.4(272C) Additional grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, or 272C or the rules promulgated thereunder. The board may impose any of the disciplinary sanctions set forth in rule 12.33(272C), including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses.

12.4(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

12.4(2) Professional incompetency. Professional incompetency includes but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

b. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

c. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa.

12.4(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, and includes any representation contrary to the physician's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards and principles of medical ethics and code of ethics set out in rules 653—13.10(147,148,272C) and 653—13.11(147,148,272C), as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

d. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a disability, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the presence of the disabled person.

e. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

12.4(4) Habitual intoxication or addiction to the use of drugs.

12.4(5) The inability of a physician to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy with reasonable skill and safety by reason of illness; drunkenness; excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis; excessive use of alcohol, drugs, narcotics, chemicals or other type of material in a manner which may impair a physician's ability to practice the profession with reasonable skill and safety; or as a result of a mental or physical condition.

12.4(6) Being convicted of a felony in the courts of this state or another state, territory, or country, including the courts of the United States, as defined in Iowa Code section 148.6(2)*"b."*

12.4(7) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a physician having made misleading, deceptive or untrue representations as to the physician's competency to perform professional services for which the physician is not qualified to perform by training or experience.

12.4(8) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified expectations of favorable results;

b. Self-laudatory claims that imply that the physician is a skilled physician engaged in a field or specialty of practice for which the physician is not qualified;

c. Representations that are likely to cause the average person to misunderstand; or

d. Extravagant claims or claims of extraordinary skills not recognized by the medical profession.

12.4(9) Willful or repeated violations of the provisions of these rules or the provisions of Iowa Code chapters 147, 148, and 272C. Willful or repeated violations of the provisions of these rules and Iowa Code chapters 147, 148, and 272C include, but are not limited to, a physician's having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of medical examiners or violated a lawful order of the board in a disciplinary hearing or has violated the provisions of Title IV, Code of Iowa.

12.4(10) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

12.4(11) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, an agency of the United States government, territory or other country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

12.4(12) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy entered into in another state, district, territory or country, including the United States.

12.4(13) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery, osteopathic medicine and surgery or osteopathy.

12.4(14) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without this state.

12.4(15) Willful or repeated violation of lawful rule or regulation adopted by the board.

12.4(16) Violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

12.4(17) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

12.4(18) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

12.4(19) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose.

12.4(20) Knowingly submitting a false report of continuing education or failure to submit the annual report of continuing education.

12.4(21) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

12.4(22) Failure to comply with a subpoena issued by the board.

12.4(23) Failure to file the reports required by rule 12.2(272C) concerning acts or omissions committed by another licensee.

12.4(24) Willful or repeated gross malpractice.

12.4(25) Willful or gross negligence.

12.4(26) Obtaining any fee by fraud or misrepresentation.

12.4(27) Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

12.4(28) Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code section 147.55, 148.6 or 272C.10.

12.4(29) Failure to comply with the recommendations issued by the Centers for Disease Control of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139C.2(3), and applicable hospital protocols established pursuant to Iowa Code section 139C.2(1).

12.4(30) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

12.4(31) Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and rule 653—16.2(261).

12.4(32) Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

12.4(33) Improper management of medical records, including failure to maintain timely, accurate, and complete medical records.

12.4(34) Failure to comply with an order of the board requiring a physician to submit to evaluation under Iowa Code section 148.6(2)*"h"* or 272C.9(1).

12.4(35) In a case which has been referred by the impaired physician review committee (IPRC) to the board, a violation of the terms of an initial agreement with the IPRC or an impaired physician recovery contract entered into with the IPRC.

12.4(36) Unprofessional conduct.

COMPLAINTS

653—12.5(17A,147,148,272C) Complaints.

12.5(1) *Form and content of the complaint.* The complaint shall be made in writing, orally, or in any other form deemed acceptable by the board. A form provided by the board may be used. The form may be obtained from the office of the board upon request. The complaint shall contain the following information:

a. The full name and address of the complainant except in instances in which the identity of the complainant is unknown.

b. The full name, address and telephone number, if known, of the physician.

c. A clear and accurate statement of the facts that fully apprises the board of the allegations against the physician.

12.5(2) *Place and time of filing of the complaint.* The complaint may be delivered in person, by telephone, other telecommunications or electronic devices, or by mail to the executive director of the board. The current office address is Board of Medical Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319-0180.

Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

12.5(3) *Complaints regarding physician supervision of physician assistants.* Complaints received relating to physician supervision of physician assistants shall be copied or summarized and forwarded to the board of physician assistant examiners.

12.5(4) *Immunities.* A person shall not be civilly liable as a result of filing a report or complaint with the board or peer review committee, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

INVESTIGATIONS

653—12.6(17A,147,148,272C) Investigations.

12.6(1) Investigations. The board shall, upon receipt of a complaint, or upon its own motion, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline.

12.6(2) Investigation of allegations. For the board to determine if probable cause exists to commence a contested case proceeding, the executive director shall direct compliance staff to conduct an investigation of the allegations made in the complaint. The executive director may refer the complaint directly to a registered peer review committee or medical expert for investigation or consultation.

12.6(3) Prior to the commencement of a contested case proceeding, the licensee who is the subject of the complaint shall be contacted by the executive director, an investigator, a medical expert consulting with the agency, or peer review committee, and offered the opportunity to respond to the allegations made in the complaint. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview or conference.

12.6(4) Issuance of investigatory subpoenas.

a. The board administrator or designee may, upon the written request of a board investigator or on the administrator's own initiative, subpoena books, papers, records, and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

(1) The nature of the complaint reasonably justifies the issuance of a subpoena;

(2) Adequate safeguards have been established to prevent unauthorized disclosure;

(3) An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

(4) An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

b. A written request for a subpoena or the administrator's written memorandum in support of the issuance of a subpoena shall contain the following:

(1) The name and address of the person to whom the subpoena will be directed;

(2) A specific description of the books, papers, records or other real evidence requested;

(3) An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

(4) In the case of a subpoena request for mental health records, confirmation that the conditions described in 12.6(4)*"a"* have been satisfied.

c. Each subpoena shall contain:

(1) The name and address of the person to whom the subpoena is directed;

(2) A description of the books, papers, records or other real evidence requested;

(3) The date, time and location for production or inspection and copying;

(4) The time within which a motion to quash or modify the subpoena must be filed;

(5) The signature, address and telephone number of the board administrator or designee;

(6) The date of issuance;

(7) A return of service attached to the subpoena.

d. Any person who is aggrieved or adversely affected by compliance with 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 board 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.

e. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

f. A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

g. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

12.6(5) Investigation report. Upon completion of the investigation, the executive director or designee shall prepare a report for the board's consideration, which report shall set forth the information obtained in the course of the investigation, and the position or defense of the respondent.

12.6(6) Review of investigations.

a. Closure. If a determination is made by the board to close the case, the complainant and the physician who is the subject of the investigation shall be so notified by letter.

b. Further investigation. If the board determines the case shall be further investigated, it shall be returned to the investigator.

c. Peer review. The board may refer a case to a peer review committee for further review.

d. Appearance. The board or the physician may request that a physician appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the physician waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that:

(1) Board members have personally investigated the case, and

(2) Board members have combined investigative and adjudicative functions.

If the executive director or director of compliance participates in the appearance, the physician further waives any objection to having the executive director or director of compliance assist the board in the contested case proceeding.

e. Informal letter. In the event the board concludes following investigation of a complaint that there is not probable cause for the filing of disciplinary charges, the board may issue the physician an informal letter of warning or education, which is not formal disciplinary action and not a public record.

f. Probable cause for disciplinary action. In the event the board finds following investigation of a complaint that there is probable cause for taking disciplinary action against a physician, the board shall order a contested case proceeding be commenced by the filing of a statement of charges and notice of hearing.

g. Physician assistants. Prior to the initiation of formal disciplinary charges in a case involving the supervision of a physician assistant, the board shall, before initiating such action, forward a copy of the investigative report to the board of physician assistant examiners for its advice and recommendations. The board of physician assistant examiners shall respond within six weeks or sooner if the issues warrant it. The board shall consider the advice and recommendations of the board of physician assistant examiners.

653—12.7(272C) Peer review committees. The board may assign any case to a peer review committee for review and report to the board.

12.7(1) The board may establish and register peer review committees by keeping a current list of peer review members in the board office.

12.7(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board.

12.7(3) The board may provide investigatory and related services to peer review committees upon request.

12.7(4) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

12.7(5) Members of the peer review committees shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

12.7(6) The peer review committees shall review the information provided by the board and make a written report to the board.

a. The written report shall contain a statement of facts, an opinion, and the rationale supporting the opinion.

b. The written report shall be signed by the members of the peer review committees concurring in the report.

c. If the peer review committee finds that it is unable to review the complaint, the complaint shall be returned together with an explanation to the board.

653—12.8(272C) Doctor-patient privileged communications. The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation by the board. No provision of Iowa Code section 622.10, except as it relates to an attorney of the licensee, or stenographer or confidential clerk of the attorney, shall be interpreted to restrict access by the board, its staff or agents to information sought in an investigation being conducted by the board.

653—12.9(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts or omissions in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

653—12.10(272C) Confidentiality of investigative files. Complaint files, investigation files, and all other investigation reports and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relates to licensee discipline shall be privileged and confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final settlement agreement or decision of the board in a contested case disciplinary proceeding shall be public record.

DISCIPLINARY HEARING PROCEDURE

653—12.11(17A) Scope and applicability. These rules apply to contested case proceedings conducted by the board of medical examiners.

12.11(1) *Definitions.* Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means the state of Iowa or the respondent.

"Presiding officer" means the board of medical examiners or a panel of the board. In a disciplinary contested case proceeding, the board may request that an administrative law judge make initial rulings on prehearing matters, and assist and advise the board in presiding at the disciplinary contested case hearing.

"Proposed decision" means a hearing panel's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

12.11(2) *Probable cause.* In the event the board finds there is probable cause for taking disciplinary action against a licensee following investigation of a complaint, the board shall order a contested case hearing be commenced by the filing of a statement of charges and notice of hearing.

12.11(3) *Legal review.* Every statement of charges and notice of hearing prepared by the board shall be reviewed by the office of the attorney general before they are filed.

12.11(4) *Time requirements.*

a. Time shall be computed as provided in Iowa Code subsection 4.1(34).

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

653—12.12(17A) Statement of charges and notice of hearing.

12.12(1) *Delivery.* Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Restricted certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

12.12(2) *Contents.* The statement of charges and notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

e. A statement that the party may be represented by legal counsel at the party's own expense;

f. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;

g. Reference to the procedural rules governing conduct of the contested case proceeding;

h. Reference to the procedural rules governing informal settlement;

i. Identification of the board as the presiding officer;

j. A statement requiring the respondent to submit an answer pursuant to subrule 12.18(2) within 20 days after receipt of the notice of hearing; and

k. When applicable, notification of the time period in which a party may request pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 12.15(17A), that the presiding officer be an administrative law judge.

653—12.13(17A) Legal representation. Following the filing of the statement of charges and notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board.

653—12.14(17A) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board or a panel of the board. However, the board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 12.31(17A). In addition, an administrative law judge may assist and advise the board in presiding at the contested case hearing.

653—12.15(17A) Presiding officer in a nondisciplinary contested case.

12.15(1) Any party in a nondisciplinary contested case 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 board.

12.15(2) The board may deny the request only upon a finding that one or more of the following apply:

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

b. An administrative law judge with the qualifications identified in 12.15(4) is unavailable to hear the case within a reasonable time.

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

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

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

f. The request was not timely filed.

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

12.15(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in 12.15(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

12.15(4) An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have the following technical expertness unless waived by the agency: An administrative law judge shall have a J.D. degree.

12.15(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies. Such appeals must be filed within ten days of the date of the issuance of the challenged ruling, but no later than the time for compliance with the order or the date of hearing, whichever is first.

12.15(6) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon intra-agency appeal, the board shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

653—12.16(17A) Disqualification.

12.16(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.

12.16(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:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information which is relayed to assigned investigators;

c. Review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other agency 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 12.16(3) and 12.29(9).

12.16(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.

12.16(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 12.16(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board shall determine the matter as part of the record in the case.

653—12.17(17A) Consolidation—severance.

12.17(1) *Consolidation.* The presiding officer may 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.

12.17(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

653—12.18(17A) Pleadings.

12.18(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

12.18(2) Answer. An answer shall be filed by the respondent within 20 days of service of the statement of charges and notice of hearing.

a. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the statement of charges. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. 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.

c. Any allegation in the statement of charges not denied in the answer is considered admitted.

12.18(3) Amendment. Amendments to the statement of charges and to an answer may be allowed with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

653—12.19(17A) Service and filing.

12.19(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as prosecutor for the state or the agency, 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.

12.19(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

12.19(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

12.19(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of Medical Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

12.19(5) *Proof of mailing.* Proof of mailing includes either:

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:

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 Board of Medical Examiners, 1209 East Court Avenue, Executive Hills West, 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).

(Date) (Signature)

DISCOVERY

653—12.20(17A) Discovery.

12.20(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

12.20(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 12.20(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

653—12.21(17A,272C) Subpoenas in a contested case.

12.21(1) Subpoenas issued in a contested case may compel the attendance of witnesses at depositions 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 may be issued separately. Subpoenas shall be issued by the board administrator or designee upon written request. A request for a subpoena of mental health records must confirm the conditions described in 12.6(4)*"a"* have been satisfied prior to the issuance of the subpoena.

12.21(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, 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, 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;

f. The date, time and location for production, or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 12.6(4)*"a"* have been satisfied.

12.21(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, 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 board administrator or designee;

j. The date of issuance;

k. A return of service attached to the subpoena.

12.21(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the board administrator 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.

12.21(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 board 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.

12.21(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct the hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

12.21(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

12.21(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

653—12.22(17A) Motions.

12.22(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.

12.22(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

12.22(3) The presiding officer may schedule oral argument on any motion.

12.22(4) Motions pertaining to the hearing 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 agency or an order of the presiding officer.

653—12.23(17A) Prehearing conferences.

12.23(1) Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date.

12.23(2) The parties at a prehearing conference shall be prepared to discuss the following subjects, and the executive director or administrative law judge may issue appropriate orders concerning:

a. The possibility of settlement.

b. The entry of a scheduling order to include deadlines for completion of discovery.

c. Stipulations of law or fact.

d. Stipulations on the admissibility of exhibits.

e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

g. Stipulations for waiver of any provision of law.

h. Identification of matters which the parties intend to request be officially noticed.

i. Consideration of any additional matters which will expedite the hearing.

12.23(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.

653—12.24(17A) Continuances. Unless otherwise provided, applications for continuances shall be filed with the board. In the event the application for continuance is not contested, the executive director shall serve as presiding officer and issue the appropriate order. In the event the application for continuance is contested, the matter shall be heard by the board as presiding officer or may be delegated by the board to an administrative law judge. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances.

12.24(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than five working days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within two 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.

12.24(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;
d. The likelihood of informal settlement;
e. The existence of an emergency;
f. Any objection;
g. Any applicable time requirements;
h. The existence of a conflict in the schedules of counsel, parties, or witnesses;
i. The timeliness of the request; and
j. Other relevant factors.

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

653—12.25(272C) Settlements.

12.25(1) A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, or the respondent. No party is required to participate in the informal settlement process. The executive director and chairperson of the board, or the chairperson's designee, shall have authority to negotiate on behalf of the board.

12.25(2) The full board shall not be involved in negotiation until a written proposed settlement is submitted to the full board for approval, unless both parties waive this prohibition.

12.25(3) Consent to negotiation by the respondent during informal settlement negotiation constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, section 19. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chairperson or designee.

12.25(4) Negotiations for a proposed settlement shall be completed at least seven days prior to the date scheduled for hearing. However, after consultation with the board chairperson or designee, the executive director shall have the power to grant additional time for continued negotiations in instances where additional time will likely lead to a satisfactory settlement prior to the hearing date.

653—12.26(17A) Hearing procedures.

12.26(1) A hearing may be conducted before the board or a panel of not less than three members of the board at least two of whom are licensed by the board.

12.26(2) When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

12.26(3) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions, and may be assisted and advised by an administrative law judge.

12.26(4) All objections shall be timely made and stated on the record.

12.26(5) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

12.26(6) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

12.26(7) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

12.26(8) Witnesses may be sequestered during the hearing.

12.26(9) The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

12.26(10) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

12.26(11) The board members and administrative law judge have the right to question a witness. Examination of witnesses by board members is subject to properly raised objections.

12.26(12) The hearing shall be open to the public unless the licensee requests that the hearing be closed.

653—12.27(17A) Evidence.

12.27(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

12.27(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

12.27(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

12.27(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 should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

12.27(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

12.27(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.

653—12.28(17A) Default.

12.28(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.

12.28(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

12.28(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 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 12.32(2). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

12.28(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.

12.28(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.

12.28(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 236.

12.28(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 12.31(17A).

12.28(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.

12.28(9) 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 12.35(17A).

653—12.29(17A) Ex parte communication.

12.29(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. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 12.16(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.

12.29(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 before the board.

12.29(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

12.29(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 12.19(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

12.29(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.

12.29(6) The executive director or director of compliance may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating under rule 12.16(17A).

12.29(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 12.24(17A).

12.29(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.

a. 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; or

b. 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.

12.29(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.

12.29(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, suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board and its executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

653—12.30(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

653—12.31(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive director, administrative law judge, or hearing panel. In determining whether to do so, the board shall consider:

12.31(1) The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and

12.31(2) The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

653—12.32(17A) Decisions.

12.32(1) *Final decisions.* When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision.

12.32(2) *Proposed decisions.*

a. When a panel of three specialists presides over the hearing, the panel shall issue a proposed decision which shall include proposed findings of fact but shall not include conclusions of law. A proposed decision of a hearing panel of specialists, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued. The parties shall have the opportunity to submit briefs and arguments to the board. The decision of the board is a final decision.

b. When a panel of three board members presides over the hearing, the panel shall issue a proposed decision which shall include proposed findings of fact, conclusions of law, and order. A proposed decision, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued. A proposed decision of a board hearing panel becomes a final decision without further proceedings unless appealed in accordance with the following provisions.

(1) The board may review a proposed decision on its own motion by serving a notice of appeal on the parties within 30 days after issuance of the proposed decision.

(2) A proposed decision may be appealed to the board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party.

(3) Following receipt of a notice of appeal the board shall enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail.

(4) Oral argument shall be heard by the board unless waived by both parties. The time granted each party for oral argument shall be established by the board.

(5) The record on appeal shall be the entire record made before the hearing panel or administrative law judge.

c. At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

d. Requests to present additional evidence. A party may request the taking of additional evidence after the issuance of a proposed decision only by establishing that:

(1) The evidence is material; and

(2) The evidence arose after the completion of the original hearing; or

(3) Good cause exists for failure to present the evidence at the original hearing; and

(4) The party has not waived the right to present additional evidence.

A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.

653—12.33(272C) Disciplinary sanctions.

12.33(1) If the board concludes following a contested case hearing that discipline is warranted, the board has authority to impose any of the following disciplinary sanctions:

a. Revocation of license.

b. Suspension of license until further order of the board or for a specified period.

c. Permanent prohibition, until further order of the board or for a specified period, from engaging in specified procedures, methods or acts.

d. Probation with imposition of appropriate term and conditions.

e. Requiring additional education or training.

f. Requiring reexamination.

g. Ordering a physical or mental examination, or ordering alcohol or drug screening within a time specified by the board.

h. Imposing civil penalties not to exceed $10,000.

i. Issuing a citation and warning.

j. Imposing such other sanctions allowed by law as may be appropriate.

12.33(2) At the discretion of the board, the following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

653—12.34(17A) Applications for rehearing.

12.34(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

12.34(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in 12.32(2)*"d"* and 12.34(5), the applicant requests an opportunity to submit additional evidence.

12.34(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

12.34(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.

12.34(5) *Additional evidence.* A request that additional evidence be considered on rehearing shall be governed by 12.32(2)*"d."*

12.34(6) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

653—12.35(17A) Stays of agency actions.

12.35(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

12.35(2) *When granted.* In determining whether to grant a stay, the board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c). The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay.

653—12.36(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.

653—12.37(17A) Emergency adjudicative proceedings.

12.37(1) *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 board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

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

12.37(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 board's decision to take immediate action. The order is a public record.

b. The written emergency adjudicative order shall be immediately delivered to the person who is 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 agency;
(3) Certified mail to the last address on file with the agency; or
(4) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

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

12.37(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

12.37(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board 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 board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing, unless the person who is required to comply with the order is the party requesting the continuance.

653—12.38(17A) Judicial review and appeal. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of the director's order.

653—12.39(17A) Publication of decisions. Final decisions of the board relating to disciplinary procedures shall be transmitted to the appropriate professional association(s), Federation of State Medical Boards, and a newspaper(s) of general circulation to be selected by the board.

653—12.40(17A) Reinstatement. Any person whose license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, has been revoked, or suspended by the board, may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

12.40(1) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the director's order or the date of voluntary surrender.

12.40(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other cases before the board.

12.40(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

12.40(4) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law, and must be based upon the affirmative vote of not fewer than six members of the board. The order of reinstatement shall be published as provided for in 12.39(17A).

653—12.41(17A) License denial. A decision of the board denying an application for licensure shall be appealed by filing a written notice of appeal with the board by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license. The appeal of a license denial shall be conducted in accordance with the contested case hearing rules of this chapter.

653—12.42(17A) Appeal of a contested case. An appeal of a contested case decision taken pursuant to the provisions of Iowa Code section 148C.6A by a physician assistant involving discipline of the physician assistant shall be conducted pursuant to the provisions of rule 12.32(17A).

653—12.43(272C) Disciplinary hearings—fees and costs.

12.43(1) *Definitions.* As used in this rule in relation to a formal disciplinary action filed by the board against a licensee:

"Deposition" means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

"Expenses" means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

"Medical examination fees" means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

12.43(2) *Disciplinary hearing fee.* The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the department of public health as provided in subrule 12.43(6).

12.43(3) *Recovery of related hearing costs.* The board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

(2) In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the agency appeal process.

b. Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, providing the costs are calculated as follows:

(1) The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(2) The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue and finance guidelines in effect on July 1, 1993.

c. Deposition costs. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition cost includes a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

d. Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

12.43(4) *Certification of reimbursable costs.* Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the executive director/designated staff person shall certify any reimbursable costs to the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of the filing.

12.43(5) *Assessment of fees and costs.* A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed $75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. A party shall file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

12.43(6) *Payment of fees and costs.* All fees and costs assessed pursuant to this subrule shall be made in the form of a check or money order made payable to the state of Iowa and delivered by the licensee to the department of public health.

12.43(7) *Failure to make payment.* Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 148 and 272C.

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**Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

CHAPTER 15
CHILD SUPPORT NONCOMPLIANCE

653—15.1(252J) Definitions. For the purpose of this chapter the following definitions shall apply.

"Act" means 1995 Iowa Acts, chapter 115, sections 1 to 9.

"Certificate" means a document known as a certificate of noncompliance which is provided by the child support unit certifying that the named licensee is not in compliance with a support order or with a written agreement for payment of support entered into by the child support unit and the licensee.

"Child support unit" means the child support recovery unit of the Iowa department of human services.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by the Act.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the child support unit certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

653—15.2(252J) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon the receipt of a certificate from the child support unit. This rule shall apply in addition to the procedures set forth in the Act.

15.2(1) *Service of denial notice.* Notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

15.2(2) *Effective date of denial.* The effective date of the denial of the issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the licensee.

15.2(3) *Preparation and service of denial notice.* The executive director of the board is authorized to prepare and serve the denial notice upon the licensee.

15.2(4) *Licensee responsible to inform board.* Licensees and applicants shall keep the board informed of all court actions, and all child support unit actions taken under or in connection with the Act. Licensees and applicants shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and withdrawal of certificates issued by the child support unit.

15.2(5) *Reinstatement following license denial.* All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

15.2(6) *Effect of filing in district court.* In the event a licensee files a timely district court action following service of a board denial notice, the board shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

15.2(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the board's receipt of a withdrawal certificate.

653—15.3(252J) Suspension or revocation of a license. The board shall suspend or revoke a license upon the receipt of a certificate from the child support unit according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

15.3(1) *Service or revocation or suspension notice.* Revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

15.3(2) *Effective date of revocation or suspension.* The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the notice upon the licensee.

15.3(3) *Preparation and service of revocation or suspension notice.* The executive director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

15.3(4) *Licensee responsible to inform board.* The licensee shall keep the board informed of all court actions and all child support recovery unit action taken under or in connection with the Act. Licensees shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal certificates issued by the child support unit.

15.3(5) *Reinstatement following license suspension or revocation.* A licensee shall pay all board fees required for license renewal or license reinstatement before a license will be reinstated after the board has suspended a license pursuant to the Act.

15.3(6) *Effect of filing in district court.* In the event a licensee files a timely district court action pursuant to the Act and following service of a revocation or suspension notice, the board shall continue with the intended action described in the revocation or suspension notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

15.3(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the board's receipt of a withdrawal certificate.

These rules are intended to implement Iowa Code chapter 252J.

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CHAPTER 16
STUDENT LOAN DEFAULT OR NONCOMPLIANCE

653—16.1(261) Definitions. For the purpose of this chapter the following definitions shall apply:

"Act" means Iowa Code sections 261.121 to 261.127.

"Applicant" means an individual who is seeking the issuance of a license.

"Board" means the board of medical examiners.

"Certificate" means a document known as a certificate of noncompliance from the college student aid commission certifying that the named licensee is not in compliance with the terms of an agreement for payment of a student loan obligation.

"Commission" means the college student aid commission.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by the Act.

"License" means a license to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, or acupuncture under Iowa Code chapters 148, 148E, 150, and 150A.

"Licensee" means an individual to whom a license has been issued.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the commission certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

653—16.2(261) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon receipt of a certificate from the commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127.

653—16.3(261) Service of denial notice. Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

16.3(1) *Effective date of denial.* The effective date of the denial of issuance or renewal of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

16.3(2) *Preparation and service of denial notice.* The executive director of the board is authorized to prepare and serve the notice upon the licensee.

16.3(3) *Responsibility to inform board.* Applicants and licensees shall keep the board informed of all court actions and all commission actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and any withdrawal certificates issued by the commission.

16.3(4) *Reinstatement following license denial.* All board fees required for application, license renewal, or license reinstatement shall be paid by applicants or licensees, and all continuing education requirements shall be met, before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

16.3(5) *Effect of filing in district court.* In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed by the court.

16.3(6) *Final notification.* The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly provide notification to the applicant or licensee when the license is issued or renewed following the board's receipt of a withdrawal certificate.

653—16.4(261) Suspension or revocation of a license. The board shall suspend or revoke a license upon receipt of a certificate from the commission according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

16.4(1) *Service of revocation or suspension notice.* Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

16.4(2) *Effective date of revocation or suspension.* The effective date of the revocation or suspension of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

16.4(3) *Preparation and service of revocation or suspension notice.* The executive director of the board is authorized to prepare and serve the notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

16.4(4) *Licensee/applicant responsible to inform board.* Licensees shall keep the board informed of all court actions and all commission actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and any withdrawal certificates issued by the commission.

16.4(5) *Reinstatement following license suspension or revocation.* All board fees required for license renewal or license reinstatement shall be paid by licensees, and all continuing education requirements shall be met, before a license will be renewed or reinstated after the board has suspended a license pursuant to the Act and then in accordance with rule 653—12.40(17A).

16.4(6) *Effect of filing in district court.* In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed by the court.

16.4(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee when the license is reinstated following the board's receipt of a withdrawal certificate.

653—16.5(261) Share information. Notwithstanding any statutory confidentiality provision, the board may share information with the commission through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under the Act.

These rules are intended to implement Iowa Code sections 261.121 to 261.127.

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CHAPTERS 17 to 19
Reserved

CHAPTER 20
PHYSICIAN'S ASSISTANTS
Rescinded IAB 11/14/90, effective 10/25/90.
See 645—Chapter 325.

NURSING BOARD[655]

[Prior to 8/26/87, see Nursing, Board of[590], renamed Nursing Board[655] under the "umbrella" of Public Health Department by 1986 Iowa Acts, ch 1245]

CHAPTER 14
FAIR INFORMATION PRACTICES
(Uniform Rules)

CHAPTER 3
LICENSURE TO PRACTICE
REGISTERED NURSE/LICENSED PRACTICAL NURSE

[Prior to 5/23/84, IAC, appeared as separate Chapters 3 and 4]
[Prior to 8/26/87, Nursing Board[590] Ch 3]

655—3.1(17A,147,152,272C) Definitions.

Accredited or approved nursing program. An accredited or approved nursing program means a nursing education program whose status has been recognized by the board or by a similar board in another state that prepares individuals for licensure as a licensed practical nurse, registered nurse, or registration as an advanced registered nurse practitioner; or grants a baccalaureate, master's, or doctorate degree with a major in nursing.

Applicant. Applicant means a person who is qualified to take the examination or apply for licensure.

Delinquent licensee. Delinquent licensee means a registered nurse/licensed practical nurse who has failed to renew the license or place it on inactive status as provided by subrule 3.7(5) by the fifteenth day of the month following the expiration date.

Endorsement. Endorsement means the process by which a registered nurse/licensed practical nurse licensed in another state becomes licensed in Iowa.

Examination. Examination means any of the tests used to determine minimum competency prior to the issuance of a registered nurse/licensed practical nurse license.

Fees. Fees means those fees collected which are based upon the cost of sustaining the board. The nonrefundable fees set by the board are as follows:

1. For the original license based on the registered nurse examination, $60.
2. For the original license based on the practical nurse examination, $55.
3. For a registered nurse/licensed practical nurse license by endorsement, $78.
4. For a certified statement that a registered nurse/licensed practical nurse is licensed in this state or registered as an advanced registered nurse practitioner, $12.
5. For reactivation of a license to practice as a registered nurse/licensed practical nurse, based on $21 per year, or any portion thereof, totals $63 for a license lasting more than 24 months up to 36 months.
6. For the renewal of a license to practice as a registered nurse/licensed practical nurse, $63 for a three-year period.
7. For a duplicate or reissued license/original certificate to practice as a registered nurse/licensed practical nurse, or registration card/original certification to practice as an advanced registered nurse practitioner, $15.
8. For a registered nurse/licensed practical nurse late renewal, $50, plus the renewal fee as specified in paragraph "6" of this rule.
9. For a registered nurse/licensed practical nurse delinquent license fee, $100, plus all renewal fees to date due.

10. For a check returned for any reason, $10. If licensure/registration had been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check or money order. If the fees are not paid within two weeks of notification by certified mail of the returned check, the license/registration is no longer in effect. The licensee's status returns to what it would have been had this license/registration not been issued.

11. For a copy of the Law of Iowa as it Pertains to the Practice of Nursing, $2.

12. For a copy of the Iowa Administrative Code, Nursing Board[655], $2.

13. For a certified copy of an original document, $15.

14. Reserved.

15. For special licensure, $62.

16. For a subscription to Notices of Intended Action for the period July 1 to June 30, $25 or for the period January 1 to June 30, $12.50.

Inactive licensee. Inactive licensee means a registered nurse/licensed practical nurse who has requested to be placed on inactive status.

Lapsed license. A lapsed license means an expired license which is either late or delinquent.

Late licensee. Late licensee means a registered nurse/licensed practical nurse who has failed to renew the license or place it on inactive status as provided by subrule 3.7(5) by the expiration date on the license. The time between the expiration date and the fifteenth day of the month following the expiration date is considered a grace period or late period.

NCLEX. NCLEX means National Council Licensure Examination, the currently used examination.

Reactivation. Reactivation means that process whereby an inactive licensee obtains a current license.

Reinstatement. Reinstatement means that process by which a delinquent licensee obtains a current license.

Temporary license. Temporary license means a license issued on a short-term basis for a specified time pursuant to subrule 3.5(3).

Verification. Verification means that process whereby the board will provide a certified statement that a registered nurse/licensed practical nurse is licensed, inactive, or lapsed, or an advanced registered nurse practitioner is registered in this state.

This rule is intended to implement Iowa Code section 147.80.

655—3.2(17A,147,152,272C) Mandatory licensure.

3.2(1) A person who practices nursing in the state of Iowa as defined in Iowa Code section 152.1, outside of one's family, shall have a current Iowa license, whether or not the employer is in Iowa and whether or not the person receives compensation. The license shall be available for public inspection.

a. A person denied licensure or not having a current active Iowa license because of disciplinary action by the board, or having an encumbered license in another state, may not take a nursing course with a clinical component.

b. A nurse who has been licensed in another country and does not hold a current active license because of disciplinary action may not take a nursing course with a clinical component.

3.2(2) Current Iowa licensure is mandatory except when:

a. A nurse who resides out of state, holds an active out-of-state license, and provides only intermittent consultation which shall not include patient care.

b. A nurse who holds an active license in another state provides services to patients in Iowa only during interstate transit.

c. A nurse who holds an active license in another state provides emergency services while serving on a Red Cross disaster team.

d. A nurse who holds an active license in any state or who has completed a nursing education course of study in another country provides nursing services incidental to a course of study while enrolled in an approved nursing education program.

This rule is intended to implement Iowa Code section 147.2.

655—3.3(17A,147,152,272C) Qualifications for licensure.

3.3(1) Applicants shall meet the requirements as set forth in Iowa Code sections 147.3 and 152.7.

a. Graduation from an accredited high school or its equivalent prior to the examination. High school equivalency shall be in conformity with the requirements of the department of education, state of Iowa.

b. Graduation from an approved nursing program as defined in Iowa Code section 152.5(1) or completion of a course of study as defined in Iowa Code section 152.7(3), prior to the examination. Theory and clinical experience shall be completed before the examination and shall include medical nursing, surgical nursing, obstetric nursing, and nursing of children. In addition, registered nurse applicants shall have had theory and clinical experience in psychiatric nursing prior to the examination.

c. Passing the examination by the standards determined by the board.

d. Approval by the board of those with a past felony record. The board determines the eligibility for licensure of a felony applicant on the felony's relationship to nursing.

3.3(2) Exceptions to the qualifications for licensure. Applicants for licensure in Iowa must meet the qualifications in effect in Iowa at the time of the applicant's graduation from nursing school. The relevant requirements listed in subrule 3.3(1) are subject to the following exceptions:

a. Graduation from high school or its equivalent was not required of registered nurse applicants until 1930 or of licensed practical nurse applicants until 1963.

b. If graduation from a nursing program was prior to 1952, a license will be granted according to board-approved guidelines.

c. Registered nurse graduates prior to 1951 are not required to have psychiatric nursing or be tested in psychiatric nursing.

d. A person licensed as a registered nurse in another state by waiver shall be accepted for Iowa licensure only if the waiver period corresponds to that in Iowa.

e. Exceptions related to examinations:

(1) Before 1946, the registered nurse applicant shall have passed a written test prepared by a licensing board of another state.

(2) A practical nurse applicant must have written the same examination as that administered in Iowa and achieved a score established as passing for that test by the board unless the applicant was graduated and licensed prior to July 1951.

(3) After June 1976, an applicant who took the State Board Test Pool Examination (SBTPE) shall have passed that examination within four writings in order to be eligible for an Iowa license. Prior to that date, there was no limit on the number of writings. An applicant who failed the SBTPE but wrote it less than four times is eligible to take the NCLEX an unlimited number of times.

(4) An applicant whose national examination scores do not meet the Iowa requirements in effect at the time of the examination and who wishes to become licensed in Iowa shall appeal to the board. The board may require the applicant to produce evidence of working experience or successful completion of a refresher course. The board may require the applicant to rewrite the current examination.

This rule is intended to implement Iowa Code sections 147.2 and 152.7(3).

655—3.4(17A,147,152,272C) Licensure by examination.

3.4(1) *Qualifications for licensure by examination.* Applicants shall meet qualifications for licensure as set forth in subrule 3.3(1).

3.4(2) *Examination.* The board contracts with the National Council of State Boards of Nursing, Inc., to utilize the examination.

a. The passing standard for the examination is determined by the board.

(1) NCLEX-PN results will be reported to the candidates as pass or fail.

(2) NCLEX-RN results will be reported to the candidates as pass or fail.

b. The examination shall be administered in Iowa.

c. The examination shall be administered in accordance with the manual prepared by the National Council of State Boards of Nursing, Inc., for the administration of the NCLEX.

d. The candidate shall present identification for admission to the testing center in accordance with the policies of the National Council of State Boards of Nursing, Inc.

e. Licensure examination statistics are available to the public.

3.4(3) *Application—Iowa graduates.* Application for licensure by examination to practice as a registered nurse in Iowa shall be made according to the following process.

a. The board is responsible for the following:

(1) At least twice a year, the board staff shall request the head of each nursing program in Iowa to submit information about the students who are anticipated to complete the program.

(2) Upon return of the information about the students who are anticipated to complete the program, an adequate supply of application forms and instructions for filing shall be sent to the head of the nursing program.

(3) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and date of graduation from an approved nursing education program.

b. The head of the nursing program is responsible for the following:

(1) Submission to the board of a list of the students/number of students who are anticipated to complete the program, at least twice a year.

(2) Distribution of the board application form and NCLEX registration materials.

(3) Submission to the board of a list of persons who have failed to complete the program.

c. The applicant is responsible for the following:

(1) Submission of a completed board application form. The applicant may obtain the board application form and the NCLEX registration materials from the head of the nursing program or the board office.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and date of graduation.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(4) *Application—out-of-state graduates.* Application for the examination to practice as a registered nurse/licensed practical nurse in Iowa shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon request, application forms and instructions for filing shall be sent to the out-of-state applicant.

(2) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and date of graduation from an approved nursing education program.

b. The out-of-state applicant is responsible for the following:

(1) Submission of a completed board application form.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and date of graduation.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(5) *Application—individuals enrolled in an academic course of study for registered nurses on June 30, 1995.* Individuals who are eligible for the practical nurse examination in Iowa under the provisions of Iowa Code section 152.7 may be required to complete additional continuing education requirements as prescribed by the board. Application for the examination to practice as a licensed practical nurse in Iowa shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon receipt of a written request, instructions for filing shall be sent to the applicant.

(2) Determination of the eligibility of the applicant by evaluation of the nursing transcript. The applicant is or has enrolled in a registered nurse program(s) for at least one year and has received a minimum grade of "C" in theory and clinical training in each of the following: medical nursing, surgical nursing, obstetric nursing, and nursing of children.

(3) Sending an application to the applicant if the above requirements have been met. If the application revealed grounds for which a license may be refused as set forth in Iowa Code section 147.4, the application shall be reviewed in closed session, and a decision in regard to the application shall be made. Issuance of the board's decision to the applicant shall be by certified mail.

(4) Notification of the applicant that other states may not grant licensure by endorsement to persons who have obtained licensure under this subrule.

(5) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and length of enrollment.

b. The applicant is responsible for the following:

(1) Submission of a completed board application form.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and length of enrollment.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(6) *Application—individuals educated in another country.* Application for examination as a registered nurse/licensed practical nurse in Iowa shall be made according to the following process:

a. The board is responsible for the following:

(1) Provision of a "Request to Apply for Iowa Licensure by Examination for Individuals Educated in Another Country" and filing instructions to applicants.

(2) Evaluation of credentials to determine that the applicant has met all qualifications for licensure by examination.

(3) Confirmation or denial of eligibility of each applicant for licensure upon receipt of the following:

1. Application for licensure by examination.
2. Original license fee.
3. Confirmation of NCLEX registration by the national testing center.
4. Official nursing transcript denoting date of entry and date of graduation submitted by the applicant if the language of the original transcript is English or validated by the Commission on Graduates of Foreign Nursing Schools (CGFNS). If it determines a waiver is warranted because of circumstances beyond the applicant's control, the board shall issue a waiver and designate conditions which must be met.
5. Validation of licensure/registration in the native country submitted by CGFNS.
6. Official verification of certificate status for individuals applying for registered nurse licensure submitted by CGFNS.
7. A Nursing and Science Course Report for individuals applying for practical nurse licensure submitted by CGFNS.
8. Verification of ability to read, write, speak and understand the English language as determined by the results of the Test of English as a Foreign Language (TOEFL) for individuals applying for practical nurse licensure. The TOEFL passing standard shall be determined by the board. Applicants will be exempt from the TOEFL examination when all the following criteria are met: native language is English, nursing education was in a college, university or professional school located in Australia, Canada (except Quebec), Ireland, New Zealand or the United Kingdom; language of instruction in the nursing program was English; and language of the textbooks in the nursing program was English.

(4) Board of nursing approval shall be required prior to confirmation or denial of eligibility by the board office for individuals applying for practical nurse licensure.

b. The applicant educated in another country is responsible for the following:

(1) Submission of a completed licensure application form.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Submission of an official nursing transcript in accord with 3.4(6)"*a*"(3)"4."

(5) Validation of licensure/registration in the native country by CGFNS.

(6) Official verification of CGFNS certificate status for individuals applying for registered nurse licensure.

(7) Submission of a "Nursing and Science Course Report" issued by the CGFNS Credentials Evaluation Service (CES) for individuals applying for practical nurse licensure.

(8) Verification of ability to read, write, speak and understand the English language as determined by the TOEFL for individuals applying for practical nurse licensure. Applicants will be exempt from the TOEFL examination when all the criteria identified in 3.4(6)*"a"*(3)"8" are met.

(9) Informing the board of the applicant's current mailing address.

(10) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(11) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(7) *Application—individuals with disabilities.* Individuals with disabilities as defined in the Americans With Disabilities Act (1990), or as subsequently amended, shall be provided modifications in the examination or examination administration according to the following process:

a. The board is responsible for the following:

(1) Notification of NCLEX applicants of the availability of modifications in the examination or examination administration for individuals with documented disabilities.

(2) Upon request, notifying the applicant of the process for obtaining board approval for testing modifications as defined in subrule 3.4(7), paragraph *"b."*

(3) Determination of eligibility for testing modifications upon receipt of the following:

Written request for a specific modification(s) in the examination or examination administration (submitted by the applicant).

Written documentation of the applicant's disability and need for testing modifications, including results of diagnostic testing, when appropriate, submitted by a qualified professional with expertise in the area of the diagnosed disability or interpretation of results.

Written documentation of testing modifications provided to the applicant while enrolled in the nursing education program, when appropriate (submitted by the nursing program).

b. The applicant is responsible for the following:

(1) Submission to the board office of a written request for a specific modification(s) in the examination or examination administration.

(2) Having a qualified professional with expertise in the area of the diagnosed disability or interpretation of test results submit to the board office written documentation of the applicant's disability and need for testing modifications, including the results of diagnostic testing, when appropriate.

(3) Having the nursing program submit to the board office written documentation of testing modifications provided to the applicant while enrolled in the nursing education program, when appropriate.

(4) Completion of all NCLEX application requirements defined in subrules 3.4(3), 3.4(4), 3.4(5), or 3.4(6).

3.4(8) *Reexamination.* An applicant who fails the examination is eligible for reexamination as follows:

a. An applicant who has graduated from an approved practical nurse program and has failed NCLEX-PN is eligible to take the NCLEX-PN an indefinite number of times.

b. An applicant who has graduated from an approved registered nurse program and has failed NCLEX-RN is eligible to take the NCLEX-RN an indefinite number of times.

c. An applicant who has graduated from an approved practical nurse program and has failed the State Board Test Pool Examination less than four times is eligible to take the NCLEX-PN an indefinite number of times.

d. An applicant who has graduated from an approved registered nurse program and has failed the State Board Test Pool Examination less than four times is eligible to take the NCLEX-RN an indefinite number of times.

e. An applicant who fails the examination shall be required to refile the following before taking another examination:

(1) The board application form.

(2) The original license fee.

(3) The NCLEX registration.

(4) The NCLEX registration fee.

3.4(9) *Certificate of licensure by examination.* Upon completion of the relevant qualifications for licensure by examination defined in these rules, the board shall issue a certificate of licensure by examination and a current license to practice as a registered nurse/licensed practical nurse.

a. A licensee shall use the relevant title registered nurse/licensed practical nurse and relevant initials R.N./L.P.N.

b. A licensee is required to hold a certificate and license. If a certificate or license is stolen or lost, the licensee shall apply for a duplicate as specified in subrule 3.7(7).

This rule is intended to implement Iowa Code sections 147.36, 147.80, 152.7(3), and 152.9.

655—3.5(17A,147,152,272C) Licensure by endorsement.

3.5(1) *Qualifications for licensure by endorsement.* The endorsee must meet the qualifications for licensure defined in subrule 3.3(1).

3.5(2) *Applicants currently licensed in another state.* Application for licensure to practice as a registered nurse or licensed practical nurse by endorsement shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon request, application forms and instructions shall be sent to the applicant.

(2) Evaluation of credentials to determine that the applicant has met all qualifications for licensure.

(3) Issuance of an original certificate and current license to practice following determination of eligibility and upon receipt of the following materials:

Completed application form (submitted by the applicant).

Endorsement fee (submitted by the applicant).

Official nursing transcript denoting date of entry and date of graduation (submitted by the nursing program).

Verification of licensure form (submitted by state of original licensure).

b. The applicant is responsible for the following:

(1) Submission of a completed board application form.

(2) Submission of the endorsement fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C) is not refundable.

(3) Having the nursing program forward an official nursing transcript which denotes the date of entry and date of graduation.

(4) Submission of the verification of licensure form from the original state of licensure.

(5) Submission of the above documents within 12 months from the date of receipt of the written request. The board reserves the right to destroy the documents after 12 months.

c. A license shall not be issued to an applicant whose license is under sanction by another state without approval of the board.

d. An applicant for endorsement who has had disciplinary action in another state shall submit all the materials required for endorsement and appear before the board. The board shall review the reasons for the out-of-state sanction and determine whether to grant licensure in Iowa. The board may determine special conditions for licensure.

e. A license shall not be issued to an applicant who fails to complete the application process within the allotted time. A license shall be issued when the application process is complete.

3.5(3) *Temporary license.* A temporary license shall be issued to an applicant who is licensed in another state if the applicant meets the qualifications for licensure as outlined in subrule 3.3(1) and has applied for licensure as a registered nurse/licensed practical nurse in Iowa. The board application form and endorsement fee as outlined in rule 3.1(17A,147,152,272C) and verification of licensure form shall be on file in the office of the board prior to the issuance of the temporary license.

a. A temporary licensee may use the appropriate title of registered nurse or licensed practical nurse and the appropriate abbreviation R.N. or L.P.N.

b. The temporary license must be signed by the licensee to be valid. The temporary license shall be issued for a period of 30 days. A second temporary license may be issued for a period not to exceed 30 days or at the discretion of the executive director.

c. A temporary license shall not be issued to an applicant whose license is under sanction by another state without approval of the board. The board may determine special conditions for licensure.

d. A temporary license shall not be issued to an applicant who fails to complete the application process within the allotted time. A license shall be issued when the application process is complete.

3.5(4) *Certificate of licensure by endorsement.* Upon completion of the endorsement procedures defined in these rules, the board shall issue a certificate of licensure by endorsement and a current license to practice as a registered nurse/licensed practical nurse. If a certificate or license is stolen or lost, the licensee shall apply for a duplicate as specified in subrule 3.7(7).

This rule is intended to implement Iowa Code sections 147.2 and 152.9.

655—3.6(17A,147,152,272C) Special licensure.

3.6(1) *Special licensure by endorsement.* A short-term special license may be granted by the board on an individual basis. The intent of the special license is to allow nurses licensed in another state to be licensed and to practice in Iowa for a fixed period of time and only under certain conditions. The purpose of the license is to allow those nurses not previously licensed in Iowa to provide care in a specialty area, to provide consultation or teaching where care is directed, or to obtain clinically based continuing education.

The application process for those currently licensed in another state who are eligible for endorsement is as follows:

a. Upon request the board shall send the application form and instructions to the applicant.

b. The application shall include identifying information, history of felony conviction, history of any disciplinary action or pending action against the individual's nursing license in another state, reason and circumstances surrounding the request for special endorsement.

c. The applicant shall submit the completed application form, special licensure fee as designated in rule 3.1(17A,147,152,272C), and evidence of current, active licensure in another state.

d. The board staff shall determine the validity of the request for special licensure by endorsement based on the duration, location, and need for the short-term nursing license and the absence of sanctions against the applicant's current license and absence of any felony convictions.

(1) If the application is incomplete, the board staff shall return it to the applicant.

(2) If the application shows a previous felony conviction or any disciplinary action or pending action against the individual's nursing license, the board staff shall return the application with an explanation that the applicant is not eligible for special licensure by endorsement. The applicant may be eligible for regular licensure by endorsement according to rule 3.5(17A,147,152,272C). The board staff shall send the regular endorsement application to the individual.

(3) If the application is complete and the request is valid, the board staff shall send the information to the board for its review.

(4) The board shall review the need for the special license by endorsement.

1. If the board determines the need exists for special licensure by endorsement, it shall grant a license. The license shall indicate its special nature and the duration and location for which it can be used. The period of licensure by special endorsement shall be determined by the board. Upon written request extensions may be granted by the board. A second special license by endorsement shall not be issued to the same person. A person with need for repeated special licensure may seek a waiver of this restriction.

2. If the board denies special licensure by endorsement, the individual may still be eligible for regular licensure by endorsement according to rule 3.5(17A,147,152,272C). The regular endorsement application shall be sent to the individual along with a reason for the denial of special licensure by endorsement.

e. This special licensure by endorsement shall be subject to all rules and regulations promulgated by the board except those pertaining to:

(1) Verification.
(2) Reactivation.
(3) Inactivation.
(4) Renewal.
(5) Late renewal.
(6) Continuing education requirements.

3.6(2) *Special licensure for those licensed in another country.* A special license may be granted by the board on an individual basis. The intent of the special license is to allow nurses licensed in another country who are not eligible for endorsement to practice in Iowa for a fixed period of time and only under certain conditions. The purpose of the license is to allow those nurses not previously licensed in Iowa to provide care in a specialty area, to provide consultation or teaching where care is directed to serve as a research assistant, to serve as a teaching assistant or to obtain clinically based continuing education.

a. Upon request the board shall send the application form and instructions to the applicant or sponsor.

b. The application shall include identifying information, history of felony conviction, history of licensure in any other state, and reason and circumstances surrounding the request for special licensure.

c. The applicant shall submit the completed application form, special licensure fee as designated in subrule 3.1(6), and a certificate by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or evidence of a score of at least 500 on the Test of English as a Foreign Language (TOEFL).

d. The board staff shall determine the validity of the request for special licensure based on the duration, location, and need for the nursing license and absence of any felony convictions.

(1) If the application is incomplete, the board staff shall return it to the applicant.

(2) If the application shows a previous felony conviction, the board staff shall return the application with an explanation that the applicant is not eligible for special licensure. The applicant may be eligible for licensure by examination according to subrule 3.4(6). The board shall send the application for individuals educated in another country to the individual.

e. The board shall review the need for a special license.

(1) If the board determines the need exists for special licensure, it shall grant a license. The license shall indicate its special nature and the duration and location for which it can be used. The period of special licensure shall be determined by the board. Upon written request extensions may be granted by the board. A second special license will not be issued to the same person. A person with need for repeated special licensure may seek a waiver of this restriction.

(2) If the board denies a license, the individual may be eligible for licensure by examination according to subrule 3.4(6).

f. This special licensure shall be subject to all rules and regulations promulgated by the board except those pertaining to:

(1) Verification.
(2) Reactivation.

(3) Inactivation.
(4) Renewal.
(5) Late renewal.
(6) Continuing education requirements.

655—3.7(17A,147,152,272C) License cycle.

3.7(1) *Name and address changes.* Written notification to the board office of name or address changes is mandatory as defined in Iowa Code section 147.9. All board correspondence is mailed to the licensee at the last known address on file with the board office. There is no charge for a change of name or address in board records. Reissuance of a license is optional as outlined in subrule 3.7(8).

3.7(2) *New licenses.* Licenses issued by endorsement and examination shall be issued for more than 24 months up to 36 months until the licensee can be placed in the three-year renewal cycle based on birth month. Expiration shall be on the fifteenth day of the birth month.

3.7(3) *Renewal.* At least 60 days prior to the expiration of the license, the board office shall mail a renewal application and continuing education report form to the licensee.

a. The licensee shall submit to the board office, 30 days before licensure expiration, the application and continuing education report form with the renewal fee as specified in rule 3.1(17A, 147,152,272C).

b. When the licensee has satisfactorily completed the requirements for renewal 30 days in advance of the expiration of the previous license, a renewal license shall be issued and mailed to the licensee before expiration of the previous license.

c. A license to practice as a registered nurse/licensed practical nurse based on renewal shall expire every three years on the fifteenth day of the birth month.

3.7(4) *Late renewal.* When the licensee has not satisfactorily completed the requirements for renewal before the previous license expired and prior to its becoming delinquent, the licensee shall be assessed a late fee, as specified in rule 3.1(17A,147,152,272C).

a. A late licensee who wishes to reinstate to a current license shall complete the renewal requirements and submit the late fee prior to the fifteenth day of the month following the expiration date of the license.

b. A late licensee who wishes to reinstate to an inactive status shall make the request in writing to the board office and submit the late fee. No continuing education shall be required.

c. A late license is considered lapsed until it is reinstated.

3.7(5) *Delinquent status.* When the licensee has not satisfactorily completed the requirements for late renewal within the grace period after expiration of the license, the licensee shall be considered a delinquent licensee.

a. A license is considered lapsed until reinstated. Immediately upon reaching a delinquent status, the delinquent licensee shall not practice nursing in Iowa until the license is reinstated to current status.

b. If no action is taken by the delinquent licensee to reinstate, the license shall remain delinquent and fees shall accrue annually.

c. If a delinquent licensee is found to be working without a current license, disciplinary proceedings may be started.

d. A delinquent licensee who wishes to reinstate a current license shall make the request to the board office.

(1) Upon receipt of the request, the board office shall send an application, continuing education report form, and statement of fees to the delinquent licensee.

(2) A delinquent licensee shall have completed 15 contact hours of continuing education as specified in 655—Chapter 5. The continuing education shall have been earned within the 12 months prior to reinstatement.

(3) Fees shall include all renewal fees to date due and a delinquent fee, as specified in rule 3.1(17A,147,152,272C).

(4) Upon receipt of the completed application, required continuing education materials, and appropriate fees, the board shall issue a current license to practice in Iowa. The license shall be issued for more than 24 months up to 36 months until the license can be placed in the three-year renewal cycle based on birth month. Expiration shall be on the fifteenth day of the birth month.

e. A delinquent licensee who wishes to reinstate to an inactive status shall make the request to the board office.

(1) Upon receipt of the request, the board office shall send an application and statement of fees to the delinquent licensee.

(2) No continuing education shall be required.

(3) Fees shall include all renewal fees to date due and a delinquent fee, as specified in 3.1(17A,147,152,272C). No current renewal fees shall be charged because a current license shall not be issued.

(4) Upon receipt of the completed application and appropriate fees, the board shall place the license on inactive status.

3.7(6) *Inactive status.* Inactive status is a status where the licensee remains inactive indefinitely and is not required to obtain continuing education or pay fees. An inactive licensee shall not practice nursing in Iowa.

a. A licensee may request inactive status by one of the following methods:

(1) The current license may be returned to the board office prior to the expiration of the license with a written request for inactive status. Inactive status becomes effective immediately upon the board's receipt of the license.

(2) Prior to the expiration of the current license, the licensee may submit the renewal form marked "requesting inactive status." Inactive status becomes effective when the current license expires.

(3) If the license is late, the license may be placed on inactive as described in subrule 3.7(4), paragraph *"b."*

(4) If the license is delinquent, the license may be placed on inactive as described in subrule 3.7(5), paragraph *"e."*

b. An inactive licensee who wishes to reactivate to a current license shall make the request to the board office.

(1) Upon receipt of the request, the board office shall send an application and continuing education report form.

(2) An inactive licensee shall have completed 15 contact hours of continuing education as specified in 655—Chapter 5. The continuing education shall have been earned within the 12 months prior to reactivation.

(3) The reactivation fee is specified in rule 3.1(17A,147,152,272C).

(4) Upon receipt of the completed application, required continuing education materials, and fee, the board shall issue a current license to practice in Iowa. The license shall be issued for more than 24 months up to 36 months until the license can be placed in the three-year renewal cycle based on birth month. Expiration shall be on the fifteenth day of the birth month.

3.7(7) *Duplicate license or certificate.* The board shall issue a duplicate of a current license or original certificate upon written request of the licensee and payment of the fee specified in rule 3.1(17A,147,152,272C). If the current license is destroyed, lost, or stolen, a duplicate license is required as replacement.

3.7(8) *Reissue of a license.* If there is an error on the license or certificate made by the board office, no fee shall be charged for a reissued corrected license or certificate. A license may be reissued if a licensee desires to have a current name or address printed on the current license prior to renewal. Reissuance is optional; however, written notification to the board office of name or address change is mandatory as outlined in subrule 3.7(1). The board shall reissue a license per written request of the licensee and payment of the fee as specified in rule 3.1(17A,147,152,272C) or at the direction of the executive director.

655—3.8(17A,147,152,272C) Verification. Upon written request from the licensee or other state and payment of the verification fee as specified in rule 3.1(17A,147,152,272C), the board shall provide a certified statement to another state that a registered nurse/licensed practical nurse is licensed, inactive, or lapsed in Iowa.

These rules are intended to implement Iowa Code chapters 17A, 152, and 272C and Iowa Code sections 147.2, 147.10, 147.11, 147.36, 147.76, 147.80, 147.100, 152.1, 152.5, 152.9, and 152.10.

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CHAPTER 4
DISCIPLINE

[Prior to 5/23/84, IAC, "Disciplinary Proceedings" appeared as Ch 8]
[Prior to 5/23/84, "Licensure to Practice—Licensed Practical Nurse" appeared as Ch 4. See Ch 3.]
[Prior to 8/26/87, Nursing Board[590] Ch 4]

655—4.1(17A,147,152,272C) Board authority. The board of nursing may discipline a registered nurse, a licensed practical nurse or an advanced registered nurse practitioner for any grounds stated in Iowa Code chapters 147, 152 and 272C, or rules promulgated thereunder.

655—4.2(17A,147,152,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

4.2(1) In accordance with Iowa Code section 272C.3(1)"*c*," the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

4.2(2) The executive director or authorized designee shall investigate complaints in order to determine the probability that a violation of law or rule has occurred.

655—4.3(17A,147,152,272C) Investigatory subpoena powers. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

4.3(1) A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive director or a designee.

4.3(2) In the event obedience to a subpoena is refused, the requesting party may petition the district court for enforcement.

655—4.4(17A,147,152,272C) Board action. The board shall review investigative conclusions and do one of the following:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

655—4.5(17A,147,152,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

4.5(1) The committee shall determine if the conduct of the licensee conforms to minimum standards of acceptable and prevailing practice of nursing and submit a report of its findings to the board.

4.5(2) The board shall review the committee's findings and proceed with action available under rule 4.4(17A,147,152,272C).

4.5(3) The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6.

655—4.6(17A,147,152,272C) Grounds for discipline. The board may discipline a licensee for wrongful acts or omissions related to nursing practice, licensure or unprofessional conduct and may revoke, suspend or deny issuance or renewal of licensure upon receipt of a certificate of noncompliance pursuant to Iowa Code chapters 252J and 261.

4.6(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:

a. Falsification of the application, credentials, or records submitted to the board for licensure as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.

b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.

c. Impersonating any applicant in any examination for licensure as a registered nurse or licensed practical nurse.

4.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:

a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.

b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.

c. Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.

d. Willful or repeated failure to practice nursing with reasonable skill and safety.

e. Willful or repeated failure to practice within the scope of current licensure or level of preparation.

f. Failure to meet the standards as defined in 655—Chapter 6, Iowa Administrative Code.

g. Failure to comply with the requirements of Iowa Code chapter 139C.

4.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:

a. Oral or written misrepresentation relating to degrees, credentials, licensure status, records and applications.

b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

4.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.

b. Allowing another person to use one's nursing license for any purpose.

c. Improper delegation of nursing services, functions, or responsibilities.

d. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.

e. Committing an act which causes physical, emotional, or financial injury to the patient or client.

f. Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or client.

g. Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.

h. Violating the confidentiality or privacy rights of the patient or client.

i. Discriminating against a patient or client because of age, sex, race, creed, illness, economic or social status.

j. Failing to assess, accurately document, or report the status of a patient or client.

k. Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.

l. Fraudulently or inappropriately using or permitting the use of prescription blanks or obtaining prescription medications under false pretenses.

m. Practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.

n. Being involved in the unauthorized manufacture, possession, distribution, or use of a controlled substance.

o. Conviction of a misdemeanor or felony related to the practice of nursing.

p. Failing to report suspected wrongful acts or omissions committed by a licensee of this board.

655—4.7(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following:

1. Revocation.
2. Suspension.
3. Probation.
4. Civil penalty. A fine may be imposed in accordance with Iowa Code section 272C.3(2)*"e."* Assessment of a fine shall be specified in the order and may not exceed a maximum amount of $1000. Fines may be incurred for:

- Practicing without an active license: $50 for each calendar month or part thereof, beginning on the date that a license enters delinquent status.
- Obtaining a license by falsification of continuing education records: $50 for each contact hour falsified.
- Violating rule 4.6(17A,147,152,272C): an amount deemed appropriate.

5. Citation and warning.

655—4.8(17A,147,152,272C) Panel of specialists. The board may appoint a panel of nurses who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

4.8(1) The executive director shall set the date, time, and location of the hearing and make proper notification to all parties.

4.8(2) The panel of specialists shall:

a. Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.

b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.

c. Receive opening statements from the parties.

d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.

e. Question the witnesses.

f. Receive closing statements from the parties.

g. Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

655—4.9(17A,147,152,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The executive director or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

655—4.10(17A,147,152,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

655—4.11(17A,147,152,272C) Application for reinstatement. Any person whose license to practice nursing has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

4.11(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be made until one year has elapsed from the date of the order.

4.11(2) The application shall allege facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists, and that it is in the public interest to reinstate the license. The burden of proof to establish these facts shall rest with the petitioner.

4.11(3) The hearing in an application for reinstatement is a contested case in the meaning of Iowa Code section 17A.12.

4.11(4) The order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed.

655—4.12(17A,147,152,272C) Licensee review committee. In accordance with the provisions of Iowa Code section 272C.3(1)"*k*," the board shall appoint a licensee review committee for the purpose of evaluating and monitoring licensees who self-report physical or mental impairments. The committee shall be comprised of the executive director or designee, a representative with chemical dependency or mental health treatment experience, and a recovering nurse with at least five consecutive years of sobriety.

4.12(1) Eligibility for referral to the committee shall be determined by the executive director in accordance with the following criteria:

a. The licensee must self-report the impairment.

b. The licensee must submit an evaluation summary, diagnosis, or other evidence which supports a determination that an impairment exists.

c. There must be no indication of practice-related problems.

d. There must be no documented violation of law or board rules related to impairment-associated behaviors.

e. There must be no record of prior board sanction for impairment-related problems.

4.12(2) The committee shall meet as necessary in order to interview potential participants, develop consensual agreements for new referrals, review licensee compliance, and determine eligibility for continued monitoring.

4.12(3) Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensed individual in writing.

4.12(4) The licensee must consent to the conditions proposed by the review committee in order to participate in this program.

4.12(5) Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for possible disciplinary action.

4.12(6) Information in possession of the licensee review committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6.

655—4.13(17A,147,152,272C) Contested case proceedings. The following rules apply to board activities which are initiated upon determination of probable cause and result in the issuance of a notice of hearing.

655—4.14(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the chairperson of the board or designee.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board of nursing did not preside.

655—4.15(17A) Time requirements.

4.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.15(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

655—4.16(17A) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

4.16(1) The date, time, and location of the hearing shall be set by the chairperson or the executive director. The licensee shall be notified at least 30 days prior to the scheduled hearing.

4.16(2) Notification shall be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the licensee cannot be located:

a. An affidavit shall be prepared outlining the measures taken to attempt service and shall become a part of the file when a notice cannot be delivered by personal service or certified mail return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive director or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

655—4.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6.

4.17(1) The chairperson of the board shall designate the presiding officer in accordance with the provisions of section 17A.11. For nondisciplinary proceedings, 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.

4.17(2) The executive director may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency 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. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

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

f. The request was not timely filed.

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

h. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

4.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

4.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.17(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, 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.

655—4.18(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 agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

655—4.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

655—4.20(17A) Disqualification.

4.20(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.

4.20(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 agency functions, including fact gathering for purposes other than investigation or 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 4.20(3) and 4.32(9).

4.20(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.

4.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.20(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.34(17A).

655—4.21(17A) Consolidation—severance.

4.21(1) *Consolidation.* The presiding officer may 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.

4.21(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

655—4.22(17A) Pleadings.

4.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

4.22(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 laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney.

4.22(3) Answer. An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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.

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.

655—4.23(17A) Service and filing of pleadings and other papers.

4.23(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 agency. 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.

4.23(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.23(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

4.23(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.23(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.
>
> (Date) (Signature)

655—4.24(17A) Discovery.

4.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

655—4.25(17A) Subpoenas.

4.25(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.25(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

655—4.26(17A) Motions.

4.26(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.

4.26(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.26(3) The presiding officer may schedule oral argument on any motion.

4.26(4) Motions pertaining to the hearing 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 agency or an order of the presiding officer.

655—4.27(17A) Prehearing conference.

4.27(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

4.27(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses 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;

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; and

c. 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.

4.27(3) In addition to the requirements of subrule 4.27(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.27(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

655—4.28(17A) Continuances. The executive director shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive director only in situations involving extenuating, extraordinary, or emergency circumstances.

655—4.29(17A) Hearing procedures.

4.29(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.29(2) All objections shall be timely made and stated on the record.

4.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

4.29(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.29(6) Witnesses may be sequestered during the hearing.

4.29(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

655—4.30(17A) Evidence.

4.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.30(3) Evidence in the proceeding shall be confined to those issues to which the parties received notice prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.30(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 should normally be provided to opposing parties.

4.30(5) Any party may object to specific evidence or may request limits on scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.30(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 order of proof and inserted in the record.

655—4.31(17A) Default.

4.31(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.

4.31(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.

4.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 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 4.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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 or a person with personal knowledge of each such fact attached to the motion.

4.31(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.

4.31(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.

4.31(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 236.

4.31(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 4.34(17A).

655—4.32(17A) Ex parte communication.

4.32(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 agency 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 4.20(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.

4.32(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.

4.32(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.32(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 4.23(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives.

4.32(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.

4.32(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.20(1) or other law and they comply with subrule 4.32(1).

4.32(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party 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 4.29(17A).

4.32(8) Disclosure of prohibited communications. A presiding officer who received 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.

4.32(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, 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.

4.32(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 agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board's executive director for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

655—4.33(17A) Recording costs. Upon request, the board of nursing shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of such recording, unless otherwise provided by law.

655—4.34(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

4.34(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest practicable time. The decision of the board is a final decision.

4.34(2) A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law shall be supported by cited authority or by a reasoned opinion.

4.34(3) The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12 as amended by 1998 Iowa Acts, chapter 1202.

4.34(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

655—4.35(17A) Appeals.

4.35(1) *Appeal by party.* Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202.

4.35(2) *Review.* The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

4.35(3) *Notice of appeal.* An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. 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;

e. The grounds for relief.

4.35(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 non-appealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.35(5) *Scheduling.* The board of nursing shall issue a schedule for consideration of the appeal.

4.35(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 20 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 an oral argument shall be filed with the briefs.

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

655—4.36(17A) Applications for rehearing.

4.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.36(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.36(4), the applicant requests an opportunity to submit additional evidence.

4.36(3) *Time of filing.* The application shall be filed with the board office within 20 days after issuance of the final decision.

4.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

4.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

655—4.37(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.

655—4.38(17A) Emergency adjudicative proceedings.

4.38(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

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

4.38(2) *Issuance.*

a. 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 agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

b. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.38(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.38(4) *Completion of proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 147.55, 152.10, 272C.4, 272C.5, 272C.6, and 272C.9.

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CHAPTER 5
CONTINUING EDUCATION
[Prior to 8/26/87, Nursing Board[590] Ch 5]

655—5.1(152) Definitions.

"Approved provider" means those persons, organizations, or institutions that meet the criteria specified in subrule 5.3(2) and are authorized by the board to offer approved continuing education programs.

"Approved provider number" means the number assigned by the board which identifies an approved provider.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period; or the selection of approved providers for verification of adherence to continuing education approved provider requirements during a specified time period.

"Continuing education" means planned, organized learning activities acquired following initial licensure and designed to maintain, improve, or expand nurses' knowledge and skills or to develop new knowledge and skills relevant to nursing for the enhancement of practice, education, administration, or theory development to the end of improving the health of the public.

"Criteria" means those standards as defined in subrule 5.3(2) which the provider shall meet to be an approved provider.

"Extended course" means an organized program of study offered in a series of sessions.

"Formal offering" means an extension course, independent study, or other course which is offered for academic credit or audit by an accredited institution of higher education. A formal offering need not be offered by an approved provider.

"Informal offering" means workshop, seminar, institute, conference, lecture, extended course, provider designed self-study, or learner designed self-study which is offered for credit in contact hours or continuing education units.

"Learner designed self-study" means the learner takes the initiative and the responsibility for assessing, planning, implementing, and evaluating an educational activity under the guidance of an approved provider. The provider may award credit to a nurse for learner designed self-study such as lecture development, research, preparation of articles for publication, development of patient care or patient education programs, or projects directed at resolving administrative problems.

"Nonapproved provider" means those persons, organizations, or institutions who do not hold an Iowa approved provider number. The board may recognize credit from nonapproved providers under special situations as specified in subrule 5.2(2), paragraph *"f,"* subparagraphs (2) and (3).

"Practicum" means a course-related, planned and supervised clinical experience which includes clinical objectives and assignment to practice in a laboratory setting or with patients/clients/families for attainment of the objectives.

"Provider designed self-study" means that the provider designs a program for learning for the nurse who completes the program at the individual's pace, e.g., home study, programmed instruction.

655—5.2(152) Continuing education — licensees.

5.2(1) *Board authority.* The board derives its authority under Iowa Code chapter 272C to create continuing education requirements as a prerequisite to obtain a current license and an audit system to ensure compliance. Rules relating to the continuing education and licensing of registered nurses and licensed practical nurses are found in this chapter; rules relating to the continuing education and licensing of advanced registered nurse practitioners are found in nursing board rules, 655—Chapter 7.

5.2(2) *Requirements.* To obtain a registered nurse or licensed practical nurse license for the next renewal period the licensee shall submit a completed report form which documents the completion of continuing education requirements or exceptions to the requirements, as outlined in subrule 5.2(3).

a. Forty-five contact hours or 4.5 continuing education units (CEU's) shall be required for renewal of a three-year license. Thirty contact hours or 3.0 CEU's shall be required for renewal of a license which was issued for less than three years as a result of one of the following:

(1) Examination.

(2) Endorsement into Iowa from another state.

(3) Reactivation from inactive status.

(4) Reinstatement from delinquent status.

b. The hours specified in paragraph *"a"* shall be completed in the license period for which the license was issued. Credit will not be accepted for a duplication of informal or formal offerings within a license period.

c. Continuing education credits from a previous license period shall not be used, nor shall credits be accumulated for use in a future licensing period. An exception may be granted to an individual licensee by the board office for continuing education credits earned from the time the licensee has satisfactorily completed the requirements for renewal and before expiration of the license. The continuing education earned during this time may be applied to the next licensure period and shall meet criteria established in this chapter. The licensee who wishes this exception shall submit a written request at the time of license renewal. This exception requires submission of the written request with the requirements for license renewal as specified in 655—subrule 3.7(3). The licensee shall retain the letter granting the exception from the board office, in addition to the certificate of attendance.

d. Units of measurement used for continuing education courses shall be as follows:

(1) 1 contact hour = 50 minutes of didactic instruction, work on learner designed self-study, and clinical or laboratory practicum in an informal offering.

(2) 1 CEU = 10 contact hours of instruction.

(3) 1 academic semester hour = 15 contact hours of instruction.

(4) 1 academic quarter hour = 10 contact hours of instruction.

e. To be approved for continuing education credit, formal offerings shall meet the qualifications of appropriate subject matter as specified in subrule 5.3(2), paragraph *"a,"* or be required as a part of a formal nursing program which extends beyond the education completed for the original nursing license. Questions about whether particular formal offerings will be approved may be directed to the board office. A denial of approval may be appealed to the board within one month of the denial. The licensee shall retain a transcript exhibiting a passing grade for each formal offering or verification of attendance for offerings which are audited.

f. To be approved for continuing education credit, informal offerings shall meet the qualifications of appropriate subject matter as specified in subrule 5.3(2), paragraph *"a."* There are no restrictions on amount of credit acquired through learner designed or provider designed self-study. The licensee shall retain a certificate to verify completion of each informal offering.

(1) Informal offerings shall be accepted when offered by board-approved providers or when guided by board-approved providers in learner designed self-study. All learner designed self-study and all offerings within Iowa including distance education technology, e.g., satellite programming, shall be sponsored by a board-approved provider to be acceptable.

(2) Informal offerings offered outside of Iowa shall be accepted when approved by other state boards of nursing with mandatory continuing education requirements or offered by the American Nurses' Association, National League for Nursing, National Federation of Licensed Practical Nurses, National Association for Practical Nurse Education and Service, Inc. These informal offerings shall be in accordance with the continuing education standards as follows:

1. American Nurses' Credentialing Center Manual for Accreditation as a Provider of Continuing Education in Nursing in effect in 1986 and the Manual for Accreditation as an Approver of Continuing Education in effect in 1986.

2. National League for Nursing criteria and guidelines of the International Association for Continuing Education and Training, fourth edition, in effect in 1991.

3. National Federation of Licensed Practical Nurses Continuing Education Department policies and procedures in effect in 1986.

4. National Association for Practical Nurse Education and Service, Inc. (NAPNES) Criteria for Approval of Continuing Education in effect in 1986.

(3) Informal offerings offered outside of Iowa by a nonapproved provider or an organization not specified in subrule 5.2(2), paragraph *"f,"* subparagraph (2), shall be accepted when specially approved by the board for an individual licensee. A licensee shall obtain special approval from the board office in order to receive credit acceptable to fulfill the requirements. The special approval application form is available from the board office upon request. Special approval requires submission of a completed application and a brochure, advertisement, or course description prior to the completion of the licensure period. Course content shall meet the qualifications of appropriate subject matter as specified in subrule 5.3(2), paragraph *"a."* The licensee shall retain the approval letter from the board office, in addition to the certificate of attendance received from the nonapproved provider. A denial of approval may be appealed to the board within one month of the denial.

g. Activities not specified in subrule 5.2(2), paragraph *"e"* or *"f,"* shall be considered appropriate for continuing education credit only after approval has been obtained in writing from the board.

5.2(3) *Exceptions to the requirements in subrule 5.2(2), paragraph "a."* A waiver of continuing education requirements or extensions of time within which to fulfill the requirements may be granted on an individual basis. Specific instructions are available from the board office for the following:

a. A licensee shall be deemed to have complied with the continuing education requirements during periods that person serves honorably on active duty in the military service as specified in Iowa Code section 272C.2(3). The continuing education credit requirements shall be waived; however, a licensee who claims this exception shall retain evidence of active duty to be presented upon request from the board.

(1) A licensee who served on active duty for the entire license period or through the end of the license period shall be exempt from the requirement of continuing education credits.

(2) A licensee, who served on active duty for a portion of a license period but is not on active duty at the time of renewal, shall comply with continuing education requirements of Iowa for the remainder of the license period. The required hours are prorated at 15 contact hours per year for each period of 12 consecutive months when not on active duty.

b. A licensee shall be deemed to have complied with the continuing education requirements when that person, at the time of renewal, resides outside of Iowa and holds a current license to practice in a state other than Iowa which also has mandatory continuing education. The continuing education credit requirements shall be waived; however, a licensee who claims this exception shall retain evidence of the out-of-state license to be presented upon request from the board.

(1) A licensee who resides out of state for the entire license period or through the end of the license period and meets a state's continuing education requirements to maintain a current license shall be exempt from the requirements of continuing education credits.

(2) A licensee, who resided out of state for a portion of a license period but is residing in Iowa at the time of renewal, shall comply with continuing education requirements of Iowa for the remainder of the license period. The required hours are prorated at 15 contact hours per year for each period of 12 consecutive months residence in Iowa.

c. A licensee shall be deemed to have complied with the continuing education requirements during periods that person is a government employee working as a registered nurse or licensed practical nurse and assigned to duty outside of the United States as specified in Iowa Code section 272C.2(3). The continuing education credit requirement shall be waived; however, a licensee who claims this exception shall retain evidence of government employment outside the United States to be presented upon request from the board.

(1) A licensee who is a government employee serving outside the United States for the entire license period or through the end of the license period shall be exempt from the requirement of continuing education credits.

(2) A licensee who is a government employee serving outside the United States for a portion of a license period but is not in that status at the time of renewal, shall comply with continuing education requirements of Iowa for the remainder of the license period. The required hours are prorated at 15 contact hours per year for each period of 12 consecutive months when not in that status.

d. A licensee shall be deemed to have complied with the continuing education requirements during periods that person is in foreign service as a registered nurse or licensed practical nurse outside the United States where a current license is required. The continuing education credit requirement shall be waived; however, a licensee who claims this exception shall retain evidence of foreign service requiring licensure to be presented upon request from the board.

(1) A licensee who is serving in such a position for the entire license period or through the end of the license period shall be exempt from the requirement for continuing education credits.

(2) A licensee who is serving in such a position for a portion of the license period, but is not in that status at the time of renewal, shall comply with continuing education requirements of Iowa for the remainder of the license period. The required hours are prorated at 15 contact hours per year for each period of 12 consecutive months when not in that status.

e. A licensee shall be deemed to have complied with the continuing education requirements when that person at the time of renewal possesses evidence of certification in a specialty area of nursing practice for the advanced registered nurse practitioner as defined in rule 655—7.1(152). The continuing education credit requirements shall be waived; however, a licensee who claims this exception shall submit a copy of current certification by the national organization at the time of renewal as well as other requirements specified in 655—subrule 3.7(3).

f. A licensee who has had a physical or mental disability or illness during the license period shall be eligible for a waiver. A waiver provides for an extension of time or exemption from some or all of the continuing education requirements. An application for a waiver is available upon request to the board office. The application requires the signature of a physician who can attest to the existence of a disability or illness during the license period. The application for a waiver shall be approved or denied depending on the disability or illness of the licensee. A licensee shall be notified of the decision. A licensee who obtains approval shall retain a copy of the waiver to be presented to the board upon request.

5.2(4) *Failure to meet requirements or exceptions to requirements.* The licensee who fails to meet the requirements or the conditions for the exceptions has the following options:

a. If prior to the expiration date of the license, the license may be placed on inactive status without penalty and no continuing education is required. The licensee shall notify the board in writing of the desire to place the license on inactive status.

b. If during the late renewal period, the late licensee as defined in nursing board rule 655—3.1(17A,147,152,272C) may retain the license in an active status, or place it on inactive status.

(1) To remain active, the licensee shall complete the continuing education requirements as specified in subrule 5.2(2) or 5.2(3) as well as other requirements specified in nursing board 655—subrule 3.7(4). The licensee shall be required to submit to an audit of continuing education following the late renewal as well as at the time of the next license renewal.

(2) To place the license on inactive status, the licensee shall make a written request to be placed on inactive status and submit the late fee as specified in nursing board rule 655—3.1(17A,147,152,272C). No continuing education is required in order to place the license on inactive status.

c. If the license is in delinquent status, the delinquent licensee as defined in nursing board rule 655—3.1(17A,147,152,272C) may reinstate the license or place the license on inactive status.

(1) To reinstate a license, the licensee shall complete 15 contact hours of continuing education as well as other requirements specified in nursing board 655—subrule 3.7(5). The continuing education shall have been earned within 12 months prior to reinstatement.

(2) To place a license on inactive status, the licensee shall make a written request to be placed on inactive status and submit the delinquent fees as specified in nursing board rule 655—3.1(17A,147,152,272C) plus all renewal fees to date due. No continuing education is required in order to place the license on inactive status.

5.2(5) *Audit of licensees.* The board may select licensees for audit following a period of licensure.

a. The licensee must submit verification of compliance with continuing education requirements or exceptions for the period of licensure being audited. Verification for satisfactory completion of the audit includes legible copies of certificates of attendance, transcripts, special approval of informal offerings from nonapproved providers, or documentation of compliance with exceptions in subrule 5.2(3).

b. Verification must be submitted within one month after the date of the audit. Extension of time may be granted on an individual basis.

c. Licensees are required to keep certificates of attendance, letters verifying special approval for informal offerings from nonapproved providers, transcripts, and documentation of compliance with exceptions for four years.

d. The board shall notify the licensee of satisfactory completion of the audit.

e. Failure to complete the audit satisfactorily or falsification of information shall result in board action as described in nursing board rules, 655—Chapter 4.

f. Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement; completion of an audit will be required prior to further license renewal.

655—5.3(152) Continuing education — providers.

5.3(1) *Board authority.* The board derives its authority under Iowa Code chapter 272C to create requirements for becoming an approved provider and maintaining that status. The board also has the authority to develop an audit, a mechanism to verify compliance with criteria for approved providers.

5.3(2) *Criteria for approved providers.* The approved providers shall show evidence of capability to adhere to criteria indicative of quality continuing education activities for nurses.

a. Criteria related to appropriate subject matter. Appropriate subject matter for continuing education credits reflects the educational needs of the nurse learner and the health needs of the consumer. Subject matter is limited to offerings that are scientifically founded and predominantly for professional growth. The following areas are deemed appropriate subject matter for continuing education credit:

(1) Nursing practice related to health care of patients/clients/families in any setting.

(2) Professional growth and development related to nursing practice roles.

(3) Sciences upon which nursing practice, nursing education, or nursing research is based, e.g., nursing theories and biological, physical, behavioral, computer, social, or basic sciences.

(4) Social, economic, ethical and legal aspects of health care.

(5) Management or administration of health care, health care personnel, or health care facilities.

(6) Education of patients or their significant others, students, or personnel in the health care field.

b. Criteria related to operation of an approved continuing education providership. The provider shall:

(1) Have a consistent, identifiable authority who has overall responsibility for the operation of the providership and execution of the informal offerings who is knowledgeable in administration and has the capability to organize, execute, and evaluate the overall operations of the providership.

(2) Have an organizational chart to delineate lines of authority and communication within the providership as well as within the parent organization, if applicable, and other cooperative or advisory committees.

(3) Develop and implement a philosophy, goals and objectives consistent with the controlling institution, if applicable, which reflect the provider beliefs about nursing, education, and continuing education. These shall indicate the overall direction of the providership for a five-year period.

(4) Maintain financial integrity so that participants receive the continuing education for which they have paid.

(5) Maintain participant and program records as specified in paragraph *"c"* of this subrule.

(6) Demonstrate active nursing participation in the planning and administration of informal offerings. Nursing participation shall be documented in a written statement of policy, denotation on the organizational chart, and planning minutes.

(7) Select appropriate subject matter designed to fulfill the educational needs of nurses in order to meet the health care needs of consumers. Have a subject matter plan which indicates the mechanism of assessing the learning needs of the population to be served and describes how the provider shall meet the appropriate subject matter criteria as specified in subrule 5.3(2), paragraph *"a,"* subparagraphs (1) to (6).

(8) Demonstrate planning for each offering that includes a statement of purpose and measurable, educational objectives.

(9) Provide notification to licensees of the availability of informal offerings. A brochure or written advertisement shall be developed for all informal offerings other than learner designed self-study and a copy shall be sent to the board prior to each offering. The brochure or advertising shall accurately describe the activities by including the date, time, location, statement of purpose, educational objectives, intended audience, credentials of instructors, costs and items covered by the fee, refund policy, and amount of continuing education credit to be awarded. The board-approved provider number shall appear on the brochure or written advertisement.

(10) Structure program content and learning experience to relate to the stated purpose and objectives. Program content shall cover one topic or a group of closely related topics. Current, relevant, scientifically based supportive materials shall be used.

(11) Develop policies and procedures for verification of satisfactory completion of the activity by each participant including a system for verification of satisfactory completion, the control methods to ensure completion and a method to inform participants that completion of the offering is required prior to the award of credit. The provider may award credit to other members of the providership who attend but do not serve as organizers during the actual offering. The provider may make an exception and award partial credit in extreme emergency conditions. The provider may make an exception and award credit for the portion of time the speaker attended the offering excluding the presentation time; however, full credit may be awarded to a speaker who presents the offering for the first time. The provider may base the verification of satisfactory completion of an extended course on the participant meeting the course objectives rather than on the number of sessions attended.

(12) Develop policies and procedures for management of continuing education programs including registration procedures, tuition refund, and enrollee grievances.

(13) Assign credit according to a uniform measure of credit as defined in subrule 5.2(2), paragraph *"d."* Credit shall be granted in increments of half hours or whole hours; however, no credit shall be awarded for less than one contact hour or .1 CEU.

(14) If desired, cosponsor an offering provided by a nonapproved provider. When cosponsoring is done, the approved provider is responsible for assurance that all criteria in subrule 5.3(2) are met. A cosponsorship contract or letter of agreement shall delineate responsibilities of all parties, which includes the approved provider awarding the credit and maintaining the program and participant records. Cosponsoring is not acceptable for learner designed self-study.

(15) An approved provider shall notify the board within 30 days of changes in the administrative authority or address of the providership or the inability to meet the criteria.

c. Criteria related to record system and maintenance of continuing education programs. The provider shall:

(1) Maintain participant records for a minimum of four years from the date of program completion. The participant records shall include the name of licensee, license number, contact hours or CEU's awarded, offering titles, and dates of offerings. The record system shall provide for secure storage and retrieval of individual attendance and information regarding each offering. The participant records of continuing education credits granted shall be available within two weeks upon request from individual nurses or the board. Individual nurses may be assessed for this retrieval service.

(2) Maintain program records for a minimum of four years from the date of program completion.

Program records for all informal offerings, other than learner designed self-study, shall include a brochure or advertising, roster of participants to whom credit was awarded, and a summary of the program including participant and provider evaluations. The provider shall maintain records for one informal offering which includes all required materials for renewal for approved providers as specified in subrule 5.3(4), paragraph *"a,"* subparagraph (6).

Program records for learner designed self-study shall include the written agreement between the learner and provider, date of completion, and learner and provider evaluations.

(3) A certificate shall be furnished to each participant documenting completion of the offering. The front of the certificate shall display: participant's name, provider number, contact hours or continuing education units awarded, starting and ending dates of the offering, subject matter taken, and a reminder to the participant to retain the certificate for four years.

d. Criteria related to faculty of informal offerings. The faculty shall:

(1) Be current, knowledgeable, and skillful in the subject matter of the offering by having evidence of further education in the subject. Such education shall be acquired through course completion or an advance degree, experience in teaching in the specialized area within the three years preceding the offering, or six months' work experience in the specialized area within the three years preceding the offering.

(2) If applicable, be skillful in assisting a nurse in designing a learner designed self-study program by having experience or education in course design.

(3) Include a nurse if the subject matter is nursing or if it is learner designed self-study.

(4) Encourage active participation of the nurse learners enrolled in the offerings.

(5) Utilize principles of adult education in teaching strategies.

(6) Utilize teaching methodologies appropriate to the subject, audience, and time allotment.

(7) Utilize current supportive materials by drawing from resources that are predominantly less than five years old unless the topic is of an historical nature.

(8) Not receive credit when teaching participants; however, an exception may be made as specified in subrule 5.3(2), paragraph *"b,"* subparagraph (11).

(9) Not receive credit for learner designed self-study from a provider which employs them in the regular administration of the providership.

e. Criteria related to evaluation of continuing education programs. The provider shall include:

(1) A design for participants to assess achievement of program objectives, faculty effectiveness, and teaching-learning methodologies, resources and facilities for each offering.

(2) Evaluation techniques to assess the effectiveness of each offering and plan for future offerings.

(3) A method of notifying the participants that the evaluation may be submitted directly to the board.

f. Additional criteria related to management of learner designed self-study for providers who wish to guide this type of education. The provider shall:

(1) Provide a written application process through which the learner describes the following:

Individual's assessed need for the learning activity which meets the criteria related to appropriate subject matter found in this subrule, paragraph *"a."*

Purpose for pursuing the learning activity.

Objectives clarifying the purpose and providing a description of expected learning outcomes in measurable, behavioral terms.

Learning experiences or activities detailed in a plan for achieving the behavioral objectives.

Learning resources identifying people, materials, and facilities to be utilized to achieve the purpose and objectives.

Timetable for completion of learning activities.

Method of evaluation to be used which ensures completion of the learning activities, the objectives, and the number of hours required.

(2) Provide a written agreement with the learner. The written agreement shall include:

The approved written application.

Cost and refund policy.

Number of contact hours to be awarded.

The board-approved provider number.

Signatures of the nurse learner and the faculty managing this learner designed self-study.

Date of the agreement.

(3) Provide an evaluation which indicates successful completion of the terms of the written agreement and the award of a certificate of completion.

5.3(3) *Initial approval process for providers.* Initial approval is granted upon the submission of required materials and the determination by the board or its representative that the materials fulfill the criteria for approved providers specified in subrule 5.3(2).

a. Upon request, the board office shall send an application to a potential provider which requires the submission of the following materials:

(1) Designation of the administrative authority and biographical information about the administrative authority.

(2) Organizational chart.

(3) Philosophy, goals and objectives.
(4) List of program offerings.
(5) Evidence of nursing participation.
(6) Plan on subject matter.
(7) A policy for record system and maintenance.
A sample of the certificate to be used.
A sample of a written agreement for learner designed self-study, if applicable.
(8) Policies and procedures for verification of satisfactory completion of an offering.
(9) Registration procedures.
(10) Tuition refund policy.
(11) A policy regarding enrollee grievances.
(12) A policy regarding program and provider evaluation.
(13) A policy regarding faculty selection.
(14) A policy regarding the use of the uniform measure of continuing education credit.
(15) Documents from a typical sample course offering. Documents for this offering shall include:
A narrative of the planning of the offering including evidence of nursing participation.
A sample brochure or advertising.
Content of course, e.g., topical outline.
Teaching-learning methodologies and supportive materials.
Bibliography.
A sample evaluation form for participant completion.
A sample evaluation form for provider completion.
(16) A policy for cosponsorship of offerings, if applicable, and a sample contract or letter of agreement.

b. Upon receipt of the completed application and two copies, a review is held by a committee.

(1) The committee is composed of at least three appointees of the board. The review is held at the board office within 60 days of receipt of the application.

(2) The review is based on the criteria as specified in subrule 5.3(2).

(3) If the submitted materials meet the requirements, the committee shall approve the provider for five years and issue a provider number. The approved provider shall be notified of the decision within two weeks of the committee review.

(4) If the committee finds submitted materials to be incomplete or unsatisfactory, it shall notify the provider applicant of the decision within two weeks of the committee review. The applicant is given the opportunity to meet the criteria with an additional review to be held within six weeks of receipt of the revised application materials at the board office.

(5) If the applicant is unable to meet the criteria within three committee reviews or one year from the receipt of the initial application at the board office, whichever comes first, the committee shall recommend nonapproval at the next regularly scheduled board meeting.

(6) Notice of this recommendation of nonapproval shall be provided to the applicant at least 30 days before the board meeting.

(7) The board shall make the final decision.

c. At any time the provider applicant disagrees with the committee's actions, the applicant may request board action. At this time the matter becomes a contested case and an evidentiary hearing as specified in Iowa Code chapter 17A shall be held by the board at its next regularly scheduled meeting.

(1) If the final decision of the board is approval, approval shall be granted up to five years and an approved provider number is issued. The applicant shall be notified of the decision within two weeks of the board's final decision.

(2) If the final decision of the board is a denial, the applicant shall be notified of the decision within two weeks of the board's final decision. Provisions for making a request for reconsideration and appeal are found in Iowa Code sections 17A.16 and 17A.19.

d. A provider applicant who has been denied approved provider status may apply no sooner than one year after denial to become an approved provider by starting the initial approval process specified in this subrule.

5.3(4) *Reapproval process for approved providers.* Reapproval is granted upon the submission of required materials and the determination by the board or its representatives that the materials fulfill the criteria for approved providers specified in this chapter.

a. The board shall send an application for reapproval to an approved provider four months before the expiration of the current approval. The completed application shall be submitted to the board office no later than two months prior to the expiration of the current approval. The application requires submission of the following materials:

(1) Identification of the current administrative authority. The information shall include the name(s) and title(s) of the authority.

(2) Current table of organization. The table shall:

Delineate the administrative authority for the providership.

Define the line relationships within the providership as well as within the parent organization, if applicable.

Illustrate cooperative or advisory relationships, if applicable.

(3) Goals, philosophy, and objectives. These shall:

Be described in regard to accomplishments, strengths, and weaknesses during the approval period.

Indicate the overall direction of the providership for the next five-year period, taking into consideration the strengths and weaknesses of the providership.

(4) List of course offerings from the previous year.

(5) Explanation of changes. A new policy or procedure shall be submitted for each change made since the previous approval.

(6) Documents from a typical course offering. The following documents shall be included:

A narrative of the planning of the offering.

A brochure, advertising, or written agreement.

Content of course, e.g., topical outline.

Teaching-learning methodologies and supportive materials.

Bibliography.

Attendance record.

Participant evaluation form.

Summary of participant and provider evaluations.

A sample of the current participant evaluation form and certificate.

b. Upon receipt of the application for reapproval, a review shall be made by a board designee at the board office within 30 days of receipt of the application.

(1) The review is based on the criteria as specified in subrule 5.3(2).

(2) If the submitted materials meet the requirements, the designee shall issue a renewal of the approved provider status for a five-year period.

(3) If the submitted materials are incomplete or unsatisfactory, the designee shall notify the provider of the decision within two weeks of the committee review. The provider shall be given the opportunity to meet the criteria within two weeks of the receipt of the board office notification. If the provider is unable to meet the requirements, the designee shall recommend nonapproval at the next regularly scheduled board meeting.

(4) Notice of this recommendation of nonapproval shall be provided to the applicant at least 30 days before the board meeting.

(5) The board shall make the final decision.

(6) At any time the renewal applicant disagrees with the designee's actions, the applicant may request board action. At this time the matter becomes a contested case and an evidentiary hearing as specified in Iowa Code chapter 17A shall be held by the board at its next regularly scheduled meeting, when the board shall issue a final decision.

(7) If the final decision of the board is reapproval, approval shall be granted up to five years. The approved provider shall be notified of the decision within two weeks of the board's final decision.

(8) If the final decision of the board is denial, the reapproval applicant shall be notified of the decision within two weeks of the board's decision. Provisions for making a request for reconsideration and appeal are found in Iowa Code sections 17A.16 and 17A.19.

(9) A reapproval applicant who has been denied reapproval may apply no sooner than one year after denial to become an approved provider by starting the initial approval process specified in subrule 5.3(3).

5.3(5) *Audit of approved providers.* The board shall monitor approved providers for adherence to criteria as established in this chapter.

a. The board may order an audit of an approved provider or may audit as a result of a written complaint. A written complaint may be filed with the board against a provider for acts or omissions which indicate a failure to meet the criteria established in this chapter. If the complaint is in regard to a particular offering, it shall be filed within one month of the completion of the offering.

b. The board may revoke the approved provider status for willful or repeated failure to meet one or more of the criteria specified in subrule 5.3(2).

c. A notice of revocation shall be issued to the provider. The provider will have 30 days to request a hearing for reconsideration of revocation. If a request for hearing is not received within the 30 days, the revocation shall be considered final.

d. The hearing will be conducted by the board pursuant to 655—4.13(17A,147,152,272C).

e. A provider who wishes to request rehearing shall do so within 20 days from the date of receipt of decision. The provider shall submit a statement which shows cause why action should not have been taken by the board. This statement shall be acted upon by the board within 20 days.

f. A provider who wishes to appeal the sanction imposed by the board may do so pursuant to Iowa Code section 17A.19.

g. A provider whose approved provider status has been revoked shall no longer advertise that it is an approved provider. The provider number shall no longer be used or appear in brochures, advertisements, certificates, or other materials.

h. A provider whose approved provider status has been revoked shall maintain the records required in subrule 5.3(2) until four years after the last credit was granted or transfer the records to the custody of the board.

i. The board shall notify other states which have mandatory nursing continuing education of the revocation of the approved provider status and the reason(s) for withdrawal.

j. A provider whose approved provider status has been revoked may apply no sooner than one year after the withdrawal of approval to become an approved provider by the initial approval process described in subrule 5.3(3).

5.3(6) *Voluntary relinquishment of an approved providership.* An approved provider may voluntarily relinquish its provider number. If an approved provider does not submit the required materials for reapproval or is unable to be located by the board, by certified mail, the board will consider that the provider voluntarily relinquished its approved provider status effective with the return of the certified mail or as determined by the executive director. When the approved providership has been voluntarily relinquished, the provider shall discontinue providing continuing education that is acceptable for license renewal in Iowa.

a. The provider shall maintain the records required in subrule 5.3(2) until four years after the last credit was granted or transfer the records to the custody of the board.

b. The provider may apply no sooner than one year after the relinquishment to become an approved provider by starting the initial approval process specified in subrule 5.3(3).

c. The board shall notify other states which have mandatory nursing continuing education of the relinquishment of the approved provider status and the reason(s) for relinquishment.

These rules are intended to implement Iowa Code sections 272C.2 and 272C.3.

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CHAPTER 8
PETITIONS FOR RULE MAKING

The board of nursing hereby adopts the Uniform Rules on Agency Procedure relating to petitions for rule making which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

655—8.1(17A) Petition for rule making. In lieu of the words "(designate office)", insert "board of nursing".

In lieu of the words "(AGENCY NAME)", insert "BOARD OF NURSING".

655—8.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Executive Director, Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319".

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CHAPTER 9
DECLARATORY ORDERS

The board of nursing hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders which are printed in the first volume of the Iowa Administrative Code.

655—9.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "board of nursing".

In lieu of the words "(designate office)", insert "1223 East Court Avenue, Des Moines, Iowa 50319".

In lieu of the words "(AGENCY NAME)", insert "BOARD OF NURSING".

Delete the following: "(An agency may wish to describe here a simplified alternative petition form that would be more appropriate for some members of its clientele in light of their particular circumstances.)".

655—9.2(17A) Notice of petition. In lieu of the underline insert "15" and delete the words "(15 or less)".

In lieu of the words "(designate agency)", insert "board of nursing".

655—9.3(17A) Intervention.

9.3(1) In lieu of the underline, insert "15".

9.3(2) In lieu of the words "(designate agency)", insert "board of nursing".

9.3(3) In lieu of the words "(designate office)", insert "the board of nursing".

In lieu of the words "(designate agency)", insert "board of nursing".

In lieu of the words "(AGENCY NAME)", insert "BOARD OF NURSING".

Delete the words "(An agency may wish to describe here a simplified alternative petition for intervention form that would be more appropriate for some members of its clientele in light of their particular circumstances.)".

655—9.4(17A) Briefs. In lieu of the words "(designate agency)", insert "board of nursing".

655—9.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Executive Director, Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319".

655—9.6(17A) Service and filing of petitions and other papers.

9.6(2) In lieu of the words "(specify office and address)", insert "the Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319".

In lieu of the words "(agency name)", insert "board of nursing".

9.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "655 IAC 4.16(17A)".

655—9.7(17A) Consideration. In lieu of the words "(designate agency)", insert "board of nursing".

655—9.8(17A) Action on petition.

9.8(1) In lieu of the words "(designate agency head)", insert "board of nursing".

9.8(2) In lieu of the words "as defined in (contested case uniform rule X.2(17A))", insert "the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified".

655—9.9(17A) Refusal to issue order.

9.9(1) In lieu of the words "(designate agency)", insert "board of nursing".

2. In lieu of the words "(designate agency)", insert "board of nursing".

3. In lieu of the words "(designate agency)", insert "board of nursing".

10. In lieu of the words "(designate agency)", insert "board of nursing".

Delete the words "(Where the agency's experience enables it to define in advance other specific reasons for refusing to issue a declaratory ruling, it should include them here.)".

655—9.12(17A) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "board of nursing".

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CHAPTER 10
AGENCY PROCEDURE FOR RULE MAKING

The board of nursing hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to procedures for rule making which are printed in the first volume of the Iowa Administrative Code.

655—10.3(17A) Public rule-making docket.
10.3(2) Delete the words "(commission, council, director)".

655—10.4(17A) Notice of proposed rule making.
10.4(3) In lieu of the words "(specify time period)", insert "one year".

655—10.5(17A) Public participation.
10.5(1) In lieu of the words "(identify office and address)", insert "the Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319".
10.5(5) In lieu of the words "(designate office and telephone number)", insert "the board of nursing at (515) 281-3255".

655—10.6(17A) Regulatory analysis.
10.6(2) In lieu of the words "(designate office)", insert "the board of nursing".

655—10.10(17A) Exemptions from public rule-making procedures.
10.10(2) In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them.)", insert the following:
"*a.* The rule confers a benefit or removes a restriction on the public or some segment thereof.
"*b.* The effective date is necessary because of imminent peril to the public health, safety or welfare."

655—10.11(17A) Concise statement of reasons.
10.11(1) In lieu of the words "(specify the office and address)", insert "the Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319".

655—10.12(17A) Contents, style, and form of rule.
10.12(3) Delete the word "actual".

655—10.13(17A) Agency rule-making record.
10.13(2) Contents.
c. In lieu of the words "(agency head)", insert "board of nursing".
10.13(4) Delete the words "(Alternatively, the agency can maintain the file indefinitely.)" and the words "(*Note: Alternatively to X.13(2)"*j*" and the amendment to X.13(4), an agency could keep a separate file of significant written criticisms to rules and maintain those for five years.)".

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CHAPTER 11
EXAMINATION OF PUBLIC RECORDS

655—11.1(17A,22,147,152,272C) Definitions.

"Access to records" means the general right of the public to examine and copy records. In subrule 11.2(9), it also means the right of the subject of a confidential record to authorize its release, in writing, to a named third party.

"Confidential record" means a record which is not available to members of the public except as specified in Iowa Code section 22.7 or other law forbidding disclosure. Nothing in this definition shall be construed to deny access to the public portions of a record which contains a mixture of public and confidential information, or to broaden the definition of confidential information to include an entire document.

"Custodian of records" means the executive director of the board or that official's designee.

"Disclosure" means the availability or release of a record.

"Individual" means a living person. It does not include persons such as sole proprietorships, partnerships, corporations, or educational institutions. A business firm which is identified by the name of one or more persons is not an individual within the meaning of this part.

"Open records" are those records which are not authorized or required to be kept confidential under Iowa Code section 22.7 or any other provision of the law.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the person by personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual and which is contained in a system of records as defined in this subrule.

"Record," when used in these rules means "public record," includes all records, documents, tapes or other information stored or preserved in any medium of or belonging to the board.

"Release of information" means granting access to examine records and providing copies as requested.

"Subject of a record" means an individual under whose name or other personal identifier a record is kept in a system of records.

"System of records" means any group of records under the control of the board from which a record is retrieved by personal identifier and all records or group of records that are not retrievable by personal identifier. Papers maintained by individual employees of the board which are prepared, maintained, or discarded at the discretion of the employee are not part of the system of records; provided, that the personal papers are not used by the employee or the board to determine any rights, benefits, or privileges of the individuals.

655—11.2(17A,22,147,152,272C) Public information and inspection of records.

11.2(1) *Public information.* Any interested person may examine public records of the board by making a written request. This request may be mailed or presented in person to the executive director or the designee at the office of the board. Records shall only be examined at the board office during the board's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays. Unless otherwise provided by law, all records other than confidential records, maintained by the board shall be made available for public inspection.

11.2(2) *Inspection of records.* Procedures governing requests for the inspection of records are set out in subrule 11.2(1).

11.2(3) *Board records routinely available for public inspection.* The board collects and maintains the following records that are routinely available for public inspection:

a. Board calendars, agenda, newsletter, news releases and other information intended for the public.

b. Board decisions, orders, opinions and other statements of law or policy issued by the board in the performance of its function.

c. The records of rule-making proceedings.

d. Annual reports of the board.

e. Reports and materials filed with the board by nursing education programs and continuing education providers.

f. Board minutes except those resulting from meetings in closed sessions in accordance with Iowa Code section 21.5.

g. Rulings on requests for waivers of board rules.

h. Information about licensees (rosters and mailing lists).

i. All of the records that are not specifically exempted from disclosure from subrule 11.2(4).

The board files of public records listed above may contain confidential records. Any request to review confidential records must be made in accordance with subrule 11.2(4). In addition, the board records listed in *"a," "b," "d," "f," "g," "h,"* and *"i"* of this subrule may contain personally identifiable information.

Various legal and technical publications relating to nursing are also available for inspection by the public in the board office.

11.2(4) *Records not routinely available for public inspection.* The following records are not routinely available for public inspection. These records are withheld as specified in Iowa Code section 22.7.

a. Materials that are specifically exempted from disclosure by statute in which the board may in its discretion withhold from public inspection. Any person may request permission to inspect particular records withheld from inspection under this subrule. At the time of the request, the board will notify all interested parties. If the request is to review materials under this subrule, the board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief.

b. Records which the board is authorized to withhold from public inspection under Iowa law include, but are not limited to, the following:

(1) Hospital records, medical records, and professional counselor records of the conditions, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient.

(2) Peace officers' investigative reports as specified in Iowa Code section 22.7, except where disclosure is authorized elsewhere in the Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

(3) Personal information in confidential personnel records of the board.

(4) Information in a report to the state department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

(5) Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of the government, to the extent that the government body receiving those communications from such persons outside of the government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. Notwithstanding this provision:

1. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

2. Information contained in the communication is public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

3. Information contained in the communication is public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety and danger of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize an investigation or would pose a clear and present danger.

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

(7) Materials exempt from public inspection under any other provision of state law.

11.2(5) *Materials specifically exempt from disclosure by statute and which the board is prohibited from making available for public inspection.* The board is required to withhold the following materials from public inspection:

a. Records which include all complaint files, investigation files, other investigation reports and all other investigative information in the possession of the board or peer review committee acting under the authorization of the board or its employees or agents which relate to licensee application or discipline are privileged and confidential and are not subject to discovery, subpoena or other means of legal compulsion for their release to persons other than the licensee or applicant, the board, its employees and agents involved in licensee discipline. For further information and exceptions, see Iowa Code section 272C.6(4).

b. Minutes and tape recordings of portions of board meetings held in closed sessions in accordance with Iowa Code section 21.5(4).

c. Criminal history or prior misconduct of the examination applicant.

d. Information relating to the contents of the licensure examination.

e. Information relating to the examination results other than final score except for information about the results of the examination given to the person who took the examination.

11.2(6) *Requests that materials or information submitted to the board be withheld from public inspection.* Any person submitting information or materials to the board may submit a request that part or all of the information or materials not be made available for public inspection pursuant to the following requirements:

a. Procedure. The request shall be attached to the materials to which it applies, each page of which shall be clearly marked confidential.

b. Content of the request. Each request shall contain a statement of the legal basis for withholding the materials from inspection and the facts to support the legal basis relied upon. The facts underlying the legal basis shall be supported by affidavit executed by a corporate officer (or by an individual, if not a business entity) with personal knowledge of the specific facts. If the request is that the materials be withheld from inspection for a limited period of time, the period shall be specified.

c. Compliance. If a request complies with the requirements of paragraphs *"a"* and *"b"* of this subrule, the materials will be temporarily withheld from public inspection. The board will examine the documents to determine whether the documents should be afforded confidentiality. If the request is granted, the ruling will be placed in a public file in lieu of the materials withheld from public inspection.

d. Request denied. If a request for confidentiality is denied, the documents will be held confidential for 14 days to allow the applicant an opportunity to seek injunctive relief. After the 14 days expire, the materials will be available for public inspection, unless the board is directed by a court to keep the material confidential.

11.2(7) *Procedures for the inspection of board records which are routinely available for public inspection.* The records requested must be reasonably described by the person requesting them to permit their location by staff personnel. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

Advance requests to have records available on a certain date may be made by telephone or by correspondence.

a. Search fees. An hourly fee will be charged for searching for requested records. The fee will be based upon the pay scale of the employee who makes the search. No search fee will be charged if the records are not located, the records are not made available for inspection, or the search does not exceed one-quarter hour in duration.

b. Written request. Written requests shall lists the telephone number (if any) of the person making the request, and for each document requested shall set out all available information which would assist in identifying and locating the document. The request should also set out the maximum search fee the person making the request is prepared to pay. If the maximum search fee is reached before all the requested documents have been located and copied the requesting person will be notified. When the requesting person requests that the board mail copies of the material, postage and handling expenses should also be included. Fees shall be paid directly to the board prior to the release of the requested information.

c. Procedure for written request. Records will be produced for inspection at the earliest possible date following a request. Records should be inspected within seven days after notice is given that the records have been located and are available for inspection or as otherwise agreed upon. After seven days, the records will be returned to storage and additional charges may be imposed for having to produce them again.

d. Copies. Copies of public records shall be made by the board staff and the charge shall be $.10 per page.

11.2(8) *Procedures for inspection of board records which are not routinely available for public inspections.* Any person desiring to inspect board records which are not routinely available for public inspection shall file a request for inspection meeting the requirements of this subrule.

a. Content of request. The records must be reasonably described by the person requesting them so as to permit their location by staff personnel. Requests shall be directed to the Executive Director of the board.

b. Procedure. Requests for inspection shall be acted upon as follows:

(1) If the board is prohibited from disclosing the records, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the board is prohibited from disclosing part of a document from inspection, that part will be deleted and the remainder will be made available for inspection.

(3) In the case of requests to inspect records not routinely available for public inspection under subrule 11.2(4)*"a"*(1) through (9), the board will notify all interested parties of the request to view the materials. The board will withhold the materials from public inspection for 14 days to allow the party who submitted the material an opportunity to seek injunctive relief. If the request is granted by the board, or is partially granted and partially denied, the person who submitted the records to the board will be afforded 14 days from the date of the written ruling in which to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection.

11.2(9) *Procedure by which the subject of a confidential record may have a copy released to a named third party.* Upon request which complies with the following procedures, the board will disclose a confidential record to its subject or to a named third party designated by the subject. Positive identification is required of all individuals making a request.

a. In person request. Subjects of a confidential record who request that information be given to a named third party will be asked for positive means of identification. If an individual cannot provide suitable identification, the request will be denied.

Subjects of a confidential record who request that information be given to a named third party will be asked to sign a release form before records are disclosed.

b. Written request. All requests by subject of a confidential board record for release of the information to a named third party sent by mail shall be signed by the requester and shall include the requester's current address and telephone number (if any). If positive identification cannot be made on the basis of the information submitted along with the information contained in the record, the request will be denied.

Subjects of a confidential record who request by mail that information be given to a named third party will be asked to sign a release form before the records are disclosed.

c. Denial of access to the record. If positive identification cannot be made on the basis of the information submitted or if data in the record are so sensitive that authorized access could cause harm or embarrassment to the individual to whom the record pertains, the board may deny access to the record pending the production of additional evidence of identity.

11.2(10) *Procedure by which the subject of a board record may have additions, dissents or objections entered into the record.* An individual may request an addition, dissent or any objection be entered into a board record which contains personally identifiable data pertaining to that individual. The request shall be acted on within a reasonable time.

a. Content of the request. The request must be in writing and addressed to the Executive Director of the board. The request should contain the following information:

(1) A reasonable description of the pertinent record.

(2) Verification of identity.

(3) The requested addition, dissent or objection.

(4) The reason for the requested addition, dissent or objection to the record.

b. Denial of request. If the request is denied, the requester will be notified in writing of the refusal and will be advised that the requester may seek board review of the denial within 20 working days after issuance of the denial.

11.2(11) *Advice and assistance.* Individuals who have questions regarding the procedures contained in these rules may contact the Executive Director of the board.

11.2(12) *Data processing system.* The board does not currently have a data processing system which matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

655—11.3(17A,22,147,152,272C) Personally identifiable information.

11.3(1) *Collection of personally identifiable information.* This board is authorized to collect information, some of which is personally identifiable. The nature and extent of the personally identifiable information collected by the board, the legal authority for the collection of that information and a description of the means of storage are found in this section.

11.3(2) *Personally identifiable information.* The board maintains the following systems of records which may contain personally identifiable information:

a. Rule making. Rule-making records may contain information about individuals making written or oral comments or proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not retrieved by individual identifier, and is not stored in an automated data processing system.

b. Board records. Agendas, minutes and materials presented to all board members in preparation for board meetings are available from the Executive Director, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4).

c. Publications. News releases, annual reports, project reports, board newsletters, etc. are available from the office of the Executive Director.

Board news releases, annual reports, project reports, and newsletters may contain personally identifiable information about board staff or members of the board or committees. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

d. Disciplinary reports. This information is available from the chief health professions investigator in the board office. These reports contain personally identifiable information about nurses who have had action taken by the board against their licenses. This information is retrieved by individual identifier and some of the information is stored on an automated data processing system. Some is stored as hard copy or microfilmed documents. This information is matched or compared with personally identifiable information in other record systems.

This information is dispersed pursuant to Iowa Code sections 272C.4, 272C.6 and Iowa Administrative Code, Nursing Board[655], 4.16(3)*"c."*

e. Declaratory rulings. Records may contain information about individuals making the requests for declaratory rulings or comments from other individuals concerning the rulings. This information is collected pursuant to Iowa Code section 17A.9. This information is retrieved by the individual requesting the ruling or topic and is not stored on an automated data processing system.

f. Licensing.

(1) Records pertaining to licensure by examination may include:

1. Transcripts from nursing education programs. This information is collected pursuant to Iowa Code section 152.7.
2. Application for licensure by examination. This information is collected pursuant to Iowa Code sections 147.8 and 147.29.
3. Application for licensure by endorsement. This information is collected pursuant to Iowa Code section 147.44.
4. Birth certificates (part of previous requirement for licensure; no longer required). This information is collected pursuant to Iowa Code section 147.3.
5. References.
6. Past felony record. This information is collected pursuant to Iowa Code section 147.3.
7. Examination scores. This information is collected pursuant to Iowa Code section 152.7.
8. High school graduation or equivalency. This information is collected pursuant to Iowa Code section 152.7.
9. Certification for advanced registered nurse practice. This information is collected pursuant to Iowa Code section 152.1(2)*"d."*

(2) Records pertaining to licensure by endorsement may include:

1. Transcripts from nursing education programs. This information is collected pursuant to Iowa Code section 152.7.
2. Application for licensure by endorsement. This information is collected pursuant to Iowa Code section 152.8.
3. Birth certificates (part of previous requirement; no longer required). This information is collected pursuant to Iowa Code section 147.3.
4. Past felony record. This information is collected pursuant to Iowa Code section 147.3.
5. Examination scores. This information is collected pursuant to Iowa Code section 152.7.
6. Disciplinary action taken by other boards of nursing. This information is collected pursuant to Iowa Code section 147.52.

7. High school graduation or equivalency. This information is collected pursuant to Iowa Code section 152.7.

8. Verification of licensure by another board of nursing. This information is collected pursuant to Iowa Code section 152.8.

(3) Licensure by renewal, reinstatement and reactivation.

1. Applications. This information is collected pursuant to Iowa Code sections 147.10 and 147.11.

2. Past felony record. This information is collected pursuant to Iowa Code section 147.3.

3. Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

11.3(3) *Retrieval of personally identifiable information.* Personally identifiable information is retrieved by individual identifier and some of this information is stored in an automated data processing system. Some is stored as hard copy or microfilmed documents. All record systems maintained by the board and which contain personally identifiable information permit the comparison of personally identifiable information in one record system with personally identifiable information in another system.

11.3(4) *Board procedures for requesting information.* After July 1, 1988, the board shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside the department might routinely be provided this information, which parts of the information requested are required and which are optional, and the consequences of failing to provide the information requested. This notification shall either appear on the form used to collect the information, or on a separate sheet accompanying the form.

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CHAPTER 12
REGISTERED NURSE CERTIFYING ORGANIZATIONS/ UTILIZATION AND COST CONTROL REVIEW

655—12.1(509,514,514B,514F) Purpose. The following chapter is promulgated for the purpose of administering the provisions of Iowa Code sections 509.3, 514.7, 514B.1 and 514F.1.

655—12.2(509,514,514B,514F) Definition. A "certified registered nurse" is a registered nurse with current active licensure in Iowa who possesses evidence of certification by a national certification organization or successor agency as recognized by the board in this rule.

655—12.3(509,514,514B) National certifying organizations. The national certifying organizations identified by the board pursuant to Iowa Code sections 509.3, 514.7, 514B.1, and 514F.1 are as follows:

1. American Association of Critical Care Nurses Certification Corporation.
2. American Association for Marriage and Family Therapy.
3. American Association of Spinal Cord Injury Nursing.
4. American Board of Medical Genetics.
5. American Board of Neuroscience Nursing.
6. American Board for Occupational Health Nurses, Inc.
7. American Board of Post Anesthesia Nursing Certification, Inc.
8. American Board of Urologic Allied Health Professionals, Inc.
9. American College of Nurse-Midwives, ACNM Certification Council (ACC).
10. American Nurses' Association, American Nurses' Credentialing Center.
11. American Society for Psychoprophylaxis in Obstetrics.
12. American Society of Plastic and Reconstructive Surgical Nurses, Inc.
13. Association for Practitioners in Infection Control.
14. Rehabilitation Nursing, Certification Board.
15. Board of Certification for Emergency Nursing.
16. Board of Nephrology Examiners, Nursing and Technology.
17. Certifying Council for Gastroenterology Clinicians, Inc.
18. Council on Certification of Nurse Anesthetists.
19. Council on Recertification of Nurse Anesthetists.
20. Enterostomal Therapy Nursing Certification Board.
21. International Association of Infant Massage Instructors.
22. International Board of Lactation Consultant Examiners.
23. Intravenous Nurses Society Certification Corporation.
24. National Board for Certification of School Nurses.
25. National Board of Nutrition Support Certification.
26. National Certification Board of Pediatric Nurse Practitioners and Nurses.

27. National Certification Board, Perioperative Nursing, Inc.
28. National Certifying Board for Ophthalmic Registered Nurses.
29. National Consortium of Chemical Dependency Nurses.
30. National Education Committee of the Oncology Nursing Society. Rescinded IAB 1/6/93, effective 2/10/93.
31. National Nurses Society of Addictions.
32. Nephrology Nursing Certification Board.
33. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties.
34. Oncology Nursing Certification Corporation.
35. Orthopedic Nurses Certification Board.
36. Plastic Surgical Nursing Certification Board.

655—12.4(514F) Utilization and cost control review (U.C.C.R.) committee. The board shall establish a U.C.C.R. committee for the purpose of providing a mechanism for review of questions related to:

1. Appropriateness of levels of nursing care.
2. Documentation of the credentials of the nurse(s) offering the service(s).
3. Documentation of the care provided.
4. Documentation of the costs of nursing services provided by certified registered nurses as requested by users and payers of such services.

655—12.5(514F) Selection and composition of the U.C.C.R. committee.

12.5(1) The U.C.C.R. committee shall consist of seven licensed registered nurses, four of whom shall be certified registered nurses. A quorum of the U.C.C.R. committee is two-thirds of the membership. When a quorum is present, a position is carried by a majority of the committee members.

12.5(2) The members of the U.C.C.R. committee shall serve three-year terms; however, the initial committee will have staggered terms with two members appointed for one year, two members appointed for two years and three members appointed for three years.

12.5(3) The chairperson of the Iowa board of nursing shall appoint the committee members, designate a chairperson and a secretary, subject to approval by the board, at the first meeting following the organizational meeting each year.

12.5(4) Members of the U.C.C.R. committee shall:

a. Have been actively practicing nursing in Iowa for a period of five years immediately prior to their appointment.

b. Hold a current Iowa registered nurse license.

c. Be actively involved in nursing practice during the term of appointment.

d. Not be exempt from mandatory disclosure requirements of Iowa Code section 272C.9.

e. Not be civilly liable when functioning in their capacity of committee members in compliance with Iowa Code section 272C.8.

f. Observe the requirements of confidentiality imposed by Iowa Code subsection 272C.6(4). For the purposes of this subsection, all information requested by or provided to the U.C.C.R. committee under this chapter shall be considered privileged and confidential complaint or investigative information. However, the final decision of the U.C.C.R. committee shall not be considered confidential.

655—12.6(514F) Scope of review.

12.6(1) Factors to determine appropriateness of nursing care deemed medically necessary shall include, but not be limited to, the following:

a. Utilization of the nursing process in establishing a nursing diagnosis.

b. Development of a nursing care plan based on documentation of client needs and standards of care for that particular clinical specialty.

c. Adequate completion of recommended nursing care plan.

d. Quality of care as measured by outcome.

e. Proper referral to specialists/physicians when conditions indicate.

12.6(2) Cost review shall result in an opinion as to the fairness of charges for nursing care services based on criteria which shall include, but not be limited to, the following:

a. The nurse's usual charge for the service.

b. The customary charge for the service based on a review of peer group charges.

c. Reasonable variance due to degree of difficulty factors which require extraordinary skill and judgment.

655—12.7(514F) Procedures for utilization and cost control review.

12.7(1) A request for review may be made to the committee by a patient, a licensee or any third party payer of health care benefits.

12.7(2) The fee for a utilization and cost control review will be $50 per individual patient review, made payable to the secretary of the U.C.C.R. committee at the time of the request. Such funds are to be used to pay expenses as deemed appropriate by the U.C.C.R. committee.

12.7(3) A request for review shall be submitted to the committee by addressing the request to the U.C.C.R. Committee, Iowa Board of Nursing, Executive Hills East, 1223 East Court Avenue, Des Moines, Iowa 50319. All requests shall be made on the approved forms. Forms will be made available upon request from the office of the board of nursing. All references to identification and location of the licensee shall be deleted prior to submission to the U.C.C.R. committee. The request will be forwarded by the office of the board to the chairperson of the U.C.C.R. committee who may assign a three-person subcommittee to review the case and issue an opinion. The subcommittee shall include at least one certified registered nurse.

12.7(4) The office of the Iowa board of nursing shall provide administrative services to the U.C.C.R. committee. The U.C.C.R. subcommittee shall respond in writing with its findings and recommendations within 90 days of the request to the chairperson of the U.C.C.R. committee, who, in turn, shall submit to the executive director of the Iowa board of nursing the results of the review or opinion. The executive director of the Iowa board of nursing shall notify the parties of the committee findings.

12.7(5) The chairperson of the U.C.C.R. committee shall issue a report to the board every six months summarizing the activities of the committee which shall include a signed report by the secretary indicating receipts and expenditures of the committee.

12.7(6) If the U.C.C.R. committee, by way of its review of the matter, determines that the matter constitutes possible violation of the Iowa practice of nursing Act (Iowa Code chapter 152), the chairperson of the committee shall immediately notify the board of nursing and submit a copy of the review findings. The board has authority to further investigate and pursue disciplinary action based on any information submitted pursuant to these rules.

12.7(7) Action of the U.C.C.R. committee does not constitute an action of the board.

These rules are intended to implement Iowa Code sections 509.3, 514.7, 514B.1, and 514F.1.

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CHAPTER 14
FAIR INFORMATION PRACTICES

The board of nursing hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices printed in the first volume of the Iowa Administrative Code.

655—14.1(17A,22) Definitions.

"Agency." In lieu of the words "(official or body issuing these rules)", insert "board of nursing".

655—14.3(17A,22) Requests for access to records.

14.3(1) In lieu of the words "(insert agency head)", insert "Executive Director".

In lieu of the words "(insert agency name and address)", insert "the Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319".

14.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays".

14.3(7) *Fees.*

c. In lieu of the words "(specify time period)", insert "one hour".

Delete the words "(An agency wishing to deal with search fees authorized by law should do so here.)".

655—14.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the board of nursing".

655—14.7(17A,22) Consent to disclosure by the subject of a confidential record. Delete the words "(and, where applicable, the time period during which the record may be disclosed)" and "(Additional requirements may be necessary for special classes of records.)".

655—14.8(17A,22) Notice to suppliers of information. Delete the words "(Each agency should revise its forms to provide this information.)".

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PHARMACY EXAMINERS BOARD[657]

[Prior to 2/10/88, see Pharmacy Examiners, Board of [620], renamed Pharmacy Examiners Board[657] under the "umbrella" of Public Health Department by 1986 Iowa Acts, ch 1245]

CHAPTER 10
CONTROLLED SUBSTANCES (DRUGS)

CHAPTER 11
DRUGS IN EMERGENCY MEDICAL SERVICE PROGRAMS

CHAPTER 12
PRECURSOR SUBSTANCES

CHAPTER 13
CODE OF PROFESSIONAL RESPONSIBILITY FOR BOARD INVESTIGATORS

CHAPTER 14
PUBLIC INFORMATION AND INSPECTION OF RECORDS

(14.1 to 14.8 Uniform Rules)

CHAPTER 1
PURPOSE AND ORGANIZATION
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 9]

657—1.1(17A) Description and organization.

1.1(1) *Description of agency.* The board derives its authority for regulating the practice of pharmacy and for regulating the legal distribution and dispensing of prescription drugs and precursor substances throughout the state from Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, and 272C.

1.1(2) *Organization of agency.* The board is comprised of five pharmacist members and two representatives of the general public, all appointed by the governor; they are assisted by an administrative staff headed by an executive secretary appointed by the board.

1.1(3) *Purpose.* The responsibilities of the board include but are not limited to:

a. Licensing of qualified applicants to the practice of pharmacy by examination, renewal, and reciprocity under the provisions of Iowa Code chapters 147 and 155A.

b. Development and administration of a program of continuing education to ensure continued competency of individuals licensed by the board. Authority for this function comes from Iowa Code chapter 272C.

c. Regulating the legal distribution of prescription drugs through the licensing of pharmacies and wholesalers under the authority of Iowa Code chapter 155A.

d. Regulating the legal distribution of controlled substances through the registration of pharmacies, physicians, physician assistants, advanced registered nurse practitioners, dentists, podiatric physicians, veterinarians, optometrists, hospitals, health care facilities, researchers, analytical laboratories, teaching institutions, and controlled substance manufacturers and distributors throughout the state under the authority of Iowa Code chapter 124.

e. Perform compliance investigations and audits of all persons registered pursuant to Iowa Code chapter 124. These investigations and audits are conducted to ensure accountability for all controlled substances covered under this chapter.

f. Regulating the legal distribution of precursor substances through the issuance of permits to vendors and recipients of precursor substances throughout the state under the authority of Iowa Code chapter 124B.

1.1(4) *Information.* Members of the general public may obtain information or submit requests relative to the practice of pharmacy, continuing education for pharmacists, or the legal distribution and dispensing of prescription drugs, or any other matters relating to the function of the board, to the Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 E. Court Avenue, Executive Hills West, Des Moines, Iowa 50319. Procedures for obtaining this information may be found in 657—Chapter 14.

1.1(5) *Public meetings.* All meetings of the board shall be open and public and all citizens of Iowa shall be permitted to attend any meeting except, as provided by statute, for some exceptional reason so compelling as to override the general public policy in favor of public meetings and as permitted by Iowa Code section 21.5. Closed meetings shall only be by affirmative public vote of either two-thirds of the members of the board or all of the members present at the meeting.

a. Meetings of the board shall be held in Des Moines, Iowa, except as designated otherwise by the chairperson.

b. The board shall set the dates of its meetings at the first meeting following May 1 of each fiscal year. Notices of meetings shall be routinely posted in the space set aside for that purpose in the governor's office and in the office of the board.

c. Special meetings of the board may be called by the chairperson or upon written request of four of its members.

(1) The reason for calling a special meeting shall be recorded in the minutes.

(2) Special meetings, although advance notice cannot be published, shall be open to the citizens of Iowa except as otherwise provided in statute.

d. The executive secretary shall keep a record of all minutes of the board and these minutes shall be open to the public for inspection.

e. Members of the general public may obtain the date, time, and location of board meetings by submitting a request to the Executive Secretary, Iowa Board of Pharmacy Examiners, 1209 E. Court, Executive Hills West, Des Moines, Iowa 50319.

f. A majority of the members of the board shall constitute a quorum.

657—1.2(17A,124,124A,124B,126,147,155A,205) Disciplinary action.

1.2(1) *License denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, restrict, revoke or suspend a license to practice pharmacy for grounds stated in Iowa Code sections 147.55 and 155A.12. Pursuant to 657—Chapters 35 and 36, the board may deny, revoke or suspend a license to operate a pharmacy for grounds stated in Iowa Code section 155A.13A or 155A.15, as appropriate. Pursuant to 657—Chapters 35 and 36, the board may deny, revoke or suspend a license to operate a wholesale drug distribution facility doing business in Iowa for grounds stated in Iowa Code section 155A.17.

1.2(2) *Controlled substance registration denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, restrict, revoke or suspend registration for grounds stated in Iowa Code sections 124.303 and 124.304.

1.2(3) *Permit denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may refuse, suspend, or revoke a permit to handle precursor substances for grounds stated in Iowa Code section 124B.12.

1.2(4) *Pharmacy technician registration denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a pharmacy technician registration for grounds stated in Iowa Code section 155A.6.

1.2(5) *Pharmacist-intern registration denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a pharmacist-intern registration for grounds stated in Iowa Code section 155A.6.

657—1.3(17A,124,126,147,155A,205,272C) Waivers or variances from rules.

1.3(1) *Applicability.* This rule governs waivers or variances from board rules in the following circumstances: The board has exclusive rule-making authority to promulgate the rule from which the waiver or variance is requested or has final decision-making authority over a contested case in which the waiver or variance is requested; and no statute or rule otherwise controls the grant of a waiver or variance from the rule from which the waiver or variance is requested.

a. The board may grant a waiver of, or variance from, all or part of a rule.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with state and federal statutes.

1.3(2) *Criteria.* A waiver or variance under this rule may be granted only upon showing that:

a. Substantially equal protection of health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the variance or waiver is requested;

b. Because of special circumstances, either 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 would serve no public benefit; and

c. Provision of a waiver or variance under the circumstances would not adversely impact an overall goal of uniform treatment of all licensees.

1.3(3) *Request.* A request for a waiver or variance shall be submitted in writing to the board as follows:

a. *License, registration, or permit application.* If the request relates to an application for, or limitation on, a license, registration, or permit, the request shall be made in accordance with the filing requirements for the license, registration, or permit in question.

b. *Contested case.* If the request relates to a pending contested case, the request shall be filed in the contested case proceeding.

c. *Other.* If the request does not relate to a particular license, registration, or permit and is not related to a pending contested case, the request may be submitted to the executive secretary/director of the board.

1.3(4) *Elements.* A request for waiver or variance shall include the following information where applicable:

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 or portion of a rule from which a waiver or variance is requested.

c. The nature of the waiver or variance requested, including any alternative means or other 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 grant the waiver or variance in question.

e. Any necessary releases of information authorizing persons with knowledge to disclose relevant information to the board.

1.3(5) *Ruling.* The board shall respond in writing to all requests. 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. The board may condition the grant of waiver or variance on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

1.3(6) *Public availability.* All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the board office.

1.3(7) *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 board may at any time cancel a waiver or variance upon appropriate notice and hearing if the board finds 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.

1.3(8) *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.

1.3(9) *Appeals.* Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

This rule is intended to implement Iowa Code sections 17A.22, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4.

657—1.4(155A) Voluntary surrender of a license. Rescinded IAB 2/19/92, effective 3/25/92.

These rules are intended to implement Iowa Code sections 17A.3, 17A.7, 17A.9, 124.303, 124.304, and 147.14.

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CHAPTER 4
PHARMACIST-INTERN REGISTRATION AND MINIMUM STANDARDS FOR EVALUATING PRACTICAL EXPERIENCE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 3]

657—4.1(155A) Definitions.

"Pharmacist-intern" means a person enrolled in a college of pharmacy or actively pursuing a pharmacy degree, who is registered with the Iowa board of pharmacy examiners. The purpose of this registration is to obtain instruction in the practice of pharmacy from a preceptor pursuant to the requirements of Iowa Code section 155A.6. Registration is required of all students enrolled in Iowa colleges of pharmacy after they have successfully completed one semester in a college of pharmacy.

"Pharmacist preceptor" or *"preceptor"* means a pharmacist licensed to practice pharmacy in Iowa. Preceptors shall meet the conditions and requirements of rule 4.9(155A). No pharmacist shall serve as a preceptor if the pharmacist's license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in 657—Chapter 36 during the time the pharmacist is serving as preceptor or within the three-year period immediately preceding application for approval as a preceptor. Provided, however, a pharmacist who has been the subject of such an order may petition the board in writing for approval to act as preceptor.

657—4.2(155A) Goal and objectives of internship.

4.2(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, responsibilities, and ability to safely, efficiently, and effectively practice pharmacy under the laws and rules of the state of Iowa.

4.2(2) The objectives of internship are as follows:

a. Managing drug therapy to optimize patient outcomes. The pharmacist-intern shall evaluate the patient and patient information to determine the presence of a disease or medical condition, to determine the need for treatment or referral, and to identify patient-specific factors that affect health, pharmacotherapy, or disease management; ensure the appropriateness of the patient's specific pharmacotherapeutic agents, dosing regimens, dosage forms, routes of administration, and delivery systems; and monitor the patient and patient information and manage the drug regimen to promote health and ensure safe and effective pharmacotherapy.

b. Ensuring the safe and accurate preparation and dispensing of medications. The pharmacist-intern shall perform calculations required to compound, dispense, and administer medication; select and dispense medications; and prepare and compound extemporaneous preparations and sterile products.

c. Providing drug information and promoting public health. The pharmacist-intern shall access, evaluate, and apply information to promote optimal health care; educate patients and health care professionals regarding prescription medications, nonprescription medications, and medical devices; and educate patients and the public regarding wellness, disease states, and medical conditions.

d. Adhering to professional and ethical standards. The pharmacist-intern shall comply with professional, legal, moral, and ethical standards relating to the practice of pharmacy and the operation of the pharmacy.

e. Understanding the management of pharmacy operations. The pharmacist-intern shall develop a general understanding of the business procedures of a pharmacy and develop knowledge concerning the employment and supervision of pharmacy employees.

657—4.3(155A) 1500-hour requirements. Internship credit may be obtained only after internship registration with the board and successful completion of one semester in a college of pharmacy. Internship shall consist of a minimum of 1500 hours, 1000 hours of which may be a college-based clinical program approved or accepted by the board. Programs shall be structured to provide experience in community, institutional, and clinical pharmacy practices. The remaining 500 hours shall be acquired under the supervision of the preceptor in a licensed pharmacy or other board-approved location, at a rate of no more than 48 hours per week. At least 250 hours shall be earned in a traditional licensed general or hospital pharmacy where the goal and objectives of internship in rule 657—4.2(155A) apply. Internship credit toward the stipulated 500 hours will not be allowed if it is acquired concurrent with academic training. "Concurrent time" means internship experience acquired while the person is a full-time student carrying, in a given school term, at least 75 percent of the average number of credit hours per term needed to graduate and receive an entry level degree in pharmacy. Credit toward the 500 hours will be granted for experience gained during recognized holiday periods, such as spring break and Christmas break. The competencies in subrule 4.2(2) shall not apply to college-based clinical programs.

657—4.4(155A) Iowa colleges of pharmacy clinical internship programs. The board shall periodically review the clinical component of internship programs of the colleges of pharmacy located in Iowa. The board reserves the right to set conditions relating to the approval of such programs.

657—4.5(155A) Requirements for internships obtained under other state programs. Graduates from out-of-state colleges of pharmacy will be deemed to have met Iowa internship requirements upon presentation of documents attesting to completion of their state internship requirements. Graduates of colleges of pharmacy in states which have no internship requirements must meet the requirements established for Iowa college of pharmacy graduates.

657—4.6(155A) Registration and reporting.

4.6(1) Every person shall register before beginning the person's internship experience, whether or not for the purpose of fulfilling the requirements of rule 4.3(155A). Registration shall remain in effect during successive training periods if records, forms, affidavits, and other materials required by the board are maintained and executed promptly at the beginning and ending of such training periods, and if the board is satisfied that the intern is pursuing a degree in pharmacy in good faith and with reasonable diligence.

4.6(2) Credit for internship time will not be granted unless registration and other required records and affidavits are completed.

a. The pharmacist-intern shall be so designated in all relationships with the public and health professionals. The intern shall wear a badge or name tag with the intern's name and designation, pharmacist-intern or pharmacy student, clearly and visibly imprinted thereon.

b. Registered interns shall notify the board office within ten days of a change of name, employment or residence.

c. Notarized affidavits of experience in non-college-sponsored programs must be filed with the board office within 90 days after the last day of the internship period. These affidavits must certify only the number of hours and dates of training which are nonconcurrent with college of pharmacy enrollment.

4.6(3) Credit will not be given for internship experience obtained prior to registration as a pharmacist-intern.

657—4.7(155A) Foreign pharmacy graduates. Foreign pharmacy graduates who are candidates for licensure in Iowa will be required to obtain a minimum of 1500 hours of internship in a licensed pharmacy or other board-approved location. These candidates must register with the board as per rule 4.6(155A). Internship credit will not be granted until the candidate has been issued an intern registration card. Applications for registration must be accompanied by documentation that the foreign pharmacy graduate has passed the Foreign Pharmacy Graduate Equivalency Exam (FPGEE) and the Test of English as a Foreign Language (TOEFL). The board may waive any or all of the 1500 hours if they determine that the candidate's experience as a practicing pharmacist in the foreign country meets the goals and objectives established in rule 4.2(155A).

657—4.8(155A) Fees. The fee for registration as an intern is $10 payable with the application.

657—4.9(155A) Preceptor requirements.

4.9(1) A preceptor shall be a licensed pharmacist in good standing with the board.

4.9(2) Preceptors are required to be approved by the board.

4.9(3) A preceptor may supervise no more than two pharmacist-interns concurrently.

4.9(4) A preceptor shall be responsible for the accuracy of all functions performed by a pharmacist-intern.

657—4.10(155A) Denial of pharmacist-intern registration. The board may deny an application for registration as a pharmacist-intern for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A or 205, or any rule of the board.

657—4.11(155A) Discipline of pharmacist-interns.

4.11(1) The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205, or any rule of the board.

4.11(2) The board may impose the following disciplinary sanctions:

a. Revocation of a pharmacist-intern registration.

b. Suspension of a pharmacist-intern registration until further order of the board or for a specified period.

c. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.

d. Such other sanctions allowed by law as may be appropriate.

These rules implement Iowa Code section 155A.6.

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657—6.8(155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or 657—Chapter 6 shall be kept at the licensed location of the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as otherwise required in this rule. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:

6.8(1) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances;

6.8(2) Records of controlled substances in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V and all other records;

6.8(3) A Schedule V nonprescription registry book shall be maintained in accordance with 657—subrule 10.13(13).

6.8(4) Invoices involving the distribution of Schedule III, IV, or V controlled substances to another pharmacy or practitioner must show the actual date of distribution; the name, strength, and quantity of controlled substances distributed; the name, address, and DEA registration number of the distributing pharmacy and of the practitioner or pharmacy receiving the controlled substances;

6.8(5) Copy 1 of DEA Order Form 222, furnished by the pharmacy or practitioner to whom Schedule II controlled substances are distributed, shall be maintained by the distributing pharmacy and shall show the quantity of controlled substances distributed and the actual date of distribution;

6.8(6) Copy 3 of DEA Order Form 222 shall be properly dated, initialed, and filed and shall include all copies of each unaccepted or defective order form and any attached statements or other documents;

6.8(7) If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable from all other items appearing on the records;

6.8(8) Suppliers' invoices of prescription drugs and controlled substances shall clearly record the actual date of receipt by the pharmacist or other responsible individual;

6.8(9) Suppliers' credit memos for controlled substances and prescription drugs shall be maintained;

6.8(10) A biennial inventory of controlled substances shall be maintained for a minimum of four years from the date of the inventory;

6.8(11) Reports of theft or significant loss of controlled substances shall be maintained;

6.8(12) Reports of surrender or destruction of controlled substances shall be maintained;

6.8(13) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. The records maintained in the alternative system contain all of the information required on the manual record; and

b. The data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

657—6.9(126) Return of drugs and appliances. For the protection of the public health and safety, prescription drugs shall not be returned, exchanged, or resold unless, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised. Under no circumstances shall a pharmacist accept from a patient or patient's agent any controlled substances for return, exchange, or resale except to the same patient. Prescription drugs, excluding controlled substances, may, however, be returned and reused as authorized in 657—subrule 23.12(5). No items of personal contact nature which have been removed from the original package or container after sale shall be accepted for return, exchanged, or resold by any pharmacist.

657—6.10(155A) Training and utilization of pharmacy technicians. General pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

These rules are intended to implement Iowa Code sections 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.31, 155A.32, and 155A.35.

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c. When feasible, the pharmacist shall prepare those drug formulations, strengths, dosage forms, and packages that are not available commercially but which are useful in the care of patients. Adequate quality assurance procedures shall be developed for these operations.

7.8(7) *Hazardous drugs and chemicals.* The pharmacist, in cooperation with other hospital staff, shall establish policies and procedures for handling drugs and chemicals that are known occupational hazards. The procedures shall maintain the integrity of the drug or chemical and protect the hospital personnel.

7.8(8) *Emergency drug supplies and floor stock.* Supplies of drugs for use in medical emergencies shall be immediately available at each nursing unit or service area as specified in policies and procedures. Stocks of drugs shall be as limited as possible. Authorized stocks shall be periodically reviewed in a multidisciplinary manner. All drug storage areas within the hospital shall be routinely inspected to ensure that no outdated or unusable items are present and that all stock items are properly labeled and stored.

7.8(9) *Product recall.* There shall be a system for removing from use any drugs subjected to a product recall.

7.8(10) *Stop order.* A written stop-order policy or other system shall be established to ensure that drug orders are not inappropriately continued.

7.8(11) *Drugs brought into the institution.* Policies and procedures shall be established for the identification of medications brought into the institution for use by patients.

657—7.9(124,155A) Drug information. The pharmacy is responsible for providing the institution's staff and patients with accurate, comprehensive information about drugs and their use and shall serve as its center for drug information.

7.9(1) *Staff education.* The pharmacist shall keep the institution's staff well-informed about the drugs used in the institution and their various dosage forms and packagings.

7.9(2) *Patient education.* The pharmacist shall help ensure that all patients are given adequate information about the drugs they receive. This is particularly important for ambulatory, home care, and discharge patients. These patient education activities shall be coordinated with the nursing and medical staffs and patient education department, if any.

657—7.10(124,155A) Ensuring rational drug therapy. An important aspect of pharmaceutical services is that of maximizing rational drug use. In this regard, the pharmacist, in concert with the medical staff, shall develop policies and procedures for ensuring the quality of drug therapy.

7.10(1) *Patient profile.* Sufficient patient information shall be collected, maintained, and reviewed by the pharmacist to ensure meaningful and effective participation in patient care. This requires that a medication profile be maintained for all inpatients and for those ambulatory patients routinely receiving care at the hospital. A pharmacist-conducted medication history from patients may be useful in this regard.

a. Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice activities.

b. The pharmacist shall review each patient's drug regimen on a concurrent basis and directly communicate any suggested changes to the prescriber.

7.10(2) *Adverse drug events.* The pharmacist, in cooperation with the appropriate patient care committee, shall develop a mechanism for the reporting and review, by the committee or other appropriate medical group, of adverse drug events.

657—7.11(126,155A) Unit dose dispensing systems.

7.11(1) *Definitions.* For the purposes of this rule, the following definitions shall apply:

"Single unit package" is a package which contains one discrete pharmaceutical dosage form.

"Unit dose dispensing systems" are those drug distribution systems determined by the board to be pharmacy-based and which involve single unit, unit dose, or unit of issue packaging in a manner which helps reduce or remove traditional drug stocks from patient care areas and enables the selection and distribution of drugs to be pharmacy-based and controlled.

"Unit dose package" is a package which contains that particular dose of a drug ordered for the patient for one administration time. A unit dose package is not always a single unit package.

"Unit of issue package" is a package which provides multiple units/doses attached to each other but separated in a card or specifically designed container.

7.11(2) *Packaging requirements.* Packaging for all nonsterile drugs stored and dispensed in single unit, unit dose, or unit of issue packages shall:

a. Preserve and protect the identity and integrity of the drug from the point of packaging to the point of patient administration.

b. When packaged by the manufacturer or distributor, be in accordance with federal Food and Drug Administration (FDA) requirements.

c. When in single unit and unit dose packages prepackaged by the pharmacy for use beyond 24 hours, be in accordance with 657—subrule 8.3(1).

d. When in containers used for packaging, be clean and free of extraneous matter when the dosage unit(s) is placed into the package.

7.11(3) *Labeling requirements.*

a. Labeling for single unit or unit dose packaging shall comply with the following:

(1) Doses packaged by the manufacturer or distributor shall be properly labeled according to federal Food and Drug Administration (FDA) requirements.

(2) Doses packaged by the pharmacy shall be properly labeled according to 657—subrule 8.3(2) if used beyond a 24-hour period.

b. Labeling for unit of issue packages shall contain the following information:

(1) Name, strength, and expiration date of drug when the packages are utilized for floor stock in an institutional setting.

(2) Name and room or bed number of patient, name of prescribing practitioner, name and strength of drug, directions for use, and name and address of the dispensing pharmacy, when the packages are utilized for patients in an institutional setting. Room or bed number, the name of prescribing practitioner, and the name and address of the dispensing pharmacy are not required if this information appears on a medication administration record used by the institution.

(3) Unit of issue packages dispensed to patients on an out-patient basis or in a noninstitutional setting shall be considered prescription containers and shall be labeled in accordance with 657—subrule 8.14(1).

c. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: "(generic name) Generic for (brand name product)".

7.11(4) *General procedures.* The following will apply when a unit dose dispensing system is employed:

a. The pharmacist shall be responsible for determining the classification for containers set by USP Standard 671 used by the pharmacy to repackage nonsterile drugs into single unit, unit dose, or unit of issue packaging. This classification shall be used to determine maximal expiration dating for repackaging set forth in subrule 7.11(5).

b. Established written policies and procedures shall be available in the pharmacy for inspection by the board or its agents which:

(1) Specify the categories of drugs or drug dosage forms which will or will not be dispensed under the particular unit dispensing system employed.

(2) Specify the pharmacy's recall policy for drugs returned upon a particular manufacturer's or FDA recall.

c. Those drugs not dispensed under a unit dose dispensing system shall be dispensed in accordance with the packaging requirements of the federal Food and Drug Administration (FDA) and labeling requirements of 657—subrule 8.14(1).

7.11(5) *Expiration dating.* Expiration dating for nonsterile drugs repackaged by the pharmacy into single unit, unit dose, or unit of issue packages shall meet the following conditions:

a. Not exceed 90 days from the date of repackaging except as provided in paragraph 7.11(5)"*c.*"

b. Not exceed the manufacturer's original expiration date.

c. May exceed 90 days from the date of repackaging provided that each of the following conditions is met:

(1) The container is classified according to USP Standard 671 as being Class A or Class B for oral solid dosage forms or is a tight container for liquid dosage forms.

(2) The container is light-resistant when the manufacturer has labeled the product "sensitive to light."

(3) The expiration date is not greater than 12 months.

d. Drugs or dosage forms having known stability problems are assigned an expiration date of less than 90 days or are not repackaged as determined by policies developed by the pharmacy.

7.11(6) *Return of drugs.* Drugs dispensed in single unit, unit dose, or unit of issue packaging in compliance with subrules 7.11(1) to 7.11(5) may be returned to the pharmacy stock and reissued provided that:

a. The expiration dating information is retrievable and identifiable.

b. Drugs returned from unit of issue packaging are kept separate according to manufacturer's lot number and the pharmacy's repackaged expiration date unless the pharmacy's recall policy states that all lots of a drug will be returned upon recall. In this instance, drugs returned to stock shall be kept separate according to the pharmacy's repackaged expiration date as determined in subrule 7.11(5).

c. The drugs were stored under proper storage conditions.

d. The drugs are returned to the pharmacy in the original packaging as when dispensed.

e. The pharmacy includes in its written policies and procedures the manner in which it will record or identify controlled substances returned.

This rule is intended to implement Iowa Code sections 124.301, 126.10, 155A.13, and 155A.28.

657—7.12(124,126,155A) Drugs dispensed to patients as a result of an emergency room visit. In those facilities with 24-hour pharmacy services, any drugs dispensed to an outpatient, including emergency department patients, may be dispensed only by a pharmacist or practitioner. In those facilities without 24-hour pharmacy services, or those facilities without outpatient pharmacy services, or when outpatient pharmacy services are not available, the following procedures shall be observed in dispensing drugs:

7.12(1) *Patients examined in emergency room.* Drugs may be dispensed only to patients who have been examined in the emergency room.

7.12(2) *Accountability.* Drugs may be dispensed only in accordance with the system of control and accountability for drugs administered or dispensed from the emergency room.

a. Such system shall be developed and supervised by the pharmacist in charge and the facility's emergency department committee, or a similar group or person responsible for policy in that department.

b. The system shall consist of drugs of the nature and type to meet the immediate needs of emergency room patients.

c. Controlled substances maintained in the emergency room are kept for use by, or at the direction of, prescribers in the emergency room. In order to receive controlled drugs, a patient must be examined by a prescriber in the emergency room where the need for a controlled substance must be determined. It is not permissible under state and federal requirements for a prescriber to see a patient outside of the emergency room setting, or talk to the patient on the telephone, and then proceed to call the emergency room and order the administration of a stocked controlled substance upon the patient's arrival at the emergency room.

d. The pharmacist in charge is responsible for maintaining accurate records of dispensing of drugs from the emergency room.

7.12(3) *Prepackaging.* Drugs dispensed in greater than a 24-hour supply may be dispensed only in prepackaged quantities not to exceed a 72-hour supply or the minimum prepackaged quantity in suitable containers and appropriately labeled as required in subrule 7.12(4), including necessary auxiliary labels.

7.12(4) *Labeling.* At the time of delivery of the medication, the practitioner shall appropriately complete the label, such that the dispensing container bears a label with at least the following information:

1. Name and address of the hospital;
2. Date dispensed;
3. Name of prescriber;
4. Name of patient;
5. Directions for use;
6. Name and strength of drug.

7.12(5) *Delivery of medication to patient.* The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged medication to the patient and explain the correct use of the drug.

7.12(6) *Verification of dispensing record.* Rescinded IAB 1/1/97, effective 2/5/97.

657—7.13(124,155A) Records. Every inventory or other record required to be kept under this chapter or under Iowa Code chapters 124 and 155A shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record except as otherwise required in this rule.

7.13(1) *Medication order information.* Each original medication order contained in inpatient records shall bear the following information:

a. Patient name and identification number;

b. Drug name, strength, and dosage form;

c. Directions for use;

d. Date;

e. Practitioner's signature or that of the practitioner's authorized agent. Any order signed by an authorized agent shall be cosigned by the practitioner within 72 hours.

7.13(2) *Medication order maintained.* The original medication order shall be maintained with the medication administration record in the medical records of the patient following discharge.

7.13(3) *Documentation of drug administration.* Each dose of medication administered shall be properly recorded in the patient's medical record.

7.13(4) *Controlled substances records.* Controlled substances records shall be maintained as follows:

a. All records for controlled substances shall be maintained in a readily retrievable manner.

b. Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

c. Schedule II controlled substances records shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

d. Distribution records for non-patient-specific, floor-stocked controlled substances shall bear the following information:

(1) Patient's name;

(2) Prescriber who ordered drug;

(3) Name of drug, dosage form, and strength;

(4) Time and date of administration to patient and quantity administered;

(5) Signature or unique electronic signature of individual administering controlled substance;

(6) Returns to the pharmacy;

(7) Waste, which is required to be witnessed and cosigned by another licensed health professional.

7.13(5) *Other pharmacy records.* Other records to be maintained by a pharmacy include:

a. Copy 3 of DEA order Form 222 which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents.

b. Supplier's invoices of prescription drugs and controlled substances upon which is clearly recorded the actual date of receipt of the controlled substances by the pharmacist or other responsible individual.

c. Suppliers' credit memos for controlled substances and prescription drugs.

d. Biennial inventory of controlled substances required by the Drug Enforcement Administration that shall be maintained for a minimum of four years from the date of the inventory.

e. Drug Enforcement Administration reports of theft or significant loss of controlled substances.

f. Reports of surrender, destruction, or disposition of controlled substances.

g. Schedule V nonprescription register book, if applicable.

h. If a pharmacy distributes controlled substances to another pharmacy or a practitioner, the following records shall be maintained by the distributing pharmacy:

(1) If for Schedule III, IV, or V controlled substances, invoices showing the actual date of distribution; the name, strength, and quantity of controlled substances distributed; the name, address, and DEA registration number of the distributing pharmacy; and the name, address, and DEA registration number of the pharmacy or practitioner to whom the controlled substances are distributed.

(2) If for Schedule I or II controlled substances, copy 1 of DEA order Form 222, furnished by the pharmacy or practitioner to whom the controlled substances are distributed, showing the quantity of controlled substances distributed and the actual date of distribution.

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.28, 155A.31 and 155A.32.

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8.7(9) *Physical disability or illness.* The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements for physical disability or illness may be granted by the board for any period of time not to exceed one renewal period. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such method as may be prescribed by the board.

8.7(10) *New license holders registered by reciprocity.* After the initial license is issued, the new license holder by reciprocity will be required to obtain 30 contact hours (3.0 CEU) of CE credits prior to the first renewal period.

This rule is intended to implement Iowa Code sections 147.10, 272C.2 and 272C.6.

657—8.8(155A) Prescription pickup locations. A licensed pharmacist shall not participate in any arrangement or agreement whereby prescriptions may be left at, picked up from, accepted by, or delivered to any place of business not licensed as a pharmacy. This shall apply to the prescription order blank and to the completed prescription medication container. Provided, however, that nothing in this rule shall prohibit a licensed pharmacist or a licensed pharmacy, by means of its employee or by use of a common carrier, from picking up prescriptions or delivering prescriptions at the office or home of the prescriber, at the residence of the patient, or at the hospital or medical care facility in which a patient is confined.

This rule is intended to implement Iowa Code sections 155A.13 and 155A.15.

657—8.9(155A,126) Unit dose dispensing systems. Rescinded IAB 5/19/99, effective 6/23/99.

657—8.10(155A) Legal status of prescriptions. Prescriptions issued in accordance with the provisions of Iowa Code section 155A.27 shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, the prescription loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the prescription and any remaining refills. Provided, however, that the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

657—8.11(155A,124) Pharmacy and prescription records. All records shall comply with all applicable state and federal laws and regulations.

This rule is intended to implement Iowa Code sections 124.301, 124.306, 124.307, 124.308, and 155A.27.

657—8.12 Reserved.

657—8.13(155A,126) Patient med paks.

8.13(1) *Definition.* Patient med pak. A patient med pak is a customized patient medication package prepared for a specific noninstitutionalized patient which comprises a series of immediate containers containing two or more prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents. A patient med pak may also be prepared for a specific institutionalized patient when the prescriber's orders specifically indicate that the resident is capable of self-administering the medications contained therein.

8.13(2) *Packaging requirements.* Packaging for all nonsterile solid oral dosage forms stored and dispensed in patient med paks shall:

a. Preserve and protect the identity and integrity of the drug from the point of packaging to the point of dispensing.

b. When in containers used for packaging, be clean and free of extraneous matter when the drugs are placed into the package.

8.13(3) *Labeling requirements.*

a. The patient med pak shall be labeled with the following:

(1) Name of patient;

(2) A separate identifying serial number for each of the prescription orders for each of the drug products contained therein;

(3) The name, strength, physical description or identification, and the total quantity of each drug product;

(4) The directions for use and cautionary statements, if any, contained in the prescription order for each drug product;

(5) The name of the prescriber of each drug product;

(6) The date of preparation of the patient med pak and the expiration date (expressed as "do not use beyond" date) assigned to the patient med pak;

(7) The name and address of the dispensing pharmacy.

b. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: "(generic name) Generic for (brand name product)".

8.13(4) *Expiration dating (beyond-use dating).* Expiration dating for nonsterile drugs repackaged by the pharmacy into patient med paks shall meet the following conditions: not exceed 90 days from the date of repackaging except as provided in 657—subrule 23.12(4), paragraph *"c."*

8.13(5) *General procedures.* The following will apply when patient med paks are employed:

a. The pharmacist shall be responsible for determining the classification for containers set by USP Standard 671 used by the pharmacy to repackage nonsterile drugs into patient med paks.

b. Drugs dispensed to patients in patient med paks may not be returned to the pharmacy stock and reissued.

c. In addition to any individual prescription filing requirements, a record of each patient med pak shall be made and filed. Each record shall contain, as a minimum:

(1) Name and address of patient;

(2) The serial number for each prescription order which is part of the med pak;

(3) The date of preparation of the patient med pak and the expiration date that was assigned;

(4) The name or initials of the pharmacist who prepared the patient med pak.

d. There are no special exemptions for patient med paks from the requirements of the Poison Prevention Packaging Act.

e. Rescinded IAB 5/19/99, effective 6/23/99.

This rule is intended to implement Iowa Code sections 126.10, 155A.2, 155A.4(2)*"f,"* and 155A.28.

657—8.14(155A) Prescription label requirements.

8.14(1) The label affixed to or on the dispensing container of any prescription dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

a. Serial number (a unique identification number of the prescription);

b. The name and address of the pharmacy;

c. The name of the patient, or if such drug is prescribed for an animal, the species of the animal and the name of its owner;

d. The name of the prescribing practitioner;

e. The date the prescription is dispensed;

f. The directions or instructions for use, including precautions to be observed;

g. Unless otherwise directed by the prescriber, the label shall bear the brand name, or if there is no brand name, the generic name of the drug dispensed, the strength of the drug, and the quantity dispensed. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the drug container label: "(generic name) Generic for (brand name product)."

h. The initials of the dispensing pharmacist.

8.14(2) The requirements of subrule 8.14(1) do not apply to unit dose dispensing systems, rule 657—23.12(124,126,155A); sterile products, rule 8.30(126,155A); and patient med paks, rule 8.13(155A,126).

657—8.15(155A) Records. When a pharmacist exercises the drug product selection prerogative pursuant to Iowa Code section 155A.32, the following information shall be noted:

8.15(1) Dispensing instructions by the prescriber or prescriber's agent shall be noted on the file copy of a prescription drug order which is orally communicated to the pharmacist.

8.15(2) The name, strength, and either the manufacturer's or distributor's name or the National Drug Code (NDC) of the actual drug product dispensed shall be placed on the file copy of the prescription drug order whether it is issued orally or in writing by the prescriber. This information shall also be indicated on the prescription in those instances where a generically equivalent drug is dispensed from a different manufacturer or distributor than was previously dispensed. This information may be placed upon patient medication records if such records are used to record refill information.

Rules 8.14(155A) and 8.15(155A) are intended to implement Iowa Code sections 155A.28, 155A.32, and 155A.35.

657—8.16(155A) Display of pharmacist license. Rescinded IAB 7/16/97, effective 8/20/97.

657—8.17(155A) Pharmacist temporary absence. Rescinded IAB 7/16/97, effective 8/20/97.

657—8.18(155A) Patient records.

8.18(1) A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall be responsible for making a reasonable effort to obtain, record, and maintain the following information:

a. Full name of the patient for whom the drug is intended;

b. Address and telephone number of the patient;

c. Patient's age or date of birth;

d. Patient's gender;

e. Significant patient information including a list of all prescription drug orders obtained by the patient at the pharmacy maintaining the patient record during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber; and

f. Pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

8.18(2) The pharmacist shall be responsible for making a reasonable effort to obtain from the patient or the patient's caregiver, and shall be responsible for recording any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs, including over-the-counter drugs, or devices currently being used by the patient which may relate to prospective drug review.

8.18(3) A patient record shall be maintained for a period of not less than two years from the date of the last entry in the profile record. This record may be a hard copy or a computerized form.

8.18(4) Information in the patient medication record shall be deemed to be confidential and may be released to the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized by law to receive such information. Information in the patient medication record may be released to others only on written release of the patient.

657—8.19(155A) Prospective drug review. A pharmacist shall review the patient record and each prescription drug order presented for initial dispensing or refilling for purposes of promoting therapeutic appropriateness by identifying:

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse;
8. Drug-prescriber contraindications.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to staff assistants other than pharmacist-interns.

8.32(4) *Storage.* The emergency/first dose drug supply shall be stored in an area suitable to prevent unauthorized access and to ensure a proper environment for preservation of medications contained therein as required in official compendia. The provider pharmacist, as defined in subrule 8.32(2), is responsible for establishing procedures to maintain the security of the emergency/first dose drug supply.

8.32(5) *Labeling—exterior.* The exterior of an emergency/first dose drug supply shall be labeled clearly and shall unmistakably indicate that it is an emergency/first dose drug supply. Such label shall also contain a listing of the name, strength, and quantity of the drugs contained therein and an expiration date of the supply based upon the earliest expiration date of any drug contained in the supply.

8.32(6) *Labeling—interior.* All drugs contained in the emergency/first dose drug supply shall be labeled in accordance with subrule 8.3(2) or 657—subrule 23.12(3), as appropriate.

8.32(7) *Removal of medication.* Medication shall be removed from the emergency/first dose drug supply only pursuant to a valid prescription order and by authorized personnel or by the provider pharmacist. The provider pharmacy shall be notified that medication was administered to a specific patient prior to the administration of a second dose. Upon notification, the provider pharmacist shall perform drug use review to assess the appropriateness of drug therapy for the patient.

8.32(8) *Notifications.* Whenever an emergency/first dose drug supply is opened or has expired, the provider pharmacy shall be notified and the pharmacist shall be responsible for replacing the medication within 72 hours to prevent risk of harm to patients. Policy must be developed by the provider pharmacist to address notification, record keeping, and documentation procedures for use of the supply.

8.32(9) *Procedures.*

a. The consultant or provider pharmacist shall, in communication with the director of nursing of the facility and the medical director of the facility, or their respective designees, develop and implement written policies and procedures to ensure compliance with this rule.

b. The provider pharmacy shall keep a complete record of each controlled substance stored in the emergency/first dose drug supply and the number of doses provided.

c. The facility shall keep a complete record of the use of controlled substances from the emergency/first dose drug supply for two years, including the patient's name, the date of use, the name of the drug used, the strength of the drug, the number of doses used, the name of the prescriber authorizing the administration, and the initials of the person administering the dose.

8.32(10) *Penalty.* If any of the provisions of this rule are violated, the board may suspend, revoke, or otherwise discipline a pharmacy's license and a pharmacist's license and may modify, suspend, or revoke the controlled substances registrations of the pharmacy and the noncompliant facility.

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CHAPTER 9
DISCIPLINE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 10]

Rescinded IAB 5/19/99, effective 6/23/99; see 657—Chapter 35.

15.7(4) Current medication prescription orders remain in effect when an inmate is transferred within the correctional institution system.

15.7(5) Controlled substance records shall be maintained as follows:

a. All records for controlled substances shall be maintained in a readily retrievable manner.

b. Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

c. Records of controlled substances in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

d. Controlled substances which are issued as unit stock shall be accompanied by a proof-of-use form which provides for documentation of the following information:

(1) Inmate's name and identification number;
(2) Prescriber;
(3) Drug name, strength, and dosage form;
(4) Date and time of administration;
(5) Quantity administered;
(6) Name of individual administering the controlled substance;
(7) Returns to the pharmacy;
(8) Waste, which is required to be witnessed and cosigned by another licensed health professional.

e. Invoices involving the distribution of Schedule III, IV, or V controlled substances to another pharmacy or practitioner shall show the actual date of distribution; the name, strength, and quantity of controlled substances distributed; the name, address, and DEA registration number of the distributing pharmacy and of the practitioner or pharmacy receiving the controlled substances.

f. Copy 1 of DEA order Form 222, furnished by the pharmacy or practitioner to whom Schedule II controlled substances are distributed, shall be maintained by the distributing pharmacy and shall show the quantity of controlled substances distributed and the actual date of distribution.

g. Copy 3 of DEA order Form 222 shall be properly dated, initialed and filed and shall include all copies of each unaccepted or defective order form and any attached statements or other documents.

h. If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable from all other items appearing on the record.

i. Suppliers' invoices of prescription drugs and controlled substances shall clearly record the actual date of receipt by the pharmacist or other responsible individual.

j. Suppliers' credit memos for controlled substances and prescription drugs shall be maintained.

k. A biennial inventory of controlled substances shall be maintained for a minimum of four years from the date of the inventory.

l. Reports of theft or significant loss of controlled substances shall be maintained.

m. Reports of surrender or destruction of controlled substances shall be maintained.

657—15.8(124,126,155A) Drug distribution and dispensing. Prescription drugs may be distributed or dispensed only from the original or a properly verified practitioner's order.

15.8(1) Drugs dispensed in a unit dose dispensing system for subsequent administration by nurses or other qualified individuals shall be packaged and labeled in compliance with the provisions of rule 657—23.12(124,126,155A).

15.8(2) Registered nurses may issue an inmate's prepackaged medications from the supply distributed by the pharmacist for that inmate, into envelopes or other appropriate container to facilitate subsequent administration by other qualified individuals. Said qualified individuals shall use the medication administration record, or a properly verified copy thereof, to administer and document administration of those medications to the inmate. The single unit or unit dose packaging shall remain intact to the point of administration.

15.8(3) Drugs dispensed for self-administration by the inmate, either during incarceration or subsequent to the inmate's departure from the department of corrections custody status, shall be packaged and labeled in accordance with rule 657—8.14(155A).

15.8(4) Correctional facility pharmacies shall be exempt from the labeling provisions and patient notification requirements of Iowa Code section 155A.32, as respects drugs distributed pursuant to medication prescription orders.

657—15.9(124,126,155A) Pharmacist in charge. Each correctional facility pharmacy shall have one pharmacist in charge who shall have the responsibility, at a minimum, for the following:

1. Prepackaging and bulk compounding of drugs in compliance with the provisions of rules 657—8.3(126) and 657—20.11(126);
2. Dispensing and distribution of drugs in compliance with the labeling, record keeping, and other requirements of these rules;
3. Quarterly inspection of all pharmaceuticals located at the correctional facility including emergency and provisional stocks located outside the confines of the pharmacy;
4. Records of all transactions of the correctional facility pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain adequate control over, and accountability for, all pharmaceutical materials;
5. Development, implementation, and review of pharmacy policies and procedures consistent with these rules and existing department of corrections policies relating to pharmaceutical services.

657—15.10(124,126,155A) Policies and procedures. Written policies and procedures for the correctional facility pharmacy drug distribution system shall be developed and implemented by the pharmacist in charge of the correctional facility pharmacy consistent with department of corrections policies and procedures pertaining to pharmaceutical services and shall include, but not be limited to, the following:

1. Controlled substances;
2. Formulary or drug list;
3. Stop orders;
4. Drug sample use and distribution;
5. Drug recalls;
6. Outdated drugs;
7. Medication profiles;
8. Inspection of drug inventories;
9. Adverse reaction reports;
10. Furlough or discharge medications;
11. Emergency and provisional stocks of drugs;
12. Drugs brought into the facility;
13. Transfers of drugs between facilities.

657—15.11(124,126,155A) Orders for medication received in the absence of a pharmacist.

15.11(1) "Provisional stock" is a limited inventory of drugs stored outside the confines of the correctional facility pharmacy and accessible to designated health services staff for the purpose of initiating critical medication prescription orders issued during periods when the pharmacist is unavailable.

15.11(2) Whenever prescription drugs or medical devices are obtained in the absence of the pharmacist from the pharmacy or provisional stock, the following is applicable:

a. Access to the pharmacy or provisional stock is restricted to those individuals as specified in rule 15.5(124,126,155A);

b. Prescription and nonprescription drugs may be removed from the pharmacy or provisional stock only in the original manufacturer's container or in a container prepackaged by the correctional facility pharmacy in accordance with rule 657—8.3(126);

c. A record shall be made of all withdrawals by the authorized person removing the drugs, which shall include the following information:

(1) Name and identification number of inmate;

(2) Name, strength, dosage form, and quantity of drug removed;

(3) Date and time of withdrawal of the drug;

(4) Signature or initials of the authorized person making the withdrawal.

d. The original or properly verified copy of new medication prescription orders shall be left with the record of withdrawal.

657—15.12(155A) Training and utilization of pharmacy technicians. Correctional facility pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

These rules are intended to implement Iowa Code sections 124.303, 124.306, 124.307, 124.308, 126.10, 155A.13, 155A.31, and 155A.32.

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17.11(3) Records described in this rule that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of any governmental agency charged with enforcement of these rules.

657—17.12(155A) Written policies and procedures. Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Wholesale drug distributors shall include in their written policies and procedures the following:

17.12(1) A procedure whereby the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate.

17.12(2) A procedure to be followed for handling recalls and withdrawals of prescription drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:

a. Any action initiated at the request of the Food and Drug Administration or other federal, state, or local law enforcement or other government agency, including the Iowa board of pharmacy examiners;

b. Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

c. Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design.

17.12(3) A procedure to ensure that wholesale drug distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

17.12(4) A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs. This documentation shall be maintained for two years after disposition of the outdated drugs.

17.12(5) The procedures required by subrules 17.12(1) and 17.12(2) do not apply to reverse distributors. All other procedures addressed in this rule are required of reverse distributors.

657—17.13(155A) Responsible persons. Wholesale drug distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

657—17.14(155A) Compliance with federal, state, and local laws. Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

17.14(1) Wholesale drug distributors shall permit the board and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

17.14(2) Wholesale drug distributors that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local, and DEA regulations.

657—17.15(155A) Salvaging and reprocessing. Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 207, 210d and 211 of the Code of Federal Regulations, April 1, 1991.

657—17.16(155A) Discipline. Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a wholesale drug license for any violation of Iowa Code chapters 155A, 126, 124, 124A, 124B, and 205, or a rule of the board promulgated thereunder.

These rules are intended to implement Iowa Code section 155A.17.

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CHAPTER 19
NONRESIDENT PHARMACY LICENSES

657—19.1(155A) Definitions.

"Board" means the Iowa board of pharmacy examiners.

"Home state" means the state in which a pharmacy is located.

"Nonresident pharmacy" means a pharmacy located outside the state of Iowa which delivers, dispenses, or distributes, by any method, prescription drugs or devices to an ultimate user physically located in this state. "Nonresident pharmacy" shall include a pharmacy located outside the state of Iowa which provides routine pharmacy services to an ultimate user in this state.

"Nonresident pharmacy license" means a pharmacy license issued to a nonresident pharmacy.

657—19.2(155A) Application and license requirements. A nonresident pharmacy shall apply for and obtain a nonresident pharmacy license from the board prior to delivering, dispensing, or distributing prescription drugs to an ultimate user in this state.

19.2(1) A nonresident pharmacy license shall expire on December 31 of each year. The fee for a new or renewal license shall be $100. A nonresident pharmacy license form shall be issued upon receipt of the license application information required in subrule 19.2(2) and payment of the license fee.

Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of the license exceed $500.

19.2(2) A nonresident pharmacy shall submit all of the following in order to obtain or renew a nonresident pharmacy license:

a. A completed application form, available from the board, and an application fee of $100.

b. Evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the home state. Such evidence shall consist of one of the following:

(1) Copy of the current license, permit, or registration certificate issued by the regulatory or licensing agency of the home state;

(2) Letter from the regulatory or licensing agency of the home state certifying the pharmacy's compliance with the pharmacy laws of that state.

c. A copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the home state.

d. Evidence of correction of any noncompliance noted on inspection reports of the regulatory or licensing agency of the home state and all other regulatory agencies.

e. A list of the names, titles, and home addresses of all principal owners, partners, or officers of the nonresident pharmacy.

f. A list of the names and license numbers of all pharmacists and, if available, the names and license or registration numbers of all supportive personnel employed by the nonresident pharmacy who deliver, dispense, or distribute, by any method, prescription drugs to an ultimate user in this state, and of the pharmacist in charge of the nonresident pharmacy.

g. A copy of the nonresident pharmacy's policies and procedures regarding the records of controlled substances delivered, dispensed, or distributed to ultimate users in this state to be maintained and detailing the format and location of those records.

h. A copy of the nonresident pharmacy's policies and procedures evidencing that the pharmacy provides, during its regular hours of operation for at least 6 days and for at least 40 hours per week, toll-free telephone service to facilitate communication between ultimate users in this state and a pharmacist who has access to the ultimate user's records in the nonresident pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state. A copy of a prescription label including the toll-free number shall be included.

19.2(3) A nonresident pharmacy shall update lists required by subrule 19.2(2), paragraphs *"e"* and *"f,"* within 30 days of any addition, deletion, or other change to a list.

657—19.3(155A) Discipline. Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a nonresident pharmacy license for any violation of Iowa Code section 155A.13A; section 155A.15, subsection 2, paragraph *"a," "b," "d," "e," "f," "g," "h,"* or *"i"*; Iowa Code chapter 124, 124A, 124B, 126, or 205; or a rule of the board promulgated thereunder unless the Iowa Code or Iowa Administrative Code conflicts with law, administrative rule, or regulation of the home state. The more stringent of the two shall apply when there is a conflict of law regarding services to Iowa residents.

657—19.4(155A) Training and utilization of pharmacy technicians. Nonresident pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

657—19.5(135C,155A) Personnel histories. Pursuant to the requirements of Iowa Code section 135C.33, the provisions of this rule shall apply to any pharmacy employing any person to provide patient care services in a patient's home within the state of Iowa. For the purposes of this rule, "employed by the pharmacy" shall include any individual who is paid, either by the pharmacy or by any other entity such as a corporate entity, a temporary agency, or an independent contractor, to provide treatment or services to any patient in the patient's home in Iowa. Specifically excluded from the requirements of this rule are individuals such as delivery persons or couriers who do not enter the patient's home for the purpose of instructing the patient or the patient's caregiver in the use or maintenance of the equipment, device, or medication being delivered, or who do not enter the patient's home for the purpose of setting up or servicing the equipment, device, or medication used to treat the patient in the patient's home.

19.5(1) *Applicants questioned, informed.* The pharmacy shall ask the following question of each person seeking employment in a position which will provide in-home services in Iowa: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" The applicant shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The applicant shall indicate, by signed acknowledgment, that the applicant has been informed that such record checks will be conducted.

19.5(2) *Procedures and forms.* Prior to the employment of any person to provide in-home services in Iowa, the pharmacy shall submit a form specified by the department of public safety to the department of public safety and receive the results of a criminal history check and dependent adult abuse record check. The pharmacy may submit a form specified by the department of human services to the department of human services to request a child abuse history check.

19.5(3) *Employment prohibition—exception.* A person who has a criminal record, founded dependent adult abuse report, or founded child abuse report shall not be employed by a pharmacy to provide in-home services in Iowa unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse does not merit prohibition from such employment.

19.5(4) *Records.* The pharmacy shall keep copies of all record checks and evaluations.

These rules are intended to implement Iowa Code section 155A.13A.

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CHAPTER 20
PHARMACY COMPOUNDING PRACTICES

657—20.1(124,126,155A) Purpose and scope. The requirements of this chapter apply to compounding of drugs by Iowa-licensed pharmacists and pharmacies and are minimum good compounding practices for the preparation of drug products for dispensing or administration to humans or animals. Pharmacists and pharmacies engaged in the compounding of drugs shall reference the USP General Chapter entitled <1161> Pharmacy Compounding Practices and shall comply with all applicable provisions of Iowa and federal laws and regulations.

657—20.2(124,126,155A) Definitions.

"Bulk drug substance" means any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug, but the term does not include intermediates used in the synthesis of such substances.

"Component" means any ingredient, other than a bulk drug substance, intended for use in the compounding of a drug product, including those that may not be identifiable in the final product.

"Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

1. For an identified individual patient as a result of a practitioner's prescription drug order or initiative based on the prescriber/patient/pharmacist relationship in the course of professional practice, or
2. For the purpose of, or as an incident to, research, teaching, chemical analysis, and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns pursuant to subrule 20.3(3). Compounding does not include mixing or reconstituting according to a product's labeling or to the manufacturer's directions.

"FDA" means the United States Department of Health and Human Services, Food and Drug Administration.

"Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container. Manufacturing also includes the preparation, promotion, and marketing of commercially available products from bulk compounds for resale by pharmacists, practitioners, or other persons.

657—20.3(124,126,155A) General requirements.

20.3(1) *Compounding commercially available product.* Based on the existence of a pharmacist/patient/prescriber relationship and the presentation of a valid prescription, pharmacists may compound, for an individual patient, drug products that are commercially available in the marketplace, if the compounded product is changed to produce for that patient a significant difference, as determined by the prescriber, between the compounded drug and the comparable commercially available drug product. "Significant difference" would include the removal of a dye for a medical reason such as an allergic reaction. When a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

20.3(2) *Substances and components.* In compounding prescriptions, pharmacists shall receive, store, and use components which meet the United States Pharmacopeia (USP) or National Formulary (NF) monograph standards, if such a monograph exists, and which comply with the USP chapter on pharmacy compounding. Pharmacists shall receive, store, and use bulk drug substances manufactured by an establishment which is registered with FDA under the federal Food, Drug, and Cosmetic Act and which sends a valid certificate of analysis for each drug product. Certificates of analysis shall be maintained pursuant to 657—20.12(124,126,155A). Bulk drug substances to be used in compounding prescriptions:

a. When a monograph exists, shall comply with the applicable USP or NF monograph and the USP chapter on pharmacy compounding; or

b. If not subject to a monograph, shall be ingredients of drugs that FDA has approved; or

c. If not subject to a monograph and not ingredients of FDA-approved drugs, shall appear on the FDA list of approved bulk drug products not subject to a monograph.

20.3(3) *Prescriber/patient/pharmacist relationship.* A prescription for a compounded drug shall either be unsolicited or marked with a notation by the pharmacist, and approved by the physician, that the compounded drug is necessary. Pharmacists may compound drugs in very limited quantities prior to receiving a valid prescription based on a history of receiving valid prescriptions that have been generated solely within an established pharmacist/patient/prescriber relationship provided that they maintain the prescriptions on file for all such products compounded at the pharmacy as required by Iowa law and that such compounding is in compliance with the requirements of 657—20.11(126). The sale or other distribution of compounded products to other pharmacies or to prescribers without a prescriber/patient/pharmacist relationship is considered manufacturing. However, compounded products may be provided to a prescriber for the prescriber's use in treatment of the prescriber's patients.

20.3(4) *Advertising and resale of compounded drug products.* Pharmacists shall not offer compounded drug products to other licensed persons or commercial entities for subsequent resale except in the course of professional practice for a practitioner to administer to an individual patient. Compounding pharmacies or pharmacists may advertise or otherwise promote the fact that they provide prescription compounding services; however, they shall not make a claim, assertion, or inference of professional superiority in the compounding of drug products which cannot be substantiated, nor shall they advertise the compounding of any specific drug, class of drug, or type of drug. All advertisements shall meet the requirements contained in 657—8.6(155A,126).

20.3(5) *Compounding prohibited.* Pharmacists shall not compound:

a. A drug that has been identified by FDA as withdrawn or removed from the market because the drug was found to be unsafe or not effective.

b. Regularly or in inordinate amounts drugs which are essentially copies of a commercially available drug product except as provided in subrule 20.3(1).

c. Drugs which have been identified by FDA or the board as products which may not be compounded.

657—20.4(126,155A) Organization and personnel.

20.4(1) *Pharmacist responsible.* As in the dispensing of all prescriptions, the pharmacist has the responsibility and authority to inspect and approve or reject all components, bulk drug substances, drug product containers, closures, in-process materials, and labeling; and has the authority to prepare and review all compounding records to ensure that no errors have occurred in the compounding process. The pharmacist is also responsible for the proper maintenance, cleanliness, and use of all equipment used in prescription compounding practice.

20.4(2) *Pharmacist competence.* All pharmacists who engage in compounding of drugs shall be proficient in compounding commensurate with the level of their compounding activity. Pharmacists shall maintain that proficiency through current awareness and documented training. Every pharmacist who engages in drug compounding shall be aware of, familiar with, and comply with all details of these good compounding practices and all applicable state and federal laws and regulations.

20.4(3) *Pharmacy technicians.* While pharmacy technicians may assist in the compounding of drug products, the supervising pharmacist remains responsible for all work performed by the pharmacy technician.

20.4(4) *Protective apparel.* Personnel engaged in the compounding of drug products shall wear clean clothing appropriate to the operation being performed. Protective apparel shall be worn as necessary to protect personnel from chemical exposure and drug products from contamination.

20.4(5) *Health of personnel.* Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of the drug compounding operation. Any person shown at any time, either by medical examination or pharmacist determination, to have an apparent illness or open lesions that may adversely affect the safety or quality of a drug product being compounded shall be excluded from direct contact with components, bulk drug substances, drug product containers, closures, in-process materials, and drug products until the condition is corrected or determined by competent medical personnel not to jeopardize the safety or quality of the products being compounded. All personnel who normally assist the pharmacist in compounding procedures shall be instructed to report to the pharmacist any health conditions that may have an adverse effect on drug products.

657—20.5(126,155A) Drug compounding facilities. Pharmacies engaging in compounding shall have a specifically designated and adequate area or space for the orderly placement of equipment and materials to be used to compound medications. The drug compounding area for sterile products shall be separate and distinct from the area used for the compounding or dispensing of nonsterile drug products. Any area used for the compounding of drugs shall be maintained in a good state of repair.

20.5(1) *Component and bulk drug substances storage.* Bulk drugs and other materials used in the compounding of drug products shall be stored in adequately labeled containers in a clean, dry area or, if required, under proper refrigeration.

20.5(2) *Facility requirements.* Adequate lighting and ventilation shall be provided in all drug compounding areas. Adequate washing facilities, easily accessible to compounding areas of the pharmacy, shall be provided. These facilities shall include, but not be limited to, hot and cold water, soap or detergent, and air dryers or single-source towels.

20.5(3) *Facility maintenance.* All areas used for the compounding of drug products shall be maintained in a clean and sanitary condition and shall be free of infestation by insects, rodents, and other vermin. Trash shall be held and disposed of in a timely and sanitary manner. Sewage, trash, and other refuse in and from the pharmacy and immediate drug compounding areas shall be disposed of in a safe and sanitary manner.

657—20.6(126,155A) Sterile products and radiopharmaceuticals.

20.6(1) *Sterile products.* If sterile products are being compounded, the requirements contained in 657—8.30(126,155A) shall be met.

20.6(2) *Radiopharmaceuticals.* If radiopharmaceuticals are being compounded, the requirements of 657—Chapter 16 shall be met.

657—20.7(126,155A) Special precaution products. If drug products with special precautions for contamination are involved in a compounding operation, appropriate measures, including either the dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its return to inventory, shall be utilized in order to prevent cross-contamination.

657—20.8(126,155A) Equipment. Equipment used in the compounding of drug products shall be of appropriate design, adequate size, and suitably located to facilitate operations for its intended use and for its cleaning and maintenance. Equipment used in the compounding of drug products shall be of suitable composition so that surfaces that contact components, in-process materials, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond that desired.

20.8(1) *Equipment maintenance.* Equipment and utensils used for compounding shall be cleaned and sanitized prior to use to prevent contamination that would alter the safety, identity, strength, quality, or purity of the drug product beyond that desired. In the case of equipment, utensils, and containers or closures used in the compounding of sterile drug products, cleaning, sterilization, and maintenance procedures as set forth in 657—8.30(126,155A) shall be followed.

20.8(2) *Equipment storage.* Equipment and utensils used for compounding drugs shall be stored in a manner to protect them from contamination. Immediately prior to the initiation of compounding operations, they shall be inspected by the pharmacist and determined to be suitable for use.

20.8(3) *Use of automated equipment.* Automatic, mechanical, or electronic equipment, or other types of equipment or related systems that will perform a function satisfactorily, may be used in the compounding of drug products. If such equipment is used, it shall be routinely inspected, checked, or calibrated if necessary to ensure proper performance.

657—20.9(126,155A) Control of bulk drug substances, components and drug product containers and closures. Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug beyond the desired result. Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product. Drug product containers and closures shall be clean and, where indicated by the intended use of the drug, sterilized and processed to remove pyrogenic properties to ensure that they are suitable for their intended use.

20.9(1) *Storage.* Components, bulk drug substances, drug product containers, closures, and bagged or boxed parts of drug product containers and closures used in the compounding of drug products shall be handled and stored in a manner to prevent contamination and to permit inspection and unhindered cleaning of the work area, including floors. Components, bulk drug substances, drug product containers, and closures for use in the compounding of drug products shall be rotated so that the oldest stock is used first.

20.9(2) *Sterile product containers and closures.* Drug product containers and closures intended for the compounding of sterile products shall be handled, sterilized, and stored in keeping with the requirements of 657—8.30(126,155A). Methods of cleaning, sterilizing, and processing to remove pyrogenic properties shall be written and followed for drug product containers and closures used in the preparation of sterile pharmaceuticals, if these processes are performed by the pharmacist or under the pharmacist's supervision, following the requirements of 657—8.30(126,155A).

657—20.10(124,126,155A) Drug compounding controls. Accountability for quality control is the responsibility of the compounding pharmacist.

20.10(1) *Procedures required.* There shall be written procedures for the compounding of drug products to ensure that the finished products have the identity, strength, quality, and purity they purport or are represented to possess. Such procedures shall include a listing of the bulk drug products and components, their amounts in weight or volume, the order of drug product and component addition, and a description of the compounding process. All equipment and utensils and the container/closure system, relevant to the sterility and stability of the intended use of the drug product, shall be listed. These written procedures shall be followed in the execution of the drug compounding procedure.

20.10(2) *Accuracy.* Components and bulk drug substances for drug product compounding shall be accurately weighed, measured, or subdivided as appropriate. These operations should be checked and rechecked by the compounding pharmacist at each stage of the process to ensure that each weight or measure is correct as stated in the written compounding procedures. If a component or bulk drug substance is removed from the original container to another, such as a powder taken from the original container, weighed, placed in a container, and stored in another container, the new container shall be identified with the component or bulk drug substance name and weight or measure.

20.10(3) *Product testing and examination.* To ensure the reasonable uniformity and integrity of compounded drug products, written procedures shall be established and followed that describe the tests or examinations to be conducted on the product being compounded, as in the compounding of capsules. Such control procedures shall be established to monitor the output and to validate the performance of those compounding processes that may be responsible for causing variability in the final drug product. Such control procedures shall include, but are not limited to, the following as appropriate:

a. Capsule weight variation.

b. Adequacy of mixing to ensure uniformity and homogeneity.

c. Clarity, completeness, or pH of solutions.

20.10(4) *Sterilization.* Appropriate written procedures designed to prevent microbiological contamination of compounded drug products purporting to be sterile shall be established and followed. Such procedures shall include validation of any sterilization process.

20.10(5) *Labeling with expiration date.* Where applicable, the compounded product shall be labeled with an expiration date based upon professional judgment, appropriate testing, or published data.

20.10(6) *Labeling and control of excess products.* In the case where a quantity of a compounded drug product in excess of that to be initially dispensed in accordance with the general provisions described above is prepared, the excess product shall be labeled or documentation referenced with the complete list of bulk drug substances and components, the preparation date, and the assigned expiration date based upon professional judgment, appropriate testing, or published data. Excess product shall be stored and accounted for under conditions dictated by its composition and stability characteristics to ensure its strength, quality, and purity.

At the completion of the drug finishing operation, the product shall be examined for correct labeling in compliance with the label information requirements contained in rule 20.11(126).

657—20.11(126) Bulk compounding.

20.11(1) *Control record.* Pursuant to the provisions of subrule 20.3(3), pharmacies may compound drugs in bulk quantities for subsequent prescription labeling and dispensing. Such drugs shall be compounded by or under the direct supervision of a pharmacist. For each drug product compounded in bulk quantities, a master formula record shall be prepared containing the following information:

a. Name of the product.

b. Specimen or copy of label.

c. List of ingredients and quantities.

d. Description of container used.

e. Compounding instructions, procedures and specifications.

20.11(2) *Production record.* For each batch of drug product compounded, a production record shall be prepared and kept containing the following information:

a. A copy of the information on the master formula record.

b. Records of each step in the compounding process including:

(1) Dates.

(2) Identification of ingredients (including lot numbers).

(3) Quantities of ingredients used.
(4) Initials of person preparing each process.
(5) Initials of pharmacist supervising each process.
c. A batch number.
d. Total yield.

20.11(3) *Label information.* For each batch of drug product compounded, labels shall be prepared and affixed to each container containing the following information:
a. Identifying name or formula.
b. Dosage form.
c. Strength.
d. Quantity per container.
e. Internal control number or date.
f. Expiration date (if any).
g. Auxiliary labels, as needed.

657—20.12(124,126,155A) Records and reports. Records shall conform with the control and production record requirements contained in rule 20.11(126).

20.12(1) *Record retention.* Any procedures or other records required to be maintained in compliance with these good compounding practices shall be retained for at least two years from the date of such procedure or record.

20.12(2) *Record availability.* All records required to be retained under these good compounding practices shall be readily available for authorized inspection during the retention period at the establishment where the activities described in such records occurred. These records shall be subject to photocopying or other means of reproduction as part of such inspection.

20.12(3) *Records form.* Records required under these good compounding practices may be retained either as the original records or as other accurate reproductions of the original records.

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.28, 155A.33, and 155A.35.

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22.21(2) *Confidentiality.* In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, or a person duly authorized by law to receive such information, the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber.

22.21(3) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, sex, age, national origin, or disease state when providing pharmaceutical services.

22.21(4) *Unethical conduct or behavior.* A pharmacy technician shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

This rule is intended to implement Iowa Code sections 147.55, 155A.6, and 155A.23.

These rules are intended to implement Iowa Code sections 155A.3, 155A.6, and 155A.33.

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CHAPTER 23
LONG-TERM CARE PHARMACIES

657—23.1(155A) Definitions. For purposes of this chapter, the following definitions shall apply:

"Consultant pharmacist" in a long-term care facility means a pharmacist licensed to engage in the practice of pharmacy in this state who is responsible for developing, coordinating, and supervising pharmaceutical services in a long-term care facility on a regularly scheduled basis. A consultant pharmacist:

1. Reviews the distribution and storage of medications and assists facilities in establishing the policies and procedures for the distribution and storage of medications and makes appropriate recommendations to the facility and the provider pharmacist;
2. Monitors the therapeutic response and utilization of all medications prescribed for the resident. The following shall be used as minimum guidelines supplementing the pharmacist's professional expertise:
   - Regulations and interpretive guidelines of the Health Care Financing Administration, if applicable;
   - Rules of the Iowa department of inspections and appeals; and
   - Other state rules and regulations;
3. Serves as a resource for pharmacy-related education services within the facility;
4. Participates in quality management of resident care in the facility;
5. Communicates with the provider pharmacist regarding areas of mutual concern and resolution thereof.

"Long-term care facility" or *"facility"* means:

1. A facility licensed by the Iowa department of inspections and appeals under Iowa Code chapter 135C or Iowa Code chapter 135H;
2. A hospital-based long-term care unit certified under 42 CFR, Part 483, Subpart B; or
3. A freestanding inpatient hospice certified under 42 CFR, Part 418.

"Long-term care pharmacy" or *"provider pharmacy"* means a hospital pharmacy, a general pharmacy, a limited use pharmacy, or a nonresident pharmacy in which medications, chemicals, or poisons are prepared, compounded, dispensed, vended, distributed, or sold on a regular and recurring basis to or for the use of residents of a long-term care facility and from which related pharmacy services are delivered.

"Medication order," as used in these rules, means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent for administration of a drug or device. For purposes of this chapter, *"medication order"* includes a prescription.

"Patient med pak" means a customized patient medication package prepared in accordance with rule 657—8.13(155A,126) for a specific resident which comprises a series of immediate containers containing two or more prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents. Use of patient med paks is permitted only when the prescriber's orders specifically indicate that the resident is capable of self-administering the medications contained therein.

"Provider pharmacist" means a pharmacist licensed to engage in the practice of pharmacy, who is employed by or contracted to a long-term care pharmacy or a provider pharmacy and who is responsible for supervising the accurate dispensing and proper delivery of medications to a long-term care facility located within this state. These services shall include, at a minimum, proper medication labeling, storage, transport, record keeping, and prospective drug utilization review in compliance with all federal, state, and local laws and regulations.

"Single unit package" means a package which contains one discrete pharmaceutical dosage form.

"Unit dose dispensing system" means those medication distribution systems determined by the board to be pharmacy based and which involve single unit, unit dose, or unit of issue packaging in a manner which helps reduce or remove traditional medication stocks from resident care areas and enables the selection and distribution of medications to be pharmacy based and controlled.

"Unit dose package" means a package which contains that particular dose of a medication ordered for the patient for one administration time. A unit dose package is not always a single unit package.

"Unit of issue package" means a package which provides multiple units or doses attached to each other but separated in a card or specifically designed container.

657—23.2(124,155A) Applicability of rules. Nothing in these rules shall be deemed to constitute a waiver or abrogation of any of the provisions of board rules or other applicable provisions of state and federal laws and rules, nor should these rules be construed as authorizing or permitting any person not licensed as a pharmacist to engage in the practice of pharmacy.

657—23.3(124,155A) Freedom of choice. Pursuant to 657—subrule 8.5(6), no pharmacist shall participate in any agreement or plan which infringes on any resident's right to freedom of choice as to the provider of pharmacy services. A resident in a long-term care facility shall have a choice of long-term care pharmacy so long as the pharmacy's medication delivery system provides for the timely delivery of medications compatible with the established system currently used by the facility. Determination of compatibility may consider medication administration, accessibility, and payment system.

657—23.4(124,155A) Pharmacy responsibilities. The long-term care pharmacy shall be responsible for:

1. Providing medications pursuant to a medication order for an individual resident, properly labeled for that resident, as addressed in rule 657—23.12(124,126,155A) or 657—23.13(124,155A).
2. Providing medications for the long-term care resident, dispensed in a form consistent with the medication distribution system described in the facility's policies and procedures.
3. Affixing labels to each container of medication for residents in long-term care facilities, in compliance with rule 657—23.12(124,126,155A) or 657—23.13(124,155A).
4. Maintaining records of all transactions of the long-term care pharmacy as may be required by law and maintaining accurate control over and accountability for all medications and prescription devices.
5. Developing a medication recall procedure that protects the health and safety of the resident including immediate discontinuation of any recalled medication and subsequent notification of the prescriber and director of nursing of the facility.
6. Providing a 24-hour emergency service procedure either directly or by contract with another pharmacy.
7. Reviewing patient profiles to ensure the appropriateness of therapy for that resident and the compatibility of the medication and dosage for that patient when processing new medication orders.
8. Providing sufficient and accurate information to facility staff regarding the appropriate administration and use of all dispensed medications.
9. Communicating with the consultant pharmacist and the facility regarding concerns and resolution thereof.

657—23.5(124,155A) Emergency medications. A supply of emergency medications may be provided by one long-term care pharmacy to the facility pursuant to rule 657—8.32(124,155A).

23.5(1) *Emergency medication order—pharmacist review.* When an emergency medication is provided pursuant to rule 657—8.32(124,155A), the medication order shall be reviewed by the patient's dispensing pharmacist prior to the administration of a second dose.

23.5(2) *Facilities in which licensed personnel administer medications.* In addition to an emergency box or stat medication box, a long-term care facility staffed by one or more persons licensed to administer medications may maintain a stock of intravenous fluids, irrigation fluids, heparin flush kits, medicinal gases, sterile water and saline, and prescription devices. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the consultant pharmacist and the medical director and director of nursing of the facility.

657—23.6(124,155A) Minimum requirements of a long-term care pharmacy. Each pharmacy serving a long-term care facility shall have adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy.

23.6(1) *Prescription department equipment.* The pharmacy shall have, as a minimum, the following:

a. Measuring devices such as syringes or graduates capable of measuring 1 ml to 250 ml;

b. Suitable refrigeration unit. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of medications requiring refrigeration;

c. Other equipment as necessary for the particular practice of pharmacy.

23.6(2) *Clean and orderly.* The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner.

23.6(3) *Reference library.* References may be printed or computer accessed. The pharmacy shall maintain a reference library which includes, as a minimum, one reference from each of the following:

a. Current Iowa pharmacy laws, rules, and regulations.

b. A patient information reference, updated at least annually, such as:

(1) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);

(2) Facts and Comparisons Patient Drug Facts; or

(3) Leaflets which provide patient information in compliance with rule 657—8.20(155A).

c. A current reference on medication interactions, such as:

(1) Phillip D. Hansten's Drug Interactions; or

(2) Facts and Comparisons Drug Interactions.

d. A general information reference, updated at least annually, such as:

(1) Facts and Comparisons with current supplements;

(2) United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or

(3) American Hospital Formulary Service with current supplements.

e. A current drug equivalency reference, including supplements, such as:

(1) Approved Drugs Products With Therapeutic Equivalence Evaluations (FDA Orange Book);

(2) ABC - Approved Bioequivalency Codes; or

(3) USP DI, Volume III.

f. Basic antidote information or the telephone number of a poison control center.

g. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

23.6(4) *Sink.* The pharmacy shall have a sink with hot and cold running water within the prescription department, available to all pharmacy personnel, and maintained in a sanitary condition.

23.6(5) *Lighting and ventilation.* The pharmacy shall be properly lighted and ventilated.

23.6(6) *Temperature.* The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of medications.

657—23.7(124,155A) Policies and procedures. Policies and procedures shall be formulated to cover the provider pharmacy's packaging and dispensing responsibilities to the residents of the long-term care facility. The policies and procedures shall be maintained at the provider pharmacy and shall be available to the facility and the consultant pharmacist. Policies and procedures shall include, at a minimum:

1. Methods used to dispense and deliver medications to the facility in a timely fashion;
2. Proper notification to the facility when a medication is not readily available;
3. Proper labeling requirements to meet the needs of the facility which are consistent with state and federal laws and regulations;
4. Appropriate medication destruction or return of unused medication, or both, which is consistent with state and federal laws and regulations.

657—23.8(124,155A) Training and utilization of pharmacy technicians. Long-term care pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

23.8(1) *Functions authorized.* Pursuant to the requirements of 657—Chapter 22, properly trained pharmacy technicians may transcribe a prescriber's medication orders to a patient profile, fill the medication orders, and perform other such duties related to a medication distribution system, including any of the functions identified in 657—22.14(155A), provided these duties are performed under the supervision of a pharmacist or as authorized in 657—6.6(155A).

23.8(2) *Pharmacist responsible.* The ultimate responsibility for the actions of a pharmacy technician working under a supervising pharmacist shall remain with the supervising pharmacist.

657—23.9(124,155A) Medication orders. Medications may be dispensed only upon orders of an authorized prescriber.

23.9(1) *Requirements.* New orders transmitted to the pharmacy for medications for residents of the facility shall, at a minimum, contain resident name, medication name and strength, directions for use, date of order, and name of prescriber. Orders for Schedule II controlled substances shall comply with the requirements of 657—23.17(124,155A).

23.9(2) *Abbreviations.* Orders employing abbreviations or chemical symbols shall be only those which are customarily used in the practice of medicine and pharmacy or those on a list of approved abbreviations developed by the appropriate committee or representative of the facility.

23.9(3) *Who may transmit medication orders.* Any person who is employed by a long-term care facility and who is authorized by the facility's policies and procedures may transmit to the long-term care pharmacy a medication order lawfully ordered by a practitioner authorized to prescribe medications and devices.

657—23.10(124,155A) Stop orders. The consultant pharmacist, in consultation with the provider pharmacist, the medical director, and the appropriate committee or representative of the facility, shall develop and implement an automatic stop order policy.

657—23.11(124,155A) Medications dispensed to residents in a care facility—general requirements.

23.11(1) *Labeling.* All prescription containers, other than those dispensed pursuant to rule 657—23.12(124,126,155A) or 657—23.13(124,155A), shall be properly labeled in accordance with 657—subrule 8.14(1).

a. If a label change is required to reflect a change in directions, the pharmacy shall be responsible for affixing the correct label to the container. Long-term care facility personnel shall not be authorized to affix such a label to the medication container.

b. Direction change labels that notify long-term care facility personnel that a change in directions for the medication has taken place may be used and affixed to the container by facility personnel so as not to deface the original label.

23.11(2) *Medication order required.* Dispensing of all medications to the facility shall be pursuant to a medication order for an individual resident.

23.11(3) *Prescription containers.* All prescription containers, including, but not limited to, single unit, unit dose, and unit of issue containers utilized for distribution within a long-term care facility, shall meet minimum requirements as established by the United States Pharmacopoeia. Where applicable, light-resistant packaging shall be used.

23.11(4) *Floor stock.* Prescription drugs, as defined by Iowa Code section 155A.3(30), shall not be floor stocked in a long-term care facility except as provided in this subrule or in subrule 23.5(2). Bulk supplies of nonprescription medications may be maintained as provided in subrule 23.13(5). Any pharmacy which utilizes a floor stock distribution system pursuant to this subrule shall develop and implement procedures to accurately establish proof of use of prescription medications and shall maintain a perpetual inventory, whether by electronic or manual means, of all prescription medications so dispensed. A floor stock distribution system for prescription drugs may be permitted in either of the following circumstances:

a. A licensed pharmacy under the direct supervision and control of a pharmacist is established in the facility, or

b. The facility and the hospital wherein the licensed pharmacy is located are both licensed under Iowa Code chapter 135B with a single hospital license.

23.11(5) *Emergency medications.* An emergency/first dose drug supply may be maintained in a long-term care facility as provided in 657—23.5(124,155A). No consultant pharmacist or provider pharmacist shall utilize a floor stock distribution system for prescription medications except as provided in subrule 23.11(4) or subrule 23.5(2). Bulk supplies of nonprescription medications may be maintained as provided in subrule 23.13(5).

657—23.12(124,126,155A) Unit dose dispensing systems. All medications dispensed to individual residents, other than those dispensed pursuant to 657—subrule 8.14(1), shall be dispensed in compliance with the requirements of this rule or 657—23.13(124,155A).

23.12(1) *Packaging requirements.* Packaging for all nonsterile drugs stored and dispensed in single unit, unit dose, or unit of issue packages shall:

a. Preserve and protect the identity and integrity of the drug from the point of packaging to the point of patient administration.

b. When packaged by the manufacturer or distributor, be in accordance with federal Food and Drug Administration (FDA) requirements.

c. When in single unit and unit dose packages prepackaged by the pharmacy for use beyond 24 hours, be in accordance with 657—subrule 8.3(1).

d. When in containers used for packaging, be clean and free of extraneous matter when the dosage unit(s) is placed into the package.

23.12(2) *Labeling requirements.*

a. Labeling for single unit or unit dose packaging shall comply with the following:

(1) Doses packaged by the manufacturer or distributor shall be properly labeled according to federal Food and Drug Administration (FDA) requirements.

(2) Doses packaged by the pharmacy shall be properly labeled according to 657—subrule 8.3(2) if used beyond a 24-hour period.

b. Labeling for unit of issue packages shall contain the following information:

(1) Name, strength, and expiration date of drug when the packages are utilized for floor stock in an institutional setting.

(2) Name and room or bed number of patient, the name of prescribing practitioner, the name and strength of drug, directions for use, and name and address of the dispensing pharmacy, when the packages are utilized for patients in an institutional setting. Room or bed number, the name of prescribing practitioner, and the name and address of the dispensing pharmacy are not required if this information appears on a medication administration record used by the institution.

(3) Unit of issue packages dispensed to patients on an outpatient basis or in a noninstitutional setting shall be considered prescription containers and shall be labeled in accordance with 657—subrule 8.14(1).

c. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: "(generic name) Generic for (brand name product)".

23.12(3) *General procedures.* The following will apply when a unit dose dispensing system is employed:

a. The pharmacist shall be responsible for determining the classification for containers set by USP Standard 671 used by the pharmacy to repackage nonsterile drugs into single unit, unit dose, or unit of issue packaging. This classification shall be used to determine maximal expiration dating for repackaging set forth in subrule 23.12(4).

b. Established written policies and procedures shall be available in the pharmacy for inspection by the board or its agents which:

(1) Specify the categories of drugs or drug dosage forms which will or will not be dispensed under the particular unit dispensing system employed.

(2) Specify the pharmacy's recall policy for drugs returned upon a particular manufacturer's or FDA recall.

c. Those drugs not dispensed under a unit dose dispensing system shall be dispensed in accordance with the packaging requirements of the federal Food and Drug Administration (FDA) and labeling requirements of 657—subrule 8.14(1).

23.12(4) *Expiration dating.* Expiration dating for nonsterile drugs repackaged by the pharmacy into single unit, unit dose, or unit of issue packages shall meet the following conditions:

a. Not exceed 90 days from the date of repackaging except as provided in paragraph 23.12(4)"*c.*"

b. Not exceed the manufacturer's original expiration date.

c. May exceed 90 days from the date of repackaging provided that each of the following conditions is met:

(1) The container is classified according to USP Standard 671 as being Class A or Class B for oral solid dosage forms or is a tight container for liquid dosage forms.

(2) The container is light-resistant when the manufacturer has labeled the product "sensitive to light."

(3) The expiration date is not greater than 12 months.

d. Drugs or dosage forms having known stability problems are assigned an expiration date of less than 90 days or are not repackaged as determined by policies developed by the pharmacy.

23.12(5) *Return of drugs.* Under no circumstances shall a pharmacist accept for reuse, except to the same patient, any previously dispensed controlled substances. Drugs, excluding controlled substances, dispensed in single unit, unit dose, or unit of issue packaging in compliance with 657—subrules 23.12(1) to 23.12(4) may be returned to the pharmacy stock and reissued provided that:

a. The expiration dating information is retrievable and identifiable.

b. Drugs returned from unit of issue packaging are kept separate according to manufacturer's lot number and the pharmacy's repackaged expiration date unless the pharmacy's recall policy states that all lots of a drug will be returned upon recall. In this instance, drugs returned to stock shall be kept separate according to the pharmacy's repackaged expiration date as determined in 657—subrule 23.12(4).

c. The drugs were stored under proper storage conditions.

d. The drugs are returned to the pharmacy in the original packaging as when dispensed.

e. The pharmacy includes in written policies and procedures the manner in which returned medications will be recorded or identified.

657—23.13(124,155A) Labeling medications under special circumstances.

23.13(1) *Insulin, ophthalmics, and otic preparations.* These medications shall be dispensed with a label affixed to the immediate container showing at least the resident's name and location.

23.13(2) *Biologicals and other injectables.* Biologicals and other injectables prescribed and dispensed for an individual resident shall meet the labeling requirements of subrule 23.11(1). Labeling of biologicals and other injectables supplied to a facility for a health immunization or ongoing screening program, such as influenza vaccine, tuberculin skin test, or hepatitis B, and intended for use in the facility, shall include the following information and such label shall be affixed so as not to obscure the manufacturer's label:

a. Identification of pharmacy;

b. Name of facility;

c. Name of biological or medication;

d. Route of administration when necessary for clarification;

e. Strength of biological or medication;

f. Auxiliary labels as needed;

g. Expiration date;

h. Date dispensed;

i. Lot number.

23.13(3) *Legend solutions—irrigation and infusion.* Legend irrigation solutions and infusion solutions supplied by a licensed pharmacy may be stored in the locked medication area of a long-term care facility provided that:

a. The facility uses the solution only within the confines of the facility and under the orders of an authorized prescriber;

b. Upon use, the container is identified by resident name;

c. The container is dated and initialed upon opening;

d. The solution is stored appropriately after opening according to facility policy.

23.13(4) *Medications added to parenteral, enteral, or irrigation solutions.* Whenever any medications are added to such solutions, whether within or outside the direct and personal supervision of a licensed pharmacist, such admixture shall be labeled with a distinctive supplementary label indicating the patient's name; the drug name, dosage, and strength per unit/volume of the medication added; the date and time of addition or dilution; the expiration date, administration time, and infusion rate when applicable; and the identity of the person so adding. If the medication is intended for addition, dilution, or reconstitution in the facility by a licensed nurse outside the direct and personal supervision of the pharmacist, specific directions for such dilution, reconstitution, or addition shall accompany the medication.

23.13(5) *Floor stocked, nonprescription medication containers.* All such nonprescription medications intended for use within the facility shall be in appropriate containers and adequately labeled as to identify, at a minimum, brand name or generic name and manufacturer, strength, lot number, and expiration date. An internal code which centrally references manufacturer and lot number may be utilized.

23.13(6) *Leave meds.* Labeling of prescription medications for residents on leave from the facility for a period in excess of 24 hours shall comply with 657—subrule 8.14(1). The pharmacy shall be responsible for packaging and labeling leave meds in compliance with this subrule.

23.13(7) *Discharge meds.* Medications authorized for a resident being discharged from the facility shall be labeled in compliance with 657—subrule 8.14(1) before the resident removes those medications from the facility premises. The pharmacy shall be responsible for packaging and labeling discharge meds in compliance with this subrule.

657—23.14(124,155A) Return and reuse of medications and devices. Pharmacists and pharmacies shall not accept from residents or their agents for reuse or resale any drugs, prescribed medications, chemicals, poisons or medical devices unless, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised. Under no circumstances shall a pharmacist accept from a patient or patient's agent any controlled substances for return, exchange, or resale except to the same patient. Prescription drugs, excluding controlled substances, dispensed in unit dose, unit of issue, or single unit packaging pursuant to 657—23.12(124,126,155A) may, however, be returned and reused as authorized in subrule 23.12(5). No items of personal contact nature which have been removed from the original package or container after sale shall be accepted for return, exchanged, or resold by any pharmacist.

657—23.15(124,155A) Destruction of outdated and improperly labeled medications. The consultant pharmacist, in consultation with the provider pharmacist, shall develop and implement policies and procedures to ensure that all discontinued, outdated, deteriorated, or improperly labeled medications or containers with worn, illegible or missing labels are destroyed or disposed of so as to render them unusable. Such medications shall be destroyed by means that will ensure protection against unauthorized possession or use.

657—23.16(124,155A) Accountability of controlled substances.

23.16(1) *Proof of use.* Documentation of use of Schedule II controlled substances shall be upon proof-of-use forms. A committee or representative of the facility may also require that Schedule III, IV, or V controlled substances or any other medications be accounted for on proof-of-use forms. Proof-of-use forms shall specify at a minimum:

a. Name of medication;

b. Dose;

c. Name of ordering prescriber;

d. Name of resident;

e. Date and time of administration to resident;

f. Signature and title of individual administering;

g. Documentation of destruction, return to the pharmacy, or other disposition of all unused portions of single doses including two signature verifications, at least one of which is a licensed healthcare professional.

23.16(2) *Container requirement.* Any medication required to be counted and accounted for with proof-of-use forms shall be dispensed in a container that allows verification of individual doses. Containers for solid oral doses must allow visual identification of individual doses and individual accountability.

657—23.17(124,155A) Schedule II orders. This rule shall not apply to Schedule II controlled substances orders in facilities which utilize a floor stock distribution system as provided in subrule 23.11(4). Schedule II controlled substances in all other facilities shall be dispensed only upon receipt of an original written order signed by the prescribing individual practitioner or upon receipt of a facsimile transmission of an original written order signed by the prescribing individual practitioner pursuant to rule 657—21.9(124,155A). In emergency situations as defined in 657—subrule 10.13(5), Schedule II controlled substances may be dispensed in compliance with the requirements of rule 657—10.13(124) or rule 657—21.7(124,155A), as applicable. In all cases, any order for a Schedule II controlled substance shall specify the total quantity authorized by the prescriber.

657—23.18(124,155A) Dispensing Schedule II controlled substances. A pharmacy that dispenses Schedule II controlled substances shall advise facility personnel that federal and state laws and regulations governing such medications require that accurate records be kept of their administration or their ultimate disposition in compliance with rule 657—23.16(124,155A). The pharmacy shall further advise facilities that stored Schedule II substances shall be double locked in accordance with rules of the Iowa department of inspections and appeals. The requirement for double locking Schedule II controlled substances shall not apply to periods during which medications are being administered to residents; however, these substances shall be secured during such administration periods.

657—23.19(124,155A) Partial filling of Schedule II controlled substances. A medication order for a Schedule II controlled substance written for a resident in a long-term care facility (LTCF) may be filled in partial quantities to include individual dosage units. The pharmacist must record on the medication order that the patient is an "LTCF patient." A medication order that is partially filled and does not contain the notation "LTCF patient" shall be deemed to have been filled in violation of the controlled substances Act.

23.19(1) *Partial filling record.* For each partial filling, the dispensing pharmacist shall record on the back of the medication order (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

23.19(2) *Total dispensed.* The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed.

23.19(3) *Duration.* Schedule II medication orders for residents in a long-term care facility shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

23.19(4) *Requirements of computerized system.* Information pertaining to current Schedule II medication orders for residents in a long-term care facility may be maintained in a computerized system if this system has the capability to permit:

a. Output (display and printout) of the original prescription number, date of issue, identification of prescribing individual practitioner, identification of resident, address of the long-term care facility, identification of medication authorized (to include dosage form, strength and quantity), listing of the partial fillings that have been dispensed under each medication order, and the information required in this rule.

b. Immediate (real-time) updating of the medication order record each time a partial filling of the medication order is conducted.

c. Retrieval of partially filled Schedule II medication order information as required in 657—subrule 21.11(6).

657—23.20(124,155A) Destruction of controlled substances. Controlled substances dispensed to a resident in a long-term care facility and subsequently requiring destruction due to discontinuance of the medication, death of the resident, or other reasons necessitating destruction shall be destroyed by one of the following methods.

23.20(1) *Destruction or other disposition of controlled substances in facility.* In facilities staffed by one or more persons licensed to administer medications, controlled substances may be destroyed by a licensed healthcare professional (pharmacist, registered nurse, licensed practical nurse) in witness of one other responsible adult. The professional destroying or otherwise disposing the medication shall prepare and maintain a readily retrievable record of the destruction or other disposition which shall be clearly marked to indicate the destruction or other disposition of resident medications. The record shall include, at a minimum, the following:

a. Resident name;

b. The name, strength, and dosage form of the substance;

c. The quantity destroyed or otherwise disposed;

d. The date the substance is destroyed or disposed;

e. The signature or uniquely identifying initials or other unique identification of the professional and the witness.

23.20(2) *Destruction or other disposition of controlled substances in long-term care pharmacy.* Controlled substances returned to the pharmacy for destruction or other disposition may be destroyed or otherwise disposed by a pharmacist in witness of one other person. The pharmacist shall prepare and maintain in the pharmacy a readily retrievable record of the destruction or other disposition which shall be clearly marked to indicate the destruction or other disposition of noninventory or resident medications. The record shall include, at a minimum, the following:

a. Source of the controlled substance (resident name, identification of resident facility, and date of return from the facility);

b. The name, strength, and dosage form of the substance;

c. The quantity returned and destroyed or otherwise disposed;

d. The date the substance is destroyed or otherwise disposed;

e. The signature or uniquely identifying initials or other unique identification of the pharmacist and the witness.

These rules are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 126.10, 155A.2, 155A.13, 155A.13A, 155A.15, 155A.21, 155A.27, 155A.28, 155A.33, 155A.35, and 155A.36.

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CHAPTER 24
Reserved

CHAPTER 26
PETITIONS FOR RULE MAKING

Adopt, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to petitions for rule making which are printed in the first volume of the Iowa Administrative Code.

657—26.1(17A) Petition for rule making. In lieu of the words "(designate office)" insert "1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)" insert "IOWA BOARD OF PHARMACY EXAMINERS". In paragraph 6 in lieu of "rule X.4(17A)", insert "rule 657—26.4(17A)".

657—26.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)" insert "Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code section 17A.7.

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CHAPTER 27
DECLARATORY ORDERS

657—27.1(17A) Petition for declaratory order. Any person may file a petition with the board of pharmacy examiners, hereinafter referred to as "the board," for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Board of Pharmacy Examiners at Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

IOWA BOARD OF PHARMACY EXAMINERS

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition shall provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 657—27.7(17A).

The petition shall be dated and signed by the petitioner or the petitioner's representative. It shall also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

657—27.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 657—27.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

657—27.3(17A) Intervention.

27.3(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.

27.3(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 board.

27.3(3) A petition for intervention shall be filed at the board office at Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

IOWA BOARD OF PHARMACY EXAMINERS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention shall provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition shall be dated and signed by the intervenor or the intervenor's representative. It shall also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

657—27.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

657—27.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187.

657—27.6(17A) Service and filing of petitions and other papers.

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

27.6(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 Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

27.6(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 657—35.11(17A,272C).

657—27.7(17A) Consideration. Upon request by petitioner, the board shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

657—27.8(17A) Action on petition.

27.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive secretary/director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

27.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 657—35.2(17A,272C).

657—27.9(17A) Refusal to issue order.

27.9(1) The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

27.9(2) A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final board action on the petition.

27.9(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 the refusal to issue an order.

657—27.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

657—27.11(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.

657—27.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, 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 board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 28
AGENCY PROCEDURE FOR RULE MAKING

657—28.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board of pharmacy examiners, hereinafter referred to as "board," are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

657—28.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

657—28.3(17A) Public rule-making docket.

28.3(1) *Docket maintained.* The board shall maintain a current public rule-making docket.

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

28.3(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 determinations with respect thereto;

h. Any known timetable for board decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing, indexing, and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

657—28.4(17A) Notice of proposed rule making.

28.4(1) *Contents.* At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

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

28.4(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 28.12(2) of this chapter.

28.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription shall file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board for Notices of Intended Action. The 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.

657—28.5(17A) Public participation.

28.5(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 shall identify the proposed rule to which they relate and shall be submitted to the Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187, or the person designated in the Notice of Intended Action.

28.5(2) *Oral proceedings.* The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board 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 shall also contain the following additional information:

a. A request by one or more individual persons shall be signed by each of them and include the address and telephone number of each of them.

b. A request by an association shall be signed by an officer or designee of the association and shall 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 shall be signed by an official having authority to act on behalf of the entity and shall contain the address and telephone number of the person signing that request.

28.5(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 subrule 28.5(2).

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, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board 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.

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 at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

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

(2) Persons making oral presentations are encouraged to avoid restating matters 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.

(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.

28.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

28.5(5) *Accessibility.* The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board of pharmacy examiners, telephone (515)281-5944, in advance to arrange access or other needed services.

657—28.6(17A) Regulatory analysis.

28.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

28.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to the Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

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

28.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

28.6(4) *Qualified requesters for regulatory analysis—economic impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 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.

28.6(5) *Qualified requesters for regulatory analysis—business impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 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;

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.

28.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

28.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

28.6(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).

28.6(9) *Publication of a concise summary.* The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

28.6(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.

28.6(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).

657—28.7(17A,25B) Fiscal impact statement.

28.7(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.6.

28.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

657—28.8(17A) Time and manner of rule adoption.

28.8(1) *Time of adoption.* The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

28.8(2) *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

28.8(3) *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

657—28.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

28.9(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

28.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

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

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

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

28.9(3) The board 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 finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

28.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

657—28.10(17A) Exemptions from public rule-making procedures.

28.10(1) *Omission of notice and comment.* To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

28.10(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. Temporary designation of controlled substances consistent with federal Drug Enforcement Administration action to add a substance to a drug schedule or to change the schedule within which a substance is controlled under the Controlled Substances Act.

b. Amend references to the Iowa Code, the Iowa Administrative Code, or the Code of Federal Regulations where such references change or are otherwise incorrect.

c. Change the name, address, or telephone number of the board of pharmacy examiners or an authorized contact person.

28.10(3) *Public proceedings on rules adopted without them.* The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 28.10(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 shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 28.10(1). Such a petition shall 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 shall be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 28.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

657—28.11(17A) Concise statement of reasons.

28.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and be delivered to the Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187. The request shall 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.

28.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

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

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

28.11(3) *Time of issuance.* After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

657—28.12(17A) Contents, style, and form of rule.

28.12(1) *Contents.* Each rule adopted by the board shall contain the text of the rule and, in addition:

a. The date the board adopted the rule;

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

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the board in its discretion decides to include such reasons; and

g. The effective date of the rule.

28.12(2) *Incorporation by reference.* The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

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

28.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text, at actual cost upon request, and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

28.12(4) *Style and form.* In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

657—28.13(17A) Board rule-making record.

28.13(1) *Requirement.* The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

28.13(2) *Contents.* The board rule-making record shall contain:

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

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

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

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

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

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

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

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

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

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

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

28.13(3) *Effect of record.* Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

28.13(4) *Maintenance of record.* The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action. The board shall maintain a record of significant written criticism as described in 28.13(2), paragraphs *"g," "h," "i,"* or *"j,"* for a period of not less than five years from the date of the written criticism.

657—28.14(17A) Filing of rules. The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall 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 shall be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

657—28.15(17A) Effectiveness of rules prior to publication.

28.15(1) *Grounds.* The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

28.15(2) *Special notice.* When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, electronic transmission, newsletter, or other timely publication.

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.

657—28.16(17A) General statements of policy.

28.16(1) *Compilation, indexing, public inspection.* The board shall maintain an official, current, and dated compilation that is indexed by subject containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)*"a," "c," "f," "g," "h,"* and *"k."* Each addition to, change in, or deletion from the official compilation shall also be dated, indexed, and a record maintained. 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 shall be made available for public inspection and copying.

28.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 28.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

657—28.17(17A) Review by board of rules.

28.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

28.17(2) In conducting the formal review, the board shall prepare, within a reasonable time, a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the board's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also 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 or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

These rules are intended to implement Iowa Code sections 17A.3 to 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTERS 32 to 34
Reserved

CHAPTER 35
CONTESTED CASES
[Prior to 5/19/99, see 657—Ch 9]

657—35.1(17A,124,124B,126,147,155A,205,272C) Scope and applicability. This chapter applies to contested case proceedings, including licensee, registrant, or permittee discipline, conducted by the board of pharmacy examiners.

657—35.2(17A,272C) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means members of the board of pharmacy examiners, or the administrative law judge assigned to preside over the case pursuant to rule 657—35.6(17A,272C).

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board of pharmacy examiners did not preside or, if the contested case involves licensee or registrant discipline, "proposed decision" means the decision of the panel of the board when the hearing is held before a panel of the board rather than the full board.

657—35.3(17A) Time requirements.

35.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

35.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

657—35.4 Reserved.

657—35.5(17A,124B,126,147,155A,205,272C) Notice of hearing.

35.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

35.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., members of the board, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 657—35.6(17A,272C), that the presiding officer be an administrative law judge.

657—35.6(17A,272C) Presiding officer for nondisciplinary hearings.

35.6(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 members of the board of pharmacy examiners.

35.6(2) The executive secretary/director may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any member of the board of pharmacy examiners, 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. The contested case involves the discipline of a licensee or registrant and therefore must be decided by the board as required by Iowa Code section 272C.6.

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.

35.6(3) The executive secretary/director shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

35.6(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 board. A party shall seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

35.6(5) Unless otherwise provided by law, members of the board of pharmacy examiners, 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.

657—35.7(17A,124B,147,155A,272C) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

657—35.8(17A,272C) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

657—35.9(17A) Disqualification.

35.9(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.

35.9(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 board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 35.9(3) and 35.22(9).

35.9(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.

35.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 35.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion shall be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 657—35.24(17A) and seek a stay under rule 657—35.28(17A,272C).

657—35.10(17A,272C) Consolidation—severance.

35.10(1) *Consolidation.* The presiding officer may 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.

35.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

657—35.11(17A,272C) Service and filing of pleadings and other papers.

35.11(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the board, 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.

35.11(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

35.11(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board of pharmacy examiners.

35.11(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board of pharmacy examiners, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

35.11(5) *Proof of mailing.* Proof of mailing includes one of the following:

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:

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 Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0187, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

_____ _____
Date Signature

657—35.12(17A,272C) Discovery.

35.12(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

35.12(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 35.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

35.12(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

657—35.13(17A,272C) Subpoenas.

35.13(1) *Issuance of investigatory subpoenas.*

a. The board's executive secretary/director or designee may, upon the written request of a board investigator or on the executive secretary/director's own initiative, subpoena books, papers, records, and other real evidence which the executive secretary/director determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

(1) The nature of the complaint reasonably justifies the issuance of a subpoena;

(2) Adequate safeguards have been established to prevent unauthorized disclosure;

(3) An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

(4) The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

b. A written request for a subpoena or the executive secretary/director's written memorandum in support of the issuance of a subpoena shall contain the following:

(1) The name and address of the person to whom the subpoena will be directed;

(2) A specific description of the books, papers, records or other real evidence requested;

(3) An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

(4) In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 35.13(1), paragraph *"a,"* have been satisfied.

c. Each subpoena shall contain:

(1) The name and address of the person to whom the subpoena is directed;

(2) A description of the books, papers, records or other real evidence requested;

(3) The date, time, and location for production or inspection and copying;

(4) The time within which a motion to quash or modify the subpoena must be filed;
(5) The signature, address and telephone number of the executive secretary/director or designee;
(6) The date of issuance;
(7) A return of service.

d. Any person who is aggrieved or adversely affected by compliance with the subpoena who desires to challenge the subpoena shall, 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 board 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.

e. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold an argument and issue a decision, or the board may hold the argument and issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

f. A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rule 657—35.26(17A,124B,126,147,155A,205,272C), provided that all of the time frames are reduced by one-half.

g. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified the investigation has been concluded with no formal action or there is a final decision in the contested case.

35.13(2) *Issuance of subpoenas in a contested case.*

a. Subpoenas issued in a contested case may compel the attendance of witnesses at depositions 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 may be issued separately. Subpoenas shall be issued by the executive secretary/director or designee upon written request. A request for a subpoena of patient records must confirm the conditions described in subrule 35.13(1), paragraph *"a,"* prior to the issuance of the subpoena.

b. A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:
(1) The name, address, and telephone number of the person requesting the subpoena;
(2) The name and address of the person to whom the subpoena shall be directed;
(3) The date, time, and location at which the person shall be commanded to attend and give testimony;
(4) Whether the testimony is requested in connection with a deposition or hearing;
(5) A description of the books, papers, records, or other real evidence requested;
(6) The date, time, and location for production or inspection and copying; and
(7) In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 35.13(1), paragraph *"a,"* have been satisfied.

c. Each subpoena shall contain, as applicable:
(1) The caption of the case;
(2) The name, address, and telephone number of the person who requested the subpoena;
(3) The name and address of the person to whom the subpoena is directed;
(4) The date, time, and location at which the person is commanded to appear;

(5) Whether the testimony is commanded in connection with a deposition or hearing;

(6) A description of the books, papers, records or other real evidence the person is commanded to produce;

(7) The date, time, and location for production or inspection and copying;

(8) The time within which a motion to quash or modify the subpoena must be filed;

(9) The signature, address, and telephone number of the executive secretary/director or designee;

(10) The date of issuance;

(11) A return of service.

d. Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive secretary/director 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.

e. 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, shall, 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 board 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.

f. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold an argument and issue a decision, or the board may hold the argument and issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

g. A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling shall appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in 657—35.26(17A,124B,126,147,155A,205,272C), provided that all of the time frames are reduced by one-half.

h. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

35.13(3) *Refusal to obey subpoena.* In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

657—35.14(17A,272C) Motions.

35.14(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.

35.14(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

35.14(3) The presiding officer may schedule oral argument on any motion.

35.14(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 board or an order of the presiding officer.

657—35.15(17A,272C) Prehearing conference.

35.15(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the executive secretary/director to all parties. For good cause the presiding officer may permit variances from this rule.

35.15(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

35.15(3) In addition to the requirements of subrule 35.15(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

35.15(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

657—35.16(17A,272C) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer or, in the case of a license or registrant disciplinary hearing, to the executive secretary/director.

35.16(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 party's representative.

An oral application for a continuance may be made if the presiding officer, or in a disciplinary hearing the executive secretary/director, 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 or, in a disciplinary hearing, by the executive secretary/director. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

35.16(2) In determining whether to grant a continuance, the presiding officer, or in a disciplinary hearing the executive secretary/director, may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;
e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors.

The presiding officer, or in a disciplinary hearing the executive secretary/director, may require documentation of any grounds for continuance.

657—35.17(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

657—35.18 Reserved.

657—35.19(17A,124B,126,147,155A,205,272C) Hearing procedures in contested cases.

35.19(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

35.19(2) All objections shall be timely made and stated on the record.

35.19(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

35.19(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

35.19(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

35.19(6) Witnesses may be sequestered during the hearing.

35.19(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

35.19(8) A license discipline hearing shall be conducted by a qualified administrative law judge and a quorum of the board or panel of not less than three pharmacist members. The administrative law judge's duties shall include:

a. Opening the record and receiving appearances.
b. Administering oaths.
c. Entering notice of the hearing into the record.

d. Receiving testimony and exhibits presented by the parties.

e. At the administrative law judge's discretion, interrogating witnesses.

f. Making initial rulings on objections and motions.

g. Closing the hearing.

h. Participating in board or panel deliberations and preparing an order containing findings of fact and conclusions of law in accordance with the board's or panel's decisions.

35.19(9) In a license disciplinary hearing, the administrative law judge shall prepare in writing the proposed decision of the panel or the final decision of the board, as applicable. Such decisions shall:

a. Be in writing and signed by the board chairperson or the chairperson's designee.

b. Set forth the issues, a brief history of the case, findings of fact, the reasons for the decision, and the actual decision.

c. Be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.

d. Be delivered to the licensee, permittee, or registrant by personal service or by certified mail, return receipt requested.

35.19(10) License, permit, or registration disciplinary hearings shall be open to the public except as provided in Iowa Code section 272C.6 and Iowa Code chapter 21.

35.19(11) Copies of all decisions of the pharmacy board shall be kept on file for public inspection at the office of the board as per conditions set out in 657—Chapter 14.

35.19(12) Oral proceedings in connection with a hearing in a contested case shall be recorded either by mechanized means or by certified shorthand reporters. These records shall be kept in the board office for a period of five years following the date of the hearing.

35.19(13) The chairperson of the board shall have the right to vote in all administrative hearings.

35.19(14) When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision.

657—35.20(17A,272C) Evidence.

35.20(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

35.20(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

35.20(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

35.20(4) 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 upon such evidence even if it would be inadmissible in a jury trial.

35.20(5) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

35.20(6) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

35.20(7) 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.

35.20(8) Subject to the above requirements, when a hearing will be expedited and the interest of the patients will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

35.20(9) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.

657—35.21(17A,272C) Default.

35.21(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.

35.21(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.

35.21(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action 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 657—35.26(17A,124B,126, 147,155A,205,272C). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

35.21(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.

35.21(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.

35.21(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 236.

35.21(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 657—35.24(17A,272C).

35.21(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.

35.21(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

35.21(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 657—35.28(17A, 272C).

657—35.22(17A,272C) Ex parte communication.

35.22(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 board 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 35.9(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.

35.22(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.

35.22(3) Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

35.22(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 657—35.11(17A,272C) and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

35.22(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

35.22(6) The executive secretary/director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 35.22(1).

35.22(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 657—35.16(17A,272C).

35.22(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.

35.22(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.

35.22(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 board. Violation of ex parte communication prohibitions by board personnel shall be reported to the executive secretary/director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

657—35.23(17A,272C) Recording costs. Upon request, the board of pharmacy examiners shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

657—35.24(17A,272C) Interlocutory appeals. If the board is not serving as the presiding officer, upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

657—35.25 Reserved.

657—35.26(17A,124B,126,147,155A,205,272C) Appeals and review.

35.26(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

35.26(2) *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

35.26(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board of pharmacy examiners. 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;

e. The grounds for relief.

35.26(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 non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

35.26(5) *Scheduling.* The board of pharmacy examiners shall issue a schedule for consideration of the appeal.

35.26(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 20 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 board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

657—35.27(17A,124B,126,147,155A,205,272C) Applications for rehearing.

35.27(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

35.27(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 35.26(4), the applicant requests an opportunity to submit additional evidence.

35.27(3) *Time of filing.* The application shall be filed with the board of pharmacy examiners within 20 days after issuance of the final decision.

35.27(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board of pharmacy examiners shall serve copies on all parties.

35.27(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

657—35.28(17A,272C) Stays of board actions.

35.28(1) *When available.*

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

b. Any party to a contested case proceeding may petition the board of pharmacy examiners 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.

35.28(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the following factors:

a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter;

b. The extent to which the applicant will suffer irreparable injury if relief is not granted;

c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings;

d. The extent to which the public interest relied on by the board is sufficient to justify the board's action in the circumstances.

35.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

657—35.29(17A,272C) 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.

657—35.30 (17A,124B,126,147,155A,205,272C) Emergency adjudicative proceedings.

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

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

35.30(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 agency'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 board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Facsimile. Facsimile transmission may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by facsimile and has provided a facsimile telephone number for that purpose.

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

35.30(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

35.30(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board 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 board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23 as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 124.304, 124B.12, 126.17, 147.96, 155A.6, 155A.12, 155A.13A, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

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CHAPTER 36
DISCIPLINE

657—36.1(147,155A,272C) Authority and grounds for discipline.

36.1(1) The board has the authority to impose discipline for any violations of Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, and 272C or the rules promulgated thereunder.

36.1(2) The board has the authority to impose the following disciplinary sanctions:

a. Revocation of a registration or of a license to operate a pharmacy or to practice pharmacy.

b. Suspension of a registration or of a license to operate a pharmacy or to practice pharmacy until further order of the board or for a specified period.

c. Nonrenewal of a registration or of a license to operate a pharmacy or to practice pharmacy.

d. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.

e. Probation.

f. Require additional education or training.

g. Require a reexamination.

h. Order a physical or mental examination.

i. Impose civil penalties not to exceed $25,000.

j. Issue citation and warning.

k. Such other sanctions allowed by law as may be appropriate.

l. Suspend for a specified period of time the licensee's privilege to participate in the medical assistance program operated by the state.

m. Deny, suspend, or revoke a wholesale drug license.

n. Refuse, suspend, or revoke a precursor substance permit.

36.1(3) The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee, registrant, or permittee.

36.1(4) The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), including civil penalties in an amount not to exceed $25,000, when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, to operate a pharmacy doing business in this state, or to operate as a wholesale drug distributor doing business in this state or in making an application for a registration to practice as a pharmacist-intern or a pharmacy technician, and includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making such application, or attempting to file or filing with the board any false or forged diploma, certificate, affidavit, identification, or qualification in making such application for a license or registration in this state.

b. Professional incompetency. Professional incompetency includes but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a licensee or registrant to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs which may impair a licensee's or registrant's ability to practice with reasonable skill or safety.

e. Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a pharmacist having made deceptive or untrue representations as to competency to perform professional services which the pharmacist is not qualified to perform by virtue of training or experience.

g. Use of untrue or improbable statements in advertisements.

h. Distribution of intoxicating liquors or drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 155A, 124, and 126.

i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to, a pharmacist's, pharmacist-intern's, or pharmacy technician's intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy examiners or the state department of public health or violating a lawful order of the board in a disciplinary hearing or violating the provisions of Title IV (Public Health) of the Code of Iowa, as amended.

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

k. Failure to report a license or registration revocation, suspension, or other disciplinary action taken by another state, territory or country.

l. Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacy technician.

m. Inability of a licensee or registrant to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

n. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license or registration for the duration of the license or registration unless the board otherwise orders.

o. Submission of a false report of continuing education or failure to submit annual reports of continuing education.

p. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice court claim or action.

q. Failure to file the reports required by subrule 36.2(4) concerning acts or omissions committed by another licensee or registrant.

r. Willful or repeated malpractice.

s. Willful or gross negligence.

t. Obtaining any fee by fraud or misrepresentation.

u. Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections 147.55, 155A.12, and 155A.15.

v. Practicing pharmacy without an active and current Iowa pharmacist license, operating a pharmacy without a current pharmacy license, operating a prescription drug wholesale facility without a current wholesale drug license, practicing as a pharmacist-intern without a current pharmacist-intern registration, or assisting a pharmacist with technical functions associated with the practice of pharmacy without a current pharmacy technician registration except as provided in 657—subrule 22.4(3).

w. Attempting to circumvent the patient counseling requirements, or discouraging patients from receiving patient counseling concerning their prescription drug orders.

x. Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J.

y. Student loan default or noncompliance with the terms of an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261.

z. Engaging in any conduct that subverts or attempts to subvert a board investigation.

aa. Employing or continuing to employ as a practicing pharmacist any person whose Iowa pharmacist license is not current and active, or employing or continuing to employ a person to assist a pharmacist with technical functions associated with the practice of pharmacy who is not currently registered as a pharmacy technician except as provided in 657— subrule 22.4(3).

ab. Retaliatory action. Retaliating against a pharmacist, pharmacist-intern, or a pharmacy technician for reporting to the board as required by board rules or by federal or state law, making allegations of illegal or unethical activities, making other required reports to the board, or cooperating with a board investigation or survey under this chapter.

657—36.2(155A,272C) Investigations.

36.2(1) *General.* The board shall, upon receipt of a written or verbal complaint, or may upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules for licensee, registrant, or permittee discipline.

36.2(2) *Reporting of judgments or settlements.* Each licensee or registrant shall report to the board every adverse judgment in a malpractice action to which the pharmacist, pharmacist-intern, or pharmacy technician is a party, and every settlement of a claim alleging malpractice. The report, together with a copy of the judgment or settlement, must be filed within 30 days from the date of the judgment or settlement.

36.2(3) *Investigation of reports of judgments and settlements.* Reports received by the board from the commissioner of insurance, insurance carriers, and licensees or registrants involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts, or omissions in the practice of pharmacy, shall be reviewed and investigated by the board.

36.2(4) *Reporting of acts or omissions.* Each licensee or registrant, having firsthand knowledge of acts or omissions set forth in subrule 36.1(4), shall report to the board those acts or omissions when committed by another person licensed to practice pharmacy or registered to practice as a pharmacist-intern or as a pharmacy technician. The report shall include the name and address of the licensee or registrant and the date, time, and place of the incident.

36.2(5) *Failure to report.* Upon obtaining information that a licensee or registrant failed to file a report as required by subrule 36.2(4) within 30 days from the date the licensee or registrant initially acquired the information, the board may initiate a disciplinary proceeding against the licensee or registrant who failed to make the required report.

36.2(6) *Confidentiality of investigative files.* Complaint files, investigation files, and all other investigation reports and investigative information in the possession of the board or its employees or agents which relate to licensee, permittee, or registrant discipline shall be privileged and confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee, permittee, or registrant, and the board, its employees, and agents involved in licensee, permittee, or registrant discipline, nor be admissible evidence in any judicial or administrative proceeding other than the proceeding involving licensee, permittee, or registrant discipline. The licensee, permittee, or registrant is not entitled to investigative reports and documentary information until a disciplinary proceeding has been commenced. However, a final written decision, finding of fact, and order of the board in a disciplinary proceeding shall be public record.

36.2(7) *Investigation of allegations.* In order to determine if probable cause exists for a disciplinary hearing, the board, the executive secretary/director, or someone designated by the executive secretary/director, shall cause an investigation to be made into the allegations of the complaint. In this regard, the person complained of may be furnished information concerning the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing but a personal conference with the investigator(s) may be had as a matter of right upon request.

36.2(8) *Investigatory subpoena powers.* In connection with the reporting of acts and omissions as required in 36.2(4), the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help determine whether a contested case proceeding (hearing) should be commenced.

36.2(9) *Investigative report.* Upon completion of the investigation, the investigator(s) shall prepare a report for the board's consideration, which report may contain the position or defense of the respondent, discuss jurisdiction, and set forth any legal arguments and authorities that appear applicable to the case. The report may be concluded with a recommendation as to whether probable cause exists for further proceedings.

36.2(10) *Board consideration.* The board shall review and rule on all investigative reports. Participation in the review and consideration of the investigative report(s) does not bar any board member from participating in any subsequent disciplinary proceeding.

36.2(11) *Ruling on the initial inquiry.*

a. *Rejection.* If a determination is made by the board to reject the case, the complaint may be returned to the complainant along with a statement specifying the reason for rejection. A letter of explanation concerning the decision of the board may be sent to the subject of the investigation.

b. Requirement of further inquiry. If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. Acceptance of the case. If determination is made by the board to initiate formal disciplinary action, the board shall direct the executive secretary/director to prepare a statement of changes and notice of hearing.

657—36.3(147,272C) Peer review committees.

36.3(1) The board may establish and register peer review committees in an emergency or under special circumstances.

36.3(2) The board shall determine which complaints or other matters shall be referred to the peer review committee for investigation, review, and report to the board.

36.3(3) The board may provide investigatory and related services to a peer review committee upon request.

36.3(4) A peer review committee may determine the method to be used in making its investigation, or that it is unable to investigate the report upon a complaint and return the complaint, together with an explanation, to the board.

36.3(5) A peer review committee shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

36.3(6) Members of a peer review committee shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

36.3(7) A peer review committee shall submit to the board for approval the procedures to be used for review, investigation, and handling of all complaints.

657—36.4(17A,124,124B,126,147,155A,272C) Disciplinary proceedings. The proceeding for revocation or suspension of a pharmacy license, a wholesale drug license, a pharmacy technician registration, a pharmacist-intern registration, or a license to practice pharmacy, or to discipline a person licensed to practice pharmacy, or the denial of a license, registration, or permit, or the suspension or revocation of a permit to handle precursor substances, or the refusal to issue or renew a license, registration, or permit, shall be substantially in accord with the procedures set forth in 657—Chapters 35 and 36 of these rules, which are an addition to the procedures stated in Iowa Code sections 147.58 et seq. and 155A.16.

657—36.5(17A,124,124B,126,147,155A,272C) Notice of disciplinary hearing.

36.5(1) The executive secretary/director shall prepare the notice of hearing upon direction to do so by members of the board upon a probable cause determination.

36.5(2) Contents. The notice of hearing shall contain the information set forth in 657—subrule 35.5(2).

36.5(3) Delivery. Delivery of the notice shall constitute the commencement of the contested case proceeding, and delivery may be executed by one of the methods provided for in 657—subrule 35.5(1).

36.5(4) Notice of a hearing involving denial of license, permit, or registration renewal shall be served no later than 30 days before the expiration of the license, permit, or registration.

36.5(5) Notice of a hearing involving revocation or suspension of a license, permit, or registration shall be served no less than 30 days before the time set for the hearing.

657—36.6(17A,124B,147,155A,272C) Informal settlement.

36.6(1) *Parties.*

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the board or the respondent.

b. The board chairperson shall designate the executive secretary/director or one or more board members with authority to negotiate on behalf of the board.

36.6(2) *Waiver of notice and opportunity to be heard.* The decision to enter into informal settlement negotiations is voluntary on the part of the respondent. By entering into informal settlement negotiations, the respondent waives the right to seek disqualification of a board member pursuant to Iowa Code section 17A.17 and 657—35.9(17A) based on that board member's participation in the settlement negotiations. Upon initiation of negotiation, the assistant attorney general is authorized to discuss informal settlement with the board's designee. Consent to negotiation by the respondent also constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation.

36.6(3) *Board approval.* All informal settlements are subject to approval of a majority of the full board. If the board fails to approve an informal settlement, it shall be of no force or effect to either party.

36.6(4) *Participation of designee.* A board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The designated board member is not disqualified from participating in the adjudication of the contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

657—36.7(272C) Appearance. The respondent shall have the right to appear before the board in person or by attorney at the respondent's expense.

657—36.8(17A,147,155A,124B,272C) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, the presiding hearing officer, the primary parties and their representatives, and the fact that all testimony is being recorded.

Hearings before the board generally follow the order established by these rules.

1. The presiding officer shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.
2. The assistant attorney general representing the public interest before the board may make an opening statement.
3. The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve an opening statement until just prior to the presentation of evidence by the respondent.
4. The presentation of evidence on behalf of the public.
5. The presentation of evidence on behalf of the respondent(s).
6. Rebuttal evidence on behalf of the public.
7. Rebuttal evidence on behalf of the respondent(s).
8. Closing arguments, first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

657—36.9(272C) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

657—36.10(17A,272C) Notification of decision. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final decision or order either in person or by first-class mail, or by telephone if necessary to ensure that the parties learn of the decision or order first.

657—36.11(272C) Board decision. The board's decision and order to discipline a licensee, registrant, or permittee or to revoke or suspend a license to practice pharmacy, a wholesale drug license, a license to operate a pharmacy, a registration to practice as a pharmacist-intern or as a pharmacy technician, or to suspend or revoke a permit to handle precursor substances, shall remain in force and effect until the appeal is finally determined and disposed of upon its merit unless the board grants a stay of its decision as provided for in rule 657—35.28(17A).

657—36.12(17A,272C) Publication of decisions. Final decisions of the board relating to disciplinary proceedings may be transmitted to the appropriate professional association and a newspaper of general circulation to be selected by the board.

657—36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacy technician registration or pharmacist-intern registration has been revoked or suspended must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

2. A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license, registration, or permit. Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 657—36.14(17A,124B,147,155A,272C).

4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657—Chapter 14.

657—36.14(17A,124B,147,155A,272C) Informal reinstatement conference.

36.14(1) *Request.* Upon informed and written consent by the respondent, an informal reinstatement conference before the board may be held.

36.14(2) *Confidentiality.* The conference shall be open to the public except as provided in Iowa Code chapter 21 and Iowa Code section 272C.6. Material submitted to the board regarding a licensee, registrant, or permittee subject to suspension or revocation received prior to the filing of an application for reinstatement shall be deemed to be investigatory in nature and therefore confidential. After an application for reinstatement is filed by the respondent, no material regarding the respondent shall be presented to board members until either a formal hearing is held or a request for an informal settlement conference is made and approved. After a request for an informal settlement conference is made and approved, all material submitted by the respondent to the board for its consideration shall be deemed public records and is not confidential unless the respondent requests that the conference be closed. Upon filing a request for an informal reinstatement conference, the respondent consents to the provision of relevant materials to board members prior to the time of the informal reinstatement conference.

36.14(3) *Disposition.* After conducting an informal reinstatement conference, the board may issue a proposed order for reinstatement, may issue a proposed order denying reinstatement, or may order a formal hearing on the application.

36.14(4) *Appeal—formal hearing.* Upon appeal of a proposed order or upon the board's order for formal hearing, application for reinstatement shall be set for formal hearing subject to the same rules of procedure as other cases before the board. By consenting to the informal settlement conference, respondent waives any objection to any board member participating in a formal hearing by virtue of the board member's participation at the informal settlement conference. All materials submitted and statements made by the respondent at the informal settlement conference shall be admissible at a subsequent formal hearing.

657—36.15(17A,124B,147,155A,272C) Voluntary surrender of a license, permit, or registration. A license to practice pharmacy, a license to operate a pharmacy, a wholesale drug license, a permit to handle precursor substances, a pharmacy technician registration, or a pharmacist-intern registration which has been voluntarily surrendered shall be considered a revocation of license, permit, or registration with respect to a request for reinstatement which will be handled under the terms established by rule 657—36.13(17A,124B,147, 155A,272C).

657—36.16(17A,124B,147,155A,272C) License, permit, or registration denial. Any request for a hearing before the board concerning the denial of a license, permit, or registration shall be submitted by the applicant in writing to the board by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license, permit, or registration.

657—36.17(272C) Disciplinary hearings—fees and costs.

36.17(1) Definitions. As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee or registrant:

"Deposition" means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

"Expenses" means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

"Medical examination fees" means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee or registrant when the examination or evaluation is conducted pursuant to an order of the board.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa, for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

36.17(2) The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken by the board against the license or registration. In addition to the fee, the board may recover from the licensee or registrant costs for the following procedures and personnel:

a. Transcript.

b. Witness fees and expenses.

c. Depositions.

d. Medical examination fees incurred relating to a person licensed or registered under Iowa Code chapters 147, 154A, 155, or 169.

36.17(3) Fees and costs assessed by the board pursuant to subrule 36.17(2) shall be calculated by the board's executive secretary/director and shall be entered as part of the board's final disciplinary order. The board's final disciplinary order shall specify the time period in which the fees and costs shall be paid by the licensee or registrant.

36.17(4) Fees and costs collected by the board pursuant to subrule 36.17(2) shall be allocated pursuant to rule 641—173.20(272C). The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

36.17(5) Failure of a licensee or registrant to pay the fees and costs assessed herein in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23 as amended by 1998 Iowa Acts, chapter 1202, 124.301, 124.304, 124B.12, 126.16 to 126.18, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.25, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

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CHAPTER 10

[Ch 10 as appeared in 1973 IDR, transferred to Transportation Department]

PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF PUBLIC SAFETY

[Prior to 4/20/88, see Public Safety Department, 680—Ch 10]

661—10.1(17A) Definitions. The following definitions apply to this chapter unless otherwise specified.

"Commissioner" means the commissioner of the department of public safety.

"Department" means the department of public safety.

661—10.2 to **10.100** Reserved.

DECLARATORY ORDERS

661—10.101(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department, at the Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF PUBLIC SAFETY

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by 10.107(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

661—10.102(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to 10.106(17A) to whom notice is required by any provision of law. The department may also give notice to any other persons.

661—10.103(17A) Intervention.

10.103(1) Any person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under 10.102(17A) and before 30-day time for agency action under 10.108(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

10.103(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 department.

10.103(3) A petition for intervention shall be filed at the Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF PUBLIC SAFETY

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.

2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

4. 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.

5. 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.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

661—10.104(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

661—10.105(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319.

661—10.106(17A) Service and filing of petitions and other papers.

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

10.106(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 Administrative Services Division, Department of Public Safety, Wallace State Office Building, 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 department.

10.106(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 10.312(17A).

661—10.107(17A) Consideration. Upon request by petitioner, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department, to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

661—10.108(17A) Action on petition.

10.108(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the commissioner of public safety or the commissioner's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

10.108(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 10.302(17A).

661—10.109(17A) Refusal to issue order.

10.109(1) The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. 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 agency decision already made.
9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.
11. The petition relates to any criminal investigation.
12. The petition concerns any procedure or practice of the department or any other agency related to initiation or conduct of criminal investigations or referral of matters for possible criminal investigation or prosecution.

10.109(2) A refusal to issue a declaratory order shall indicate the specific grounds for the refusal, unless it pertains to a matter under criminal investigation, or which has been referred for possible criminal prosecution, in which event no information which might compromise the investigation or prosecution shall be released to the petitioner or any intervenor. A refusal to issue a declaratory order constitutes final agency action on the petition.

10.109(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 the refusal to issue an order.

661—10.110(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

661—10.111(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to each original petitioner and to each intervenor.

661—10.112(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound 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 department. The issuance of a declaratory order constitutes final agency action on the petition.

661—10.113 to **10.200** Reserved.

AGENCY PROCEDURE FOR RULE MAKING

661—10.201(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

661—10.202(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department 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 department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

661—10.203(17A) Public rule-making docket.

10.203(1) *Docket maintained.* The department shall maintain a current public rule-making docket.

10.203(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 department, with the approval of the commissioner of public safety. 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 rule-making authority for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

10.203(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 department determinations with respect thereto;

h. Any known timetable for department 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.

661—10.204(17A) Notice of proposed rule making.

10.204(1) *Contents.* At least 35 days before the adoption of a rule the department 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 department 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 department for the resolution of each of those issues.

10.204(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 10.212(2) of this chapter.

10.204(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, 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 department 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 department 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. The price for such a subscription can be obtained from the Plans and Research Bureau, Department of Public Safety, at the address above, by telephone at (515)281-5042, or by electronic mail via the Internet at admrule@dps.state.ia.us.

661—10.205(17A) Public participation.

10.205(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 Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or the person or office designated in the Notice of Intended Action.

10.205(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department 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 department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

10.205(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 commissioner of public safety or the commissioner's designee shall preside at the oral proceeding on a proposed rule. If the commissioner does not preside, the presiding officer shall prepare a memorandum for consideration by the department summarizing the contents of the presentations made at the oral proceeding unless the commissioner determines that such a memorandum is unnecessary. If the oral proceeding relates to rule making which falls within the authority of an official other than the commissioner, the oral proceeding shall be presided over by the official with rule-making authority or that official's designee.

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 agency 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 agency 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 summarize matters which have already been submitted in writing.

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

(4) 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 agency.

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

(6) 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 representatives of the department who may be present 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.

(7) 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.

10.205(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

10.205(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, in advance to arrange access or other needed services.

661—10.206(17A) Regulatory analysis.

10.206(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

10.206(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, 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 department 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 department 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.

10.206(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 department 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 department 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.

10.206(4) *Qualified requesters for regulatory analysis—economic impact.* The department 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;

b. The administrative rules review committee.

10.206(5) *Qualified requesters for regulatory analysis—business impact.* The department 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;

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.

10.206(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the department shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

10.206(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

10.206(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).

10.206(9) *Publication of a concise summary.* The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

10.206(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.

10.206(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).

661—10.207(17A,25B) Fiscal impact statement.

10.207(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.

10.207(2) If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

661—10.208(17A) Time and manner of rule adoption.

10.208(1) *Time of adoption.* The department 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 department 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.

10.208(2) *Consideration of public comment.* Before the adoption of a rule, the department 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.

10.208(3) *Reliance on department expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

661—10.209(17A) Variance between adopted rule and published notice of proposed rule adoption.

10.209(1) The department 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.

10.209(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 department 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.

10.209(3) The department 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 department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

10.209(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

661—10.210(17A) Exemptions from public rule-making procedures.

10.210(1) *Omission of notice and comment.* To the extent the department 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 department 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 department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

10.210(2) Reserved.

10.210(3) *Public proceedings on rules adopted without them.* The department 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 10.210(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the department, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 10.210(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 department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 10.210(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

661—10.211(17A) Concise statement of reasons.

10.211(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 department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, 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.

10.211(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 department's reasons for overruling the arguments made against the rule.

10.211(3) *Time of issuance.* After a proper request, the department 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.

661—10.212(17A) Contents, style, and form of rule.

10.212(1) *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

a. The date the department 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 department 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. The effective date of the rule.

10.212(2) *Incorporation by reference.* The department 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 department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department 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 department may incorporate such matter by reference in a proposed or adopted rule only if the department 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 department, and how and where copies may be obtained from the agency, organization, association, or persons originally issuing that matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

If the department 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.

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

10.212(4) *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

661—10.213(17A) Agency rule-making record.

10.213(1) *Requirement.* The department 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.

10.213(2) *Contents.* The department 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 department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the department'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 department, 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 department and considered by the commissioner of public safety or other official with rule-making authority, 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 department 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 department 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 department 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.

10.213(3) *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

10.213(4) *Maintenance of record.* The department 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 10.213(2)*"g," "h," "i,"* or *"j."*

661—10.214(17A) Filing of rules. The department 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 department shall use the standard form prescribed by the administrative rules coordinator.

661—10.215(17A) Effectiveness of rules prior to publication.

10.215(1) *Grounds.* The department 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 department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

10.215(2) *Special notice.* When the department 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 department 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 department 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 department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 10.215(2).

661—10.216(17A) General statements of policy.

10.216(1) *Compilation, indexing, public inspection.* The department 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," "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.

10.216(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 10.216(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

661—10.217(17A) Review by department of rules.

10.217(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department 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.

10.217(2) In conducting the formal review, the department 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 department'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 department or granted by the department. 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 department'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.

661—10.218(17A) Petition for rule making. Any person or agency may file a petition for rule making with the department at the Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF PUBLIC SAFETY

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. 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.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by subrule 10.221(1).

10.218(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

10.218(2) The department may deny a petition because it does not substantially conform to the required form.

661—10.219(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

661—10.220(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Administrative Rules Coordinator, Plans and Research Bureau, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319.

661—10.221(17A) Agency consideration.

10.221(1) Within 14 days after the filing of a petition, the department 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 department may schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

10.221(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department 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 rulemaking proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

10.221(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 agency's rejection of the petition.

661—10.222(17A) Waiver of rules. The commissioner of public safety may grant waivers of rules. Waivers may be granted at the discretion of the commissioner, upon a finding that a need for the waiver has been established and that the purpose of the rule will be achieved through equivalent technology or compensating factors. Requests for waivers shall be addressed in writing to the Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Each application must contain the following information:

1. The specific rule(s) for which a waiver is requested.
2. Documentation of the need for a waiver. Explanation should be given of the unreasonable hardship which would be created by compliance with the rule(s) cited in the application.
3. Explanation of alternative means to achieve the purpose of the rule(s) through use of equivalent technology or compensating factors.

The commissioner may request any additional information deemed relevant to a waiver request. The commissioner shall grant or deny the requested waiver within 60 days of receiving all requested information.

661—10.223 to 10.300 Reserved.

CONTESTED CASES

661—10.301(17A) Scope and applicability. Rules 661—10.301(17A) to 10.332(17A) apply to contested case proceedings conducted by the department.

661—10.302(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the commissioner of public safety or other person designated by the commissioner to preside over a contested case proceeding.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commissioner of public safety did not preside.

661—10.303(17A) Time requirements.

10.303(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

10.303(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by other provision of 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.

661—10.304(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 agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency 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.

Requests for contested case proceedings shall be filed with the Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319.

661—10.305(17A) Notice of hearing.

10.305(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

10.305(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 10.306(17A), that the presiding officer be an administrative law judge.

661—10.306(17A) Presiding officer.

10.306(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 agency head.

10.306(2) The commissioner of public safety or the commissioner's designee may deny the request only upon a finding that one or more of the following apply:

a. Neither the department nor any officer of the agency 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 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.

10.306(3) The commissioner or the commissioner's designee shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 10.306(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

10.306(4) Reserved.

10.306(5) 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 agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.306(6) Unless otherwise provided by law, the commissioner, 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.

661—10.307(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 department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

661—10.308(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

661—10.309(17A) Disqualification.

10.309(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.

10.309(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 agency 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 10.309(3) and 10.323(9).

10.309(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.

10.309(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.309(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 10.325(17A) and seek a stay under rule 10.329(17A).

661—10.310(17A) Consolidation—severance.

10.310(1) *Consolidation.* The presiding officer may 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.

10.310(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

661—10.311(17A) Pleadings. Formal pleadings are not required in cases initiated by a notice of appeal or a notice of claim. However, the presiding officer may order the parties to file formal pleadings in any case.

661—10.312(17A) Service and filing of pleadings and other papers.

10.312(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 department, 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.

10.312(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

10.312(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Administrative Services Division, Department of Public Safety, Wallace State Office Building, 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 department.

10.312(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

10.312(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Administrative Services Division, Department of Public Safety, Wallace State Office Building, 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).
> (Date) (Signature)

661—10.313(17A) Discovery.

10.313(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.313(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.313(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

10.313(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

661—10.314(17A) Subpoenas.

10.314(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

10.314(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

661—10.315(17A) Motions.

10.315(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.

10.315(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the department or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

10.315(3) The presiding officer may schedule oral argument on any motion.

10.315(4) Motions pertaining to the hearing 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 administrative rule or an order of the presiding officer.

661—10.316(17A) Prehearing conference.

10.316(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

10.316(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

10.316(3) In addition to the requirements of subrule 10.316(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

10.316(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

661—10.317(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

10.317(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 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 department may waive notice of such requests for a particular case or an entire class of cases.

10.317(2) In determining whether to grant a continuance, the presiding officer may consider:
a. Prior continuances;
b. The interests of all parties;
c. The likelihood of informal settlement;
d. The existence of an emergency;
e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors.
The presiding officer may require documentation of any grounds for continuance.

661—10.318(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

661—10.319(17A) Intervention.

10.319(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.

10.319(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. 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 ordinarily be denied.

10.319(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

10.319(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

661—10.320(17A) Hearing procedures.

10.320(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

10.320(2) All objections shall be timely made and stated on the record.

10.320(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

10.320(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

10.320(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

10.320(6) Witnesses may be sequestered during the hearing.

10.320(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

661—10.321(17A) Evidence.

10.321(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

10.321(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

10.321(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

10.321(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 should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

10.321(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.321(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.

661—10.322(17A) Default.

10.322(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.

10.322(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.

10.322(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days, or other period of time specified by statute or rule, 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 10.327(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

10.322(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.

10.322(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, or other time specified by the presiding officer, 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.

10.322(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 236.

10.322(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 10.325(17A).

10.322(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.

10.322(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

10.322(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 10.329(17A).

661—10.323(17A) Ex parte communication.

10.323(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 agency 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 10.309(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.

10.323(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.

10.323(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

10.323(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 10.312(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

10.323(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.

10.323(6) The commissioner of public safety or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 10.323(1).

10.323(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 10.317(17A).

10.323(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 or disclosed, as determined by the presiding officer. 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.

10.323(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.

10.323(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 agency. Violation of ex parte communication prohibitions by department personnel shall be reported to the Internal Affairs Bureau, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

661—10.324(17A) Recording costs. Upon request, the department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

661—10.325(17A) Interlocutory appeals. Upon written request of a party or on the commissioner's own motion, the commissioner of public safety may review an interlocutory order of the presiding officer. In determining whether to do so, the commissioner shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

661—10.326(17A) Final decision.

10.326(1) When commissioner of public safety presides over the reception of evidence at the hearing, the commissioner's decision is a final decision.

10.326(2) When the commissioner does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 10.327(17A).

661—10.327(17A) Appeals and review.

10.327(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commissioner of public safety within 30 days after issuance of the proposed decision.

10.327(2) *Review.* The commissioner may initiate review of a proposed decision on the commissioner's own motion at any time within 30 days following the issuance of such a decision.

10.327(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. 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;

e. The grounds for relief.

10.327(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 non-appealing party, within 14 days of service of the notice of appeal. The commissioner may remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

10.327(5) *Scheduling.* The department shall issue a schedule for consideration of the appeal.

10.327(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 20 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 commissioner may resolve the appeal on the briefs or provide an opportunity for oral argument. The commissioner may shorten or extend the briefing period as appropriate.

661—10.328(17A) Applications for rehearing.

10.328(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

10.328(2) *Content of application.*

a. 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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 10.327(4), the applicant requests an opportunity to submit additional evidence.

b. Substantially state in separate numbered paragraphs the following:

(1) Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;

(2) Clear and concise statements of all relevant facts upon which the party relies;

(3) Refer to any particular statute or statutes and any rule or rules involved;

(4) The signature of the party or that of the representative.

10.328(3) *Time of filing.* The application shall be filed with the Administrative Services Division, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, within 20 days after issuance of the final decision.

10.328(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 department shall serve copies on all parties.

10.328(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

661—10.329(17A) Stays of agency actions.

10.329(1) *When available.*

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

b. Any party to a contested case proceeding may petition the department 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.

10.329(2) *When granted.* In determining whether to grant a stay, the presiding officer or commissioner shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

10.329(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

661—10.330(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.

661—10.331(17A) Emergency adjudicative proceedings.

10.331(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 department may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

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

10.331(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 department'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 department;

(3) Certified mail to the last address on file with the department;

(4) First-class mail to the last address on file with the department; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

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

10.331(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

10.331(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department 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 agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

661—10.332(17A) Burden of proof. Unless otherwise provided by law, the burden of proof in all contested case proceedings in which the department is a party shall be on the petitioner.

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

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REVENUE AND FINANCE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

CHAPTER 17
EXEMPT SALES

CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD OF TRANSACTION OR USAGE

CHAPTER 19
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

TITLE V
INDIVIDUAL

CHAPTER 38
ADMINISTRATION

CHAPTER 39
FILING RETURN AND PAYMENT OF TAX

CHAPTER 40
DETERMINATION OF NET INCOME

TITLE XIX
ACCOUNTING

CHAPTER 201
AUDITING CLAIMS

CHAPTER 202
Reserved

CHAPTER 203
EMPLOYEE PAYROLL DEDUCTIONS
"CHARITABLE ORGANIZATIONS"

CHAPTER 204
PROFESSIONAL/TRADE DUES
DEDUCTIONS

CHAPTER 205
Reserved

CHAPTER 206
INSURANCE DEDUCTIONS

CHAPTERS 207 to 209
Reserved

CHAPTER 210
PREPAYMENT OF EXPENSES

CHAPTER 1
STATE BOARD OF TAX REVIEW—ADMINISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—1.1(17A) Establishment, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests. By an Act of the General Assembly (chapter 342, Acts of the 62nd GA) there was established within the department of revenue for administrative and budgetary purposes a state board of tax review hereinafter called the state board. The state board consists of three members appointed by the governor to serve six-year terms and a secretary. One of the three members is selected as the chairperson and it is the chairperson's duty to call and chair meetings.

The state board is required by law to meet at least six times a year with the first meeting on the second secular day of July. At such meetings the state board conducts hearings to review matters appealed to them from the department of revenue and finance or on their own motion, determines and adopts such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review, advises and counsels with the director of revenue and finance concerning the tax laws and regulations, prepares and submits to each regular session of the General Assembly a report containing such recommendations as to changes in the tax laws as the state board determines necessary, and sets the capitalization rate for agricultural property within the state.

The office of the state board is maintained in the office of the Department of Revenue and Finance at the seat of government in the Hoover State Office Building, Des Moines, Iowa 50319. Persons wishing to obtain information pertaining to the state board or to make submissions or requests should address correspondence to that address.

This rule is intended to implement Iowa Code chapter 17A and section 421.1.

701—1.2(17A) Time for issuing a decision. The board shall issue its decisions in writing in matters considered by it on appeal within a reasonable time after the matter has been submitted to the board. The term "submitted to the board" means that time in the appeal proceeding when all the evidence in the matter on appeal has been taken, motions by counsel have been ruled upon, the arguments of counsel made, and all briefs have been submitted to the board or the time for submitting briefs has expired. See Iowa Code section 4.1(34) for computation time and *Emmetsburg Ready Mix Co. v. Norris,* 362 N.W.2d 498 (Iowa 1985), when the last day for filing falls on a holiday.

This rule is intended to implement Iowa Code sections 17A.22 and 421.1(4).

701—1.3(17A) Declaratory orders. The state board will not consider or rule upon petitions for declaratory orders as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order. Upon request, the state board may review a ruling of the department of revenue and finance disposing of a petition for a declaratory order properly submitted to the department of revenue and finance.

This rule is intended to implement Iowa Code sections 421.1 and 441.49 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—1.4(17A) Petitions for rule making. The state board will not consider any petitions of interested persons requesting the promulgation, amendment or repeal of a substantive tax rule. Such petitions should be submitted to the department of revenue and finance. The board will, however, consider and dispose of petitions of interested persons requesting the amendment or repeal of procedural or administrative rules of the state board of topics covered in Chapter 1 or 2 of these rules or the promulgation of such rules.

This rule is intended to implement Iowa Code sections 421.1 and 441.49 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 2
CONDUCT OF APPEALS, RULES OF PRACTICE AND PROCEDURE

[Prior to 12/17/86, Revenue Department[730]]

DIVISION I
CONDUCT OF APPEALS FOR PROCEEDINGS COMMENCED BEFORE JULY 1, 1999, AND GENERAL RULES OF PRACTICE AND PROCEDURE

701—2.1(421,17A) Definitions. For the purposes of these rules the following definitions shall govern:

1. *"Board"* or *"state board"* shall refer to the state board of tax review created by chapter 342 of the Acts of the 62nd General Assembly.
2. *"Department"* shall refer to the Iowa department of revenue and finance.
3. *"Director"* shall refer to the director of the Iowa department of revenue and finance.
4. *"Secretary"* shall refer to the secretary of the state board of tax review.

701—2.2(421,17A) Notice of appeal. Jurisdiction is conferred upon the state board by giving written notice to the department within 30 days of the rendering of the decision, order or directive from which such appeal is taken. However, the state board does not have jurisdiction with regard to a final equalization notice issued pursuant to Iowa Code section 441.49, unless written notice is given within 10 days of the date of the order in accordance with rule 701—71.15(441).

Notice of appeal may be given by certified mail with return receipt requested addressed to the department of revenue and finance to the attention of the director; or, by service on the director or an assistant director as provided by the Iowa rules of civil procedure.

Notice shall be proved by affidavit of mailing signed by appellant or the appellant's duly authorized representative, with return receipt and a copy of the notice attached filed with the secretary or, filing with the secretary a copy of the notice of appeal with return of service attached.

This rule is intended to implement Iowa Code sections 441.49 and 421.2.

701—2.3(421,17A) Contents of notice of appeal. The written notice of appeal shall contain:

1. A caption in the following form:

BEFORE THE IOWA STATE BOARD OF TAX REVIEW
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	☆	NOTICE OF APPEAL
(state taxpayer's name, address and designate	☆	DOCKET NO. _____
type of proceeding e.g., income tax refund	☆	(filled in by Board)
claim)	☆	

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2. Substantially state in separate numbered paragraphs the following:

a. The appellant's name and legal residence;

b. The date appellant received the director's decision, order or directive;

c. The amount of assessment, nature of tax, year or other period, date of assessment, and approximate amount of total tax liability in controversy;

d. A clear and concise assignment of each and every error;

e. A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;

f. The relief requested;

g. The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

701—2.4(421,17A) Certification by director. Within 30 days after notice of appeal is given the director shall certify to the board all records, documents, reports, audits, a copy of the decision, order or directive from which appeal is taken and all other information pertinent thereto.

701—2.5(421,17A) Motions and special appearances. All motions or special appearances shall be in writing and shall be filed with the state board within 30 days after the filing of the pleading attacked and shall set forth the reasons and grounds thereof. The state board shall act upon such motions or special appearances as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit.

701—2.6(421,17A) Responsive pleadings. Responsive pleadings shall be filed with the state board within 30 days after the filing of pleading responded to, unless attacked by motion or special appearance as provided in 2.5(421,17A), and then responsive pleadings shall be filed within 30 days after ruling on said motion or special appearance.

701—2.7(421,17A) Docketing. Appeals shall be assigned consecutive file numbers. The state board shall cause to be kept a well-bound, blank record book with suitable index. There shall be entered therein each action and each act done with the proper dates as follows:

1. The title of the appeal.
2. Brief statement of the type of tax, year or period, date of assessment, and the amount involved including tax, penalty, interest and costs.
3. The manner and time of service of notice of appeal.
4. The appearance of all parties.
5. Notice of hearing, together with manner and time of service.
6. The decision of the state board or other disposition of the case and the date thereof.

701—2.8(421,17A) Filing of papers. After filing proof of giving notice, all motions, pleadings, briefs and other papers to be filed shall be in quadruplicate with the secretary who shall send copies to members of the state board and to all other parties of record, unless represented by counsel of record, then to such counsel.

701—2.9(421,17A) Hearing an appeal. Hearing an appeal shall be de novo. The case may be submitted on an agreed statement of the facts with written briefs and arguments. Or, the state board, on its own motion or at the written request of any party, may allow the production of evidence, by oral testimony or otherwise, and the submission of the case on oral arguments, or any combination of the foregoing.

Notwithstanding the aforementioned provisions of this rule, in the event that the case consists of a review by the board of a decision of the director in a contested case proceeding, the board will only consider those issues or selected issues actually presented at the contested case proceeding where such issues were of the type which by statute were entrusted to the director for determination. Further, in such review of the decision of the director on these issues presented at the contested case proceeding, the board shall not itself hear any further evidence with respect to those issues, but it shall afford each party an opportunity to present briefs and oral arguments.

This rule is intended to implement Iowa Code sections 421.1(4) and 17A.15(5).

701—2.10(421,17A) Amendments. The board, upon its own motion or upon motion of either party showing good cause filed prior to setting the appeal for hearing, may order a party to file a further and better statement of the nature of the claim or defense. Such a motion filed by a party shall point out defects complained of and the details desired.

The state board may set such motions for hearing or may rule thereon ex parte.

The state board may at any time during the course of the hearing grant motion of either party to amend to conform to the proof.

701—2.11(421,17A) Appearances by appellant. Any appellant may appear in person, or, in the case of corporations, partnerships or other associations, by its duly authorized representative, or by an attorney at law or a certified public accountant authorized to practice in the state of Iowa.

701—2.12(421) Authority of chairperson to enter prehearing and procedural orders. During periods when the board is not in session, the chairperson, or other member designated by the chairperson, may enter preliminary orders for a party to file a better statement of the nature of a claim or defense under rule 701—2.10(421,17A) or a continuance under rule 701—2.14(421,17A) or order a prehearing conference before the board to be conducted under rule 701—2.13(421,17A). The chairperson, or other member designated by the chairperson, may also enter preliminary orders on discovery disputes or other prehearing matters which should be timely resolved in order to assist the progress of the appeal toward final hearing before the board. The secretary shall immediately mail a copy of any preliminary order entered under this rule to the two members of the board who did not participate in the order. All orders entered under this rule shall become the action of the board unless both members of the board who did not participate in the order notify the secretary of their objection within five days of its receipt by them. In case both members of the board who did not participate in the order object, then the order shall be null and void. The secretary shall notify the parties of the order entered under this rule, when it becomes the order of the board. The chairperson, or other member designated by the chairperson, may grant a continuance of the hearing on appeal for just cause even though there is insufficient time before the scheduled hearing for other members of the board to object to the continuance.

701—2.13(421,17A) Prehearing procedure. The state board, on its own motion or on the written request of any party, may order a prehearing conference to consider:

1. The desirability of amending pleadings.
2. Agreeing to the admission of facts, documents or records not really controverted, to avoid unnecessary proof.
3. Limiting the number of witnesses.
4. Settling any facts of which the state board is to be asked to take judicial notice.
5. Stating and simplifying the factual and legal issues.
6. Consolidation or separation of cases.
7. Possibility of compromise.
8. Manner of submission of case.
9. Any other matter which may aid, expedite or simplify the hearing.

The state board shall make an order reciting any action taken at the prehearing conference which will control the subsequent course of the case relative to matters it includes, unless modified to prevent manifest injustice.

701—2.14(421,17A) Continuances. Any hearing may be continued for good cause. Requests for continuance prior to the hearing shall be in writing, promptly filed with the state board immediately upon the cause becoming known.

701—2.15(421,17A) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Des Moines, Iowa 50319.

701—2.16(421,17A) Members participating. All appeals shall be heard by a minimum of two members of the state board or a hearing officer. Orders and decisions shall be signed by one member of the board and shall name members participating. Decisions shall affirm, modify, remand or reverse the director's decision, order or directive. A majority decision by the state board shall govern and control. Written dissenting decisions may be filed.

701—2.17(421,17A) Presiding officer. The chairperson of the state board, the chairperson's designated member or a hearing officer appointed according to Iowa Code chapter 17A shall preside at the hearing.

701—2.18(421,17A) Rulings of the chair. The presiding member shall rule upon motions, objections and other evidentiary matters arising during a hearing, or such rulings may be deferred to the state board or reserved.

701—2.19(421,17A) Rules of evidence. Although the state board is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the state board may give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The state board shall give effect to the rules of privilege recognized by law. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the state board.

701—2.20(421,17A) Transcript of hearing. Hearings shall be stenographically reported and a transcript thereof shall be made if in the opinion of the state board a permanent record is deemed necessary. Either party may provide a certified court reporter at their own expense.

701—2.21(421,17A) Suspension or alterations of rules. The board may in its discretion, on its own motion, or upon request by the parties, amend, modify or suspend any of its rules or may adopt other or different rules for the conduct of hearings and procedure before the board.

701—2.22(17A) Declaratory rulings. The state board will not consider or rule upon petitions for declaratory rulings as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order. Upon request, the state board may review a ruling of the department of revenue and finance disposing of a petition for a declaratory ruling properly submitted to the department of revenue and finance.

701—2.23(17A) Petitions for rule making. The state board will not consider any petitions of interested persons requesting the promulgation, amendment or repeal of a substantive tax rule. Such petitions should be submitted to the department of revenue and finance. The board will, however, consider and dispose of petitions of interested persons requesting the amendment or repeal of procedural or administrative rules of the state board of topics covered in chapter 1 or 2 of these rules or the promulgation of such rules.

These rules are intended to implement Iowa Code sections 421.1, 441.49 and chapter 17A.

DIVISION II
RULES GOVERNING CONTESTED CASE PROCEEDINGS COMMENCED ON OR AFTER JULY 1, 1999

Section A
Appeals from Final Contested Case Decisions of or Attributable to the Director of Revenue and Finance

701—2.24(421,17A) Definitions. For the purposes of Division II, Section A, the following definitions shall govern:

"Board" or *"state board"* shall refer to the state board of tax review created by chapter 342 of the Acts of the Sixty-second General Assembly.

"Department" shall refer to the department of revenue and finance.

"Director" shall refer to the director of the department of revenue and finance.

"Secretary" shall refer to the secretary of the state board of tax review.

701—2.25(421,17A) Notice of appeal. Jurisdiction is conferred upon the state board by giving written notice to the department within 30 days of the rendering of the decision, order or directive from which such appeal is taken.

Notice of appeal may be given by certified mail with return receipt requested addressed to the department of revenue and finance to the attention of the director; or by service on the director or an assistant director as provided by the Iowa Rules of Civil Procedure.

Notice shall be proved by affidavit of mailing signed by appellant or the appellant's duly authorized representative, with return receipt and a copy of the notice attached filed with the secretary or, filing with the secretary a copy of the notice of appeal with return of service attached.

This rule is intended to implement Iowa Code sections 421.2 and 441.49 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—2.26(421,17A) Contents of notice of appeal. The written notice of appeal shall contain a caption in the following form:

BEFORE THE IOWA STATE BOARD OF TAX REVIEW
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ _____ (state taxpayer's name, address and designate type of proceeding, e.g., income tax refund claim).	NOTICE OF APPEAL DOCKET NO. _____ _____ (filled in by Board)

The notice of appeal shall substantially state in separate numbered paragraphs the following:

1. The appellant's name and legal residence;
2. The date the director's decision, order or directive was issued;
3. The amount of assessment or refund denial, nature of tax, year or other period, date of assessment or refund denial, and approximate amount of total tax liability in controversy;
4. A clear and concise assignment of each and every error;

5. A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;
6. The relief requested;
7. The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

701—2.27(421,17A) Certification by director. Within 30 days after notice of appeal is given, the director shall certify to the board all records, documents, reports, audits, a copy of the decision, order or directive from which appeal is taken, and all other information pertinent thereto.

701—2.28(421,17A) Motions. All motions shall be in writing and shall be filed with the secretary of the state board within 30 days after the filing of the pleading attached and shall set forth the reasons and grounds thereof. The state board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit.

701—2.29(421,17A) Answer. An answer shall be filed with the secretary of the state board within 30 days after the filing of pleading responded to, unless attached by motion as provided in rule 701—2.28(421,17A), and then the answer shall be filed within 30 days after the date on which the state board issues a ruling on said motion.

701—2.30(421,17A) Docketing. Appeals shall be assigned consecutive file numbers. The state board shall cause to be kept a well-bound, blank record book with suitable index.

There shall be entered therein each action and each act done with the proper dates as follows:
1. The title of the appeal;
2. Brief statement of the type of tax, year or period, date of assessment or refund denial, and the amount involved including tax, penalty, interest, and costs;
3. The manner and time of service of notice of appeal;
4. The appearance of all parties;
5. Notice of hearing, together with manner and time of service; and
6. The decision of the state board or other disposition of the case and the date thereof.

701—2.31(421,17A) Filing of papers. After proof of notice has been filed, all motions, pleadings, briefs and other papers to be filed shall be in quadruplicate with the secretary who shall send copies to members of the state board and to all other parties of record, unless represented by counsel of record, then to such counsel.

701—2.32(421,17A) Hearing an appeal. In the event that the case consists of a review by the board of a decision of or attributable to the director in a contested case proceeding, the board will only consider those issues or selected issues actually presented at the contested case proceeding where such issues were of the type which by statute were entrusted to the director for determination. Further, in such review of the decision of or attributable to the director on these issues presented at the contested case proceeding, the board shall not itself hear any further evidence with respect to those issues, but it shall afford each party an opportunity to present briefs and oral arguments.

This rule is intended to implement Iowa Code sections 421.1(4) and 17A.15(5).

701—2.33(421,17A) Appearances by appellant. Any appellant may appear in person or, in the case of corporations, partnerships or other associations, by its duly authorized representative, or by an attorney-at-law or a certified public accountant authorized to practice in the state of Iowa.

701—2.34(421) Authority of state board to enter issue procedural orders. The state board or member of the state board may issue preliminary orders regarding procedural matters. The secretary for the state board shall immediately mail a copy of any such preliminary order entered under this rule to the two members of the board who did not participate in the order. All orders entered under this rule shall become the action of the board unless both members of the board who did not participate in the order notify the secretary of their objection within five days of its receipt by them. If both members of the board who did not participate in the order timely object, then the order shall be null and void. The secretary shall notify the parties of the order entered under this rule, when it becomes the order of the board. The chairperson, or other member designated by the chairperson, may grant a continuance of the hearing on appeal for "good cause" even though there is insufficient time before the scheduled hearing for other members of the board to object to the continuance.

701—2.35(421,17A) Continuances. Any hearing may be continued for "good cause." Requests for continuance prior to the hearing shall be in writing, promptly filed with the state board immediately upon the cause becoming known.

701—2.36(421,17A) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Des Moines, Iowa 50319.

701—2.37(421,17A) Members participating. All appeals shall be heard by a minimum of two members of the state board. Orders and decisions shall be signed by one member of the board and shall name members participating. Decisions shall affirm, modify, remand, or reverse the decision, order or directive appealed from. A majority decision by the state board shall govern and control. Written dissenting decisions may be filed.

701—2.38(421,17A) Presiding officer. The chairperson of the state board, or a designated member shall preside at the hearing.

Section B
Rules Governing Contested Case Proceedings in which the
State Board Has Original Jurisdiction to Commence a
Contested Case Proceeding

701—2.39(421,17A) Applicability and scope. The rules set forth under Division II, Section B, govern the proceedings for all cases in which the state board has original jurisdiction to commence a contested case proceeding. The rules within Division II, Section B, govern all such cases for which the state board has original jurisdiction and which are commenced on or after July 1, 1999.

701—2.40(17A) Definitions. For the purposes of Division II, Section B, the following definitions shall govern:

"Board" or *"state board"* shall refer to the state board of tax review created by chapter 342 of the Acts of the Sixty-second General Assembly.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5), over which the state board of tax review has original jurisdiction to commence a contested case proceeding and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Department" means the department of revenue and finance.

"Department of inspections and appeals" means the state department created by Iowa Code chapter 10A.

"Director" means the director of the department or the director's authorized representative.

"Division of administrative hearings" means the division of the department of inspections and appeals responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Person" means any individual, estate, trust, fiduciary, partnership including limited liability partnership, corporation including limited liability corporation, association, governmental subdivision, or public or private organization of any character or any other person covered by the Act other than an agency.

"Presiding officer" means the members of the state board officiating over the contested case proceedings or, if the notice of appeal is transferred, an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case.

701—2.41(421,17A) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34).

701—2.42(421,17A) Notice of appeal. Jurisdiction is conferred upon the state board by giving written notice to the department within 30 days of the rendering of the decision, order, or directive from which such appeal is taken. However, the state board does not have jurisdiction with regard to a final equalization notice issued pursuant to Iowa Code section 441.49, unless written notice is given within ten days of the date of the order in accordance with rule 701—71.15(441).

Notice of appeal may be given by certified mail with return receipt requested addressed to the department of revenue and finance to the attention of the director or by service on the director or an assistant director as provided by the Iowa Rules of Civil Procedure.

Notice shall be proved by affidavit of mailing signed by appellant or the appellant's duly authorized representative, with return receipt and a copy of the notice attached filed with the secretary, or filing with the secretary a copy of the notice of appeal with return of service attached.

This rule is intended to implement Iowa Code sections 421.2, 441.49 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—2.43(421,17A) Contents of notice of appeal. The written notice of appeal shall contain a caption in the following form:

BEFORE THE STATE BOARD OF TAX REVIEW
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ _____ (state taxpayer's name, address and designate type of proceeding e.g., income tax refund claim).	NOTICE OF APPEAL DOCKET NO. _____ _____ (filled in by Board)

The notice of appeal shall substantially state in separate numbered paragraphs the following:

1. The appellant's name and legal residence;
2. The date appellant received the director's decision, order, or directive;
3. The amount of assessment, nature of tax, year or other period, date of assessment, and approximate amount of total tax liability in controversy;
4. A clear and concise assignment of each and every error;
5. A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;
6. The relief requested;
7. The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

701—2.44(421,17A) Certification by director. Within 30 days after notice of appeal is given the director shall certify to the board all records, documents, reports, audits, a copy of the decision, order or directive from which appeal is taken, and all other information pertinent thereto.

701—2.45(421,17A) Answer. An answer shall be filed with the secretary of the state board within 30 days after the filing of pleading responded to, unless attached by motion as provided in Division II, Section A, rule 701—2.28(421,17A), and then the answer shall be filed within 30 days after the date on which the board issues a ruling on said motion.

701—2.46(421,17A) Docketing. Appeals shall be assigned consecutive file numbers. The state board shall cause to be kept a well-bound, blank record book with suitable index.

There shall be entered therein each action and each act done with the proper dates as follows:

1. The title of the appeal;
2. Brief statement of the type of tax, year or period, date of assessment, and the amount involved including tax, penalty, interest and costs;
3. The manner and time of service of notice of appeal;
4. The appearance of all parties;
5. Notice of hearing, together with manner and time of service; and
6. The decision of the state board or other disposition of the case and the date thereof.

701—2.47(421,17A) Appearances by appellant. Any appellant may appear in person or, in the case of corporations, partnerships or other associations, by its duly authorized representative, or by an attorney-at-law or a certified public accountant authorized to practice in the state of Iowa.

701—2.48(421,17A) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Des Moines, Iowa 50319.

701—2.49(421,17A) Transcript of hearing. Hearings shall be stenographically reported and a transcript thereof shall be made if, in the opinion of the state board, a permanent record is deemed necessary. Either party may provide a certified court reporter at the party's own expense.

701—2.50(421,17A) Requests for contested case. Any party may request commencement of a contested case proceeding by filing a written request for such a proceeding after the notice of appeal and answer has been filed.

701—2.51(421,17A) Notice of hearing.

2.51(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure;

b. Certified mail, return receipt requested;

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

2.51(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the state board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the parties' representatives where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer;

h. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15, and 701—2.52(421,17A), that the presiding officer be an administrative law judge; and

i. Whether the state board on its own motion has decided to transfer the case to the division of administrative hearings.

701—2.52(17A) Presiding officer.

2.52(1) Request. 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 request for commencement of a contested case proceeding as provided in rule 701—2.50(421, 17A).

2.52(2) The state board may deny the request only upon a finding that one or more of the following apply:

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

b. An administrative law judge with the qualifications identified in subrule 2.52(4) is unavailable to hear the case within a reasonable time;

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

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

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

f. The request was not timely filed;

g. The request is not consistent with a specified statute; or

h. The state board based on its discretion may wish to retain the case due to the subject matter of the case or issues involved in the case.

2.52(3) Ruling on request. The state board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 2.52(4), the parties shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will not be available.

2.52(4) Qualifications of the administrative law judge. An administrative law judge assigned to act as a presiding officer in a case in which the state board has original jurisdiction shall have the following technical expertise unless waived by the state board: The administrative law judge must be an attorney licensed to practice law in the state of Iowa and, based on the discretion of the state board, possess sufficient technical expertise in the area of taxation and related matters to be capable of rendering a fair and competent decision in such cases.

2.52(5) Appeal of proposed decision by the administrative law judge. 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 state board. A party must seek any available interagency appeal in order to exhaust adequate administrative remedies.

2.52(6) Review of interagency appeals. Unless otherwise provided by law, members of the state board, when reviewing a proposed decision upon interagency appeal, shall have the powers of Division II, Section B, which apply to presiding officers.

701—2.53(421,17A) Transfer of case for hearing or appeal. The secretary for the state board shall transfer the case file to the division of administrative hearings within 30 days of the date of a determination by the state board that the case should be transferred. The parties to the case shall be notified at least ten days prior to the hearing if a qualified administrative law judge will be available.

The administrative hearings division shall, upon issuance of a proposed decision, promptly forward the record of the contested case proceeding and all other papers associated with the case to the state board, if no timely motion to vacate under rule 701—2.68(421,17A) is filed. If such a motion is filed, the record shall be promptly forwarded after the motion to vacate is denied or a proposed decision is rendered on the merits.

701—2.54(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of Division II, Section B. However, the state board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

701—2.55(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

701—2.56(421,17A) Disqualifications.

2.56(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, or 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.

2.56(2) Personally investigated. 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 functions of the state board, 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 or a member of the state board shall be disclosed if required by 1998 Iowa Acts, chapter 1202, section 19(3), subrule 2.56(3), and 701—2.69(421,17A).

2.56(3) Withdrawal. 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.

2.56(4) Motion for disqualification. If a party asserts disqualification on any appropriate ground, including those listed in subrule 2.56(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under 701—2.71(421,17A) and seek a stay under 701—2.75(421,17A).

701—2.57(421,17A) Consolidation and severance.

2.57(1) *Consolidation.* The presiding officer may 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.

2.57(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

701—2.58(17A) Service and filing of pleadings and other papers.

2.58(1) *When service is 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 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.

2.58(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

2.58(3) *Filing—when required.* All pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Secretary for the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 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 state board at the address for the secretary of the state board as previously stated. However, once an administrative law judge becomes a presiding officer, thereafter, such papers will be filed with that administrative law judge.

2.58(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Secretary of the State Board of Tax Review, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing. However, when a filing is made with an administrative law judge, a document is deemed filed on the date when delivery to the administrative law judge occurs using one of the methods set forth in this subrule.

2.58(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

701—2.59(421,17A) Discovery.

2.59(1) *Discovery procedure.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

2.59(2) *Discovery motions.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in the above subrule 2.59(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

2.59(3) *Admissibility of evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

701—2.60(421,17A) Subpoenas.

2.60(1) *Issuance.*

a. A subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

2.60(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

701—2.61(421,17A) Motions.

2.61(1) Form. No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

2.61(2) Response. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

2.61(3) Oral argument. The presiding officer may schedule oral argument on any motion.

2.61(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 state board or an order of the presiding officer.

2.61(5) Motions for summary judgment. Motions for summary judgment shall comply with requirements of Iowa Rule of Civil Procedure 237 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 45 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 written submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to appeal or rehearing pursuant to rules 701—2.73(421,17A) and 701—2.74(421,17A).

701—2.62(421,17A) Prehearing conference.

2.62(1) *Request.* Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall not be scheduled less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the state board to all parties. For good cause the presiding officer may permit variances from this rule.

2.62(2) *Prehearing information.* Each party shall bring to the prehearing conference:

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

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; and

c. 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.

2.62(3) *Permissible prehearing conference actions.* In addition to the requirements of subrule 2.62(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

2.62(4) *Telephone.* Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

701—2.63(421,17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

2.63(1) *Application.* A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

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

2.63(2) *Factors in determining a continuance.* In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

701—2.64(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

701—2.65(421,17A) Intervention.

2.65(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.

2.65(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. 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 ordinarily be denied.

2.65(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

2.65(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

701—2.66(421,17A) Hearing procedures.

2.66(1) Authority of presiding officer. The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

2.66(2) Objections. All objections shall be timely made and stated on the record.

2.66(3) Representation. Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

2.66(4) Participation in hearing. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

2.66(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

2.66(6) Sequestration. Witnesses may be sequestered during the hearing.

2.66(7) Conduct of the hearing. The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

c. Parties present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and shall be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

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

701—2.67(421,17A) Evidence.

2.67(1) *Admissibility.* The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

2.67(2) *Stipulations.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

2.67(3) *Scope of admissible evidence.* Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

2.67(4) *Exhibits.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

2.67(5) *Objection.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

2.67(6) *Offer of proof.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

701—2.68(421,17A) Default.

2.68(1) Grounds. 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.

2.68(2) Moving for default. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

2.68(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 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 701—2.73(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

2.68(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision of the motion to vacate.

2.68(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.

2.68(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" as interpreted in the case of *Purethane, Inc. v. Iowa State Board of Tax Review,* 498 N.W.2d 706 (Iowa 1993).

2.68(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 701—2.71(17A).

2.68(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.

2.68(9) A default decision may award any relief consistent with the request for relief made in the pleadings and embraced in their issues.

2.68(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 701—2.75(17A).

701—2.69(421,17A) Ex parte communication.

2.69(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following the 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 a 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 state board 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 701—2.56(421,17A), 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.

2.69(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.

2.69(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

2.69(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 701—2.58(421,17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through a telephone conference call including all parties or their representatives.

2.69(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.

2.69(6) Other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 2.69(2).

2.69(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 701—2.63(421,17A).

2.69(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, or disclosed if an appropriate order is made. 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.

2.69(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.

2.69(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 state board. Violation of ex parte communication prohibitions by state board personnel shall be reported to the Secretary for the State Board of Tax Review, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

701—2.70(421,17A) Recording costs. Upon request, the state board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

701—2.71(421,17A) Interlocutory appeals. Upon written request of a party or on its own motion, the state board may review an interlocutory order of the presiding officer. In determining whether to do so, the state board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the state board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

701—2.72(421,17A) Final decision.

2.72(1) When the state board presides over the reception of evidence at the hearing, its decision is a final decision.

2.72(2) When the state board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the state board without further proceedings unless there is a timely motion to vacate under rule 701—2.68(421,17A), or an appeal to, or review on motion of, the state board within the time provided in rule 701—2.73(421,17A).

701—2.73(421,17A) Appeals and review.

2.73(1) *Appeal by any party.* Any adversely affected party may appeal a proposed decision to the state board within 30 days after issuance of the proposed decision.

2.73(2) *Review.* The state board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

2.73(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Secretary for the State Board, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. 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.

2.73(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 non-appealing party, within 14 days of service of the notice of appeal. The state board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

2.73(5) *Scheduling.* The state board shall issue a schedule for consideration of the appeal.

2.73(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 20 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 state board may resolve the appeal on the briefs or provide an opportunity for oral argument. The state board may shorten or extend the briefing period as appropriate.

701—2.74(421,17A) Applications for rehearing.

2.74(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

2.74(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 decision on the existing record and whether, on the basis of the grounds enumerated in subrule 2.73(4), the applicant requests an opportunity to submit additional evidence.

2.74(3) *Time of filing.* The application shall be filed with the state board within 20 days after issuance of the final decision.

2.74(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 state board shall serve copies on all parties.

2.74(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

701—2.75(421,17A) Stays of agency actions.

2.75(1) *When available.*

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

b. Any party to a contested case proceeding may petition the state board for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

2.75(2) *When granted.* In determining whether to grant a stay, the presiding officer or state board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

2.75(3) *Vacation.* A stay may be vacated by the state board upon application of the department or any other party.

701—2.76(421,17A) No factual dispute contested case. 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.

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

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CHAPTERS 3 and 4
Reserved

CHAPTER 7
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE AND FINANCE

[Prior to 12/17/86, Revenue Department[730]]

DIVISION I
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS COMMENCED PRIOR TO JULY 1, 1999

701—7.1(17A) Definitions. As used in the rules contained herein the following definitions apply, unless the context otherwise requires:

"Act" means the Iowa administrative procedure Act.

"Administrative law judge" means the person assigned to preside over a proceeding whether that be the director or an administrative law judge appointed according to Iowa Code chapter 17A.

"Agency" means each board, commission, department, officer, or other administrative office or unit of the state.

"Contested case" means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

"Department" means the Iowa department of revenue and finance.

"Department of inspections and appeals" means the state department created by Iowa Code chapter 10A.

"Director" means the director of the department or the director's authorized representative.

"Division of appeals and fair hearings" means the division of the department of inspections and appeals responsible for holding contested case proceedings which are authorized by Iowa Code chapter 10A.

"License" means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

"Licensing" means the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

"Motion" has the same meaning as the term is defined in rule 109 of the Rules of Civil Procedure.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including intervenors.

"Person" means any individual, estate, trust, fiduciary, partnership, corporation, association, governmental subdivision, or public or private organization of any character or any other person covered by the Act other than an agency.

"Petition" means application for declaratory ruling, initiation of rule-making proceedings or document filed in licensing.

"Pleadings" means protest, answer, reply or other similar document filed in a contested case proceeding.

"Presiding administrative law judge" means the administrative law judge who presides at the evidentiary hearing on the contested case.

"Proceeding" means licensing, rule making, declaratory rulings, contested cases, informal procedures.

"Protester" means any person entitled to file a protest which can culminate in a contested case proceeding.

"Review unit" means the unit composed of department employees designated by the director and the attorney general's staff who have been assigned by the director to review protests filed by taxpayers.

Unless otherwise specifically stated, the terms used in these rules promulgated by the department shall have the meaning defined by the Act.

This rule is intended to implement Iowa Code sections 10A.202(1m), 17A.22 and 421.14.

701—7.2(17A) Scope of rules. The rules contained in this chapter pertaining to practice and procedure are designed to implement the requirements of the Act and aid in the effective and efficient administration and enforcement of the tax laws of this state. These rules shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, licensing, rule making, and declaratory rulings involving:

1. Sales tax—Iowa Code sections 422.42 to 422.59.
2. Use tax—chapter 423.
3. Individual and fiduciary income tax—sections 422.4 to 422.31 and 422.110 to 422.112.
4. Franchise tax—sections 422.60 to 422.66.
5. Corporate income tax—sections 422.32 to 422.41 and 422.110 to 422.112.
6. Withholding tax—sections 422.16 and 422.17.
7. Estimated tax—sections 422.16, 422.17 and 422.85 to 422.92.
8. Motor fuel tax—chapter 452A.
9. Property tax—chapters 421, 425, 426A, 427, 427A, 428, 428A and 433 to 441.
10. Cigarette and tobacco tax—chapters 421B and 453A.
11. Inheritance, generation skipping transfer and estate tax—chapters 450, 450A, 450B and 451.
12. Local option taxes—chapter 422B.
13. Hotel and motel tax—chapter 422A.
14. Drug excise tax—chapter 453B.
15. Automobile rental excise tax—chapter 422C.
16. Environmental protection charge—chapter 424.
17. Other taxes as may be assigned to the department from time to time.

As the design of these rules is to facilitate business and advance justice, any rule contained herein, unless otherwise provided by law, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

This rule is intended to implement Iowa Code chapter 17A.

701—7.3(17A) Business hours. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall be open between the hours of 8 a.m. to 4:30 p.m. each weekday except Saturdays, Sundays and legal holidays as prescribed in Iowa Code section 4.1(34), for the purpose of receiving protests, pleadings, petitions, motions, requests for public information, copies of official documents, or for the opportunity to inspect public records.

All documents or papers required to be filed with the department by these rules shall be filed with the administrative law judge in the principal office of the department in the Hoover State Office Building, Des Moines, Iowa 50319. Requests for public information or copies of official documents or the opportunity to inspect public records shall be made in the director's office at the department's principal office.

701—7.4(17A) Computation of time, filing of documents. In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

All documents or papers required to be filed with the department shall be considered as timely filed if they are either received by the department's principal office or are postmarked for delivery to the department's principal office within time limits as prescribed by law or by rules or orders of the department.

In all cases where the time for the filing of a protest or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

701—7.5(17A) Form and style of papers. All pleadings, petitions, briefs and motions or other documents filed with the department shall be typewritten, shall have a proper caption, and a signature and copies as herein provided or as specified in some other rule.

7.5(1) Papers shall be typed on only one side of plain white paper. Pleadings, petitions, motions, orders and any other papers allowed or required to be filed by these rules may be on any size paper. Citations should be underscored.

7.5(2) The proper caption shall be placed in full upon the first paper filed.

7.5(3) The signature of the petitioner, party, or authorized representative shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual and not a firm name except that the signature of a corporation shall be the name of the corporation by one of its active officers. The name and mailing address of the party or the party's representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief every statement contained in the document is true and no such statement is misleading; and that it is not interposed for delay.

7.5(4) Every pleading (other than protest) or motion or brief shall bear proof of service upon the opposing party as provided by the Iowa Rules of Civil Procedure.

7.5(5) Except as otherwise provided in these rules or ordered by the department, an original copy only of every pleading, brief, motion or petition shall be filed.

7.5(6) All copies shall be clear and legible but may be on any weight paper.

Upon motion of an opposing party or on its own, the department may, in its discretion, if a person or party has failed to comply with this rule, require such person or party to follow the provisions of this rule pointing out the defects and details needed to comply with the rule prior to filing.

701—7.6(17A) Persons authorized to practice before the department. Due to the complex questions involved and the technical aspects of taxation, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys and certified public accountants.

The right to practice before the department in connection with any proceeding shall be limited to the following classes of persons:

1. Taxpayers who are natural persons representing themselves.
2. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa.

3. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with Iowa Supreme Court Rule 116.

4. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542C.

5. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer, excluding attorneys who are acting in the capacity of a director or officer of a corporation and who have not met the requirements of the third classification above.

6. Partners representing their partnership.

7. Fiduciaries.

8. Government officials authorized by law.

9. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II, Iowa Code chapter 422.

Any person appearing in any proceeding before the department on behalf of another must have on file with the department a power of attorney.

No person who has served as an official or employee of the department shall within a period of two years after the termination of such service or employment appear before the department or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and in which the person personally participated during the period of service or employment.

This rule is intended to implement Iowa Code chapter 17A.

701—7.7(17A) Resolution of tax liability. Unless a proper protest has been filed as provided hereinafter, persons interested in any tax liability, refund claim, licensing or any other tax matters shall discuss the resolution of such matters with appropriate personnel as designated by the billing.

In the event that a proper protest has been filed as provided hereinafter, the appropriate department personnel, when authorized by the review unit, shall have the authority to discuss the resolution of any matter in the protest either with the protester or the protester's representative. The appropriate personnel shall report their activities in this regard to the review unit and the unit shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve a protest.

This rule is intended to implement Iowa Code chapter 17A.

701—7.8(17A) Protests. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must be either delivered to the department by United States Postal Service, by ordinary, certified, or registered mail, directed to the attention of the administrative law judge, personally delivered to the office of the administrative law judge, or be served on the department by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. It is considered filed the date personal service or personal delivery to the office of the administrative law judge is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing. The period for appealing agency action relating to refund claims is the same statutory period for contesting an assessment. For assessments issued before January 1, 1995, the time period for filing a protest to an assessment cannot be extended by filing a refund claim. Failure to timely file a written protest will be construed as a waiver of opposition to the matter involved unless on the director's own motion, pursuant to statutory authority, the power of abatement is exercised. The review unit may seek dismissal of protests which are not in the proper form as provided by this rule. See subrule 7.11(2) for dismissals.

For refund claims filed on or after January 1, 1995, if the department has not granted or denied a refund claim within six months of filing the claim, the refund claimant may file a protest. Even though a protest is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

Notwithstanding the above, the taxpayer who fails to timely protest an assessment issued on or after January 1, 1995, may contest the assessment by paying the whole assessed tax, interest, and penalty and by filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes, which are not timely protested, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer can contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment would be canceled. *Flora v. United States*, 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct. 630 (1960); *Higginbotham v. United States*, 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States*, 280 F.2d 89 (8th Cir. 1960); *Stern v. United States*, 563 F. Supp. 484 (D.Nev. 1983); *Drake v. United States*, 355 F. Supp. 710 (E.D. Mo. 1973). Any such protest filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file a protest as authorized by this rule.

All of the taxes administered by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, and franchise tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A: X is assessed withholding income taxes, penalty and interest, as a responsible party on eight employees. X fails to timely protest the assessment. X contends that X is not a responsible party. If X is a responsible party, X was required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X can pay an amount of tax, penalty and interest attributable to one employee for one month and file a refund claim within the time period provided by law since if X is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B: Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely protest the assessment. Y was billed monthly for electricity by the power company to whom Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y can pay an amount of tax, penalty and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since if Y is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a variance in the name set forth in the protest and the correct name, a statement of the reason for the discrepancy shall be set forth in the protest.

A protest which is filed shall contain:

7.8(1) A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name, address and	*	PROTEST
designate type of proceeding, e.g.,	*	DOCKET NO. _____
income tax refund claim)	*	(filled in by Department)

7.8(2) Substantially state in separate numbered paragraphs the following:

a. Proper allegations showing:

(1) Date of assessment.

(2) Date of refund denial.

(3) Whether, for assessments issued on or after January 1, 1995, protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing the refund claim.

(4) Whether, for refund claims filed on or after January 1, 1995, the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim.

(5) Attach a copy of the assessment, refund claim, and refund denial.

(6) Other items that the protester wishes to bring to the attention of the department.

b. The type of tax, the taxable period or periods involved and the amount in controversy;

c. List each error alleged to have been committed in a separate paragraph. For each error listed, provide an explanation of the error and all relevant facts related to the error;

d. Refer to any particular statute or statutes and any rule or rules involved, if known;

e. Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest, if any, and provide copies of any records or documents that were not previously presented to the department;

f. Any other matters deemed relevant and not covered in the above paragraphs;

g. The desire of protester to waive informal or contested case proceedings if it is desired; unless the protester so indicates a waiver, informal procedures will be initiated;

h. A statement setting forth the relief sought by protester;

i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative.

j. Attach a copy of power of attorney for protester's representative.

Upon receipt of the protest, the administrative law judge shall docket the protest in a docket kept for that purpose and shall assign a number to the case which number shall be placed on all subsequent pleadings filed in the case. An original and two copies of the protest shall be filed.

The protester may amend the protest at any time prior to the commencement of the evidentiary hearing. The department can request that protester amend the protest for purposes of clarification.

7.8(3) Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension of driver's license. A person who has had an application for renewal of vehicle registration denied or has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file a protest with the department if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

The issues raised in a protest by the person, which are limited to a mistake of fact, may include but are not limited to:

1. The person has the same name as the obligor but is not the correct person.
2. The amount in question has been paid.
3. The person has made arrangements with the department to pay the amount.

701—7.9(17A) Identifying details. Any person may, at any time, petition the administrative law judge to delete identifying details concerning the person from any document relating to any proceedings as defined in rule 7.1(17A), prior to disclosure to members of the public.

If the petition concerns information which is not a part of a contested case, the petition shall be in the form of a request to delete identifying details; if part of a contested case, the petition shall be in the form of a motion to delete identifying details. All motions to delete shall conform to subrule 7.17(3).

The motion or request shall contain the following:

1. The name of the person requesting deletion and the docket number of the proceeding, if applicable.
2. The legal basis for their request for deletion; such as, release of the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret or of advantage to competitors. A corporation may not claim an unwarranted invasion of privacy.
3. A precise description of the document, report or other material in the possession of the department from which the deletion is sought, and a precise description of the information to be deleted. If deletion is sought from more than one document, each document and the materials sought to be deleted from it shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, such as, the material sought to be deleted is a trade secret or its release would give advantage to competitors and serve no public purpose.
4. An affidavit in support of deletion must accompany each motion or request. The affidavit must be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying deletion, not merely the legal basis for deletion.
5. All affidavits shall contain a general statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect, and if the grounds for deletion is that the release of information would give advantage to competitors, the general statement that the release would serve no public purpose.

A ruling on a request or motion shall not become the final decision of the department until 30 days after the date of the ruling unless there is an appeal to, or review on motion of, the director within 30 days of the date of the ruling.

701—7.10(17A) Docket. The administrative law judge shall maintain a docket of all proceedings and each of the proceedings shall be assigned a number. Every matter coming within the purview of these rules shall be assigned a docket number which shall be the official number for the purposes of identification. Upon receipt of a protest, petition for declaratory ruling or petition to initiate rule-making proceedings, the proceeding will be docketed and assigned a number, and the parties notified thereof. The number shall be placed by the parties on all papers thereafter filed in the proceeding.

701—7.11(17A) Informal procedures and dismissals of protests.

7.11(1) *Informal procedures.* Persons are encouraged to utilize the informal procedure provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protester indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protester, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

a. *Review unit.* A review unit is created within the department and, subject to the control of the director, the unit will:

(1) Review and evaluate the validity of all protests made by taxpayers from the agency action.

(2) Determine the correct amount of tax owing or refund due.

(3) Determine the best method of resolving the dispute between the protester and the department.

(4) Assign protests to the appropriate divisions or sections of the department for resolution.

(5) Take further action regarding the protest, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the protest, including a request for an informal conference.

(6) Determine whether the protest complies with rule 7.8(17A) and request any amendments to the protest or additional information.

After assignment of the protest, the section or division responsible may concede any items contained in the protest which it determines should not be controverted by the department. If the protester has not waived informal procedures, the section or division responsible may request the protester and the protester's representative, if any, to attend an informal conference with the responsible section or division to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or of narrowing the issues presented in the protest if no settlement can be made.

If informal procedures have been waived, findings dealing with the issues raised in the protest may be issued unless the issues may be more expeditiously determined in another manner or it is determined that findings are unnecessary. The protester will be notified of the decision on the issues in controversy.

Nothing herein will prevent the section or division responsible and the protester from mutually agreeing on the manner in which the protest will be informally reviewed.

b. *Settlements.* If a settlement is reached during informal procedures, the administrative law judge shall be notified. The administrative law judge shall issue an order and serve it upon all parties which order shall set forth that a settlement was reached and shall terminate the case.

7.11(2) *Dismissal of protests.*

a. Whether informal procedures have been waived or not, the failure of the protester to timely file a protest or to pursue the protest may be grounds for dismissal of the protest by the administrative law judge. If informal procedures have not been waived, the failure of the protester to present evidence or information requested by the review unit shall constitute grounds for the administrative law judge to dismiss the protest. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. The failure of protester to file a protest in the format required by rule 7.8(17A) may be grounds for dismissal of the protest by the administrative law judge.

b. If the department seeks to have the protest dismissed, the review unit shall file a motion to dismiss with the office of the administrative law judge and serve a copy of the motion on protester. Protester may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the administrative law judge shall immediately enter an order dismissing the protest. If a resistance is filed, the review unit has 10 days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the administrative law judge and protester. If no such notice is issued by the review unit within the 10-day period, the administrative law judge shall issue a notice for a contested case proceeding on the motion as prescribed by rule 7.14(17A) except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be dismissed. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such dismissal proceedings.

c. If a motion to dismiss is filed and is unresisted, a protest so dismissed may be reinstated by the administrative law judge for good cause shown if an application for reinstatement is filed with the office of the administrative law judge within 30 days of the date the protest was dismissed. The application shall set forth all reasons and facts upon which the protester relies in seeking reinstatement of the protest. The review unit shall review the application and notify the protester whether the application is granted or denied. If the review unit denies the application to reinstate the protest, the protester has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing before the administrative law judge on the reinstatement. When a written request is received, the administrative law judge shall issue a notice as prescribed in rule 7.14(17A) except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be reinstated. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such reinstatement proceedings.

d. Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a protester has either failed to diligently pursue the protest or refuses to comply with requests for discovery set forth in rule 7.15(17A).

701—7.12(17A) Answer. The department may, in lieu of findings, file an answer. When findings are issued, the department will file an answer within 30 days of receipt of written notification from protester stating disagreement with the findings. The answer shall be filed with the department's administrative law judge.

In the event that the protester does not so respond in writing to the findings issued on matters covered by subrule 7.11(1) within 30 days after being notified, the department may seek dismissal of the protest pursuant to subrule 7.11(2).

The answer of the department shall be drawn in a manner as provided by the Iowa rules of civil procedure for answers filed in Iowa district courts.

Each paragraph contained in the answer shall be numbered to correspond, where possible, with the paragraphs of the protest. An original copy only of the answer shall be filed with the administrative law judge and shall be signed by the department's counsel or representative.

The department shall forthwith serve a copy of the answer upon the representative of record, or if there is no representative of record then upon the protester, and shall file proof of service with the administrative law judge at the time of filing of the answer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

The provisions of rule 7.12(17A) shall be considered as a part of the informal procedures since a contested case proceeding, at the time of filing the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the protester or the department.

Notwithstanding the above portions of this rule, if a taxpayer, who has filed a protest on or after January 1, 1995, makes a written demand for a contested case proceeding, as authorized by subrule 7.14(2), after a period of six months from the filing of a proper protest, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be suspended, if the protest involves an assessment, from the time that the department was required to answer until the date that the department files its answer and, if the protest involves a refund, interest shall accrue on the refund at double the rate from the time the department was required to answer until the date that the department files its answer.

This rule is intended to implement Iowa Code sections 10A.202(1)*"m,"* 17A.22, 421.14 and 421.60.

701—7.13(17A) Subpoenas. Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, records and shall have all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the department's administrative law judge.

This rule is intended to implement Iowa Code sections 10A.202(1)*"m,"* 17A.22 and 421.14.

701—7.14(17A) Commencement of contested case proceedings.

7.14(1) Payment of tax or bond required prior to contested case proceedings for assessments made prior to January 1, 1991.

a. Effective date—payment or bond required. Effective for contested case proceedings for unpaid tax, penalty, interest, or fees commenced in response to assessments made on or after January 1, 1987, and prior to January 1, 1991, the taxpayer must pay prior to the commencement of contested case proceedings, all of the assessed tax, penalty, interest, or fees or, upon a showing of good cause, a bond may be posted in lieu of payment of the amount of the assessment that is in dispute.

b. Cases applicable. The provisions of this subrule only apply to those contested case proceedings where a tax, penalty, interest, or fees, or any combination of them, which has not been previously paid prior to the commencement of contested case proceedings, is at issue.

c. Cases not applicable. This subrule does not apply to protest proceedings involving only the denial of refund claims. Nor does this subrule apply to a taxpayer's appeal or protest pending in informal procedures involving an unpaid tax, penalty, interest, or fees.

d. Time disputed tax, penalty, interest, or fees must be paid. Unless a bond has been posted as provided in subrule 7.14(1), paragraph *"f,"* all of the disputed tax, penalty, interest, or fees assessed computed to the date of payment must be paid in full, within 30 days after the date the answer is filed by the department. Undisputed amounts are not eligible for a bond and must be paid with the payment of the disputed amount, or with the posting of the bond.

e. Payment deemed made under protest. Unless the taxpayer declares otherwise in writing, the payment of that portion of the assessed tax, penalty, interest, or fees in dispute after the filing of the department's answer, shall be deemed to have been paid under protest and, if upon resolution of the protest, the amount paid is in excess of the correct tax, penalty, interest, or fees due, the excess shall be refunded to the taxpayer or other persons entitled with interest as provided by law, subject to any right of offset.

f. Bond in lieu of payment. Within 30 days after the date the answer is filed by the department, and upon filing an application showing good cause, the taxpayer may, in lieu of payment, post a bond securing the payment of that portion of the assessed tax, penalty, interest, or fees which is in dispute accrued to the date the bond is posted. A taxpayer is not permitted to refuse to pay the portion of the assessed amount not in dispute until all disputed issues have been resolved. The uncontested portion of the assessment must be paid and a bond is only permitted to be posted in lieu of payment of the amount in dispute. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings. The bond shall be for the full amount of the assessed tax, penalty, interest, or fees that is in dispute, computed to the day the bond is posted. Provided upon application of the taxpayer or the department, the department's administrative law judge may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days' prior notice is given to the department or the taxpayer as the case may be.

g. Type of bond. A personal bond, without a surety, is only permitted if the taxpayer posts with the department's administrative law judge, cash, a cashier's check, a certificate of deposit, or other marketable securities with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of this subrule and Iowa Code chapter 636 relating to personal and corporate sureties shall govern.

h. Procedure for posting bond. In the event the taxpayer desires to post bond in lieu of payment of the amount of the tax, penalty, interest, or fees claimed to be due which is in dispute, an application in writing, together with the bond must be filed with the administrative law judge within 30 days after the department's answer is filed. The application must state the reasons why good cause exists for posting a bond in lieu of payment. A copy of the application with a copy of the bond attached must be given the department's representative by ordinary mail and thereafter if the taxpayer and the department agree on the bond, it shall be approved by the administrative law judge. If an agreement on the bond is not reached and the department has not filed with the administrative law judge written objections to granting the bond within ten days after the postmark date of the notice of application, the administrative law judge shall approve the bond, if the bond is otherwise in proper form and in compliance with the law. In the event objections are filed by the department, the administrative law judge shall set the objections down for hearing with written notice to be given the taxpayer and the department at least ten days prior to the hearing. If upon hearing the department's objections are overruled, the bond shall be approved. If the objections are sustained, and the taxpayer fails to pay the amount of the tax, penalty, interest, or fees claimed to be due or cure the bond defects, if permitted by the administrative law judge's order, within 30 days after the administrative law judge's decision, the protest shall be dismissed and the dismissal shall be with prejudice, if the time for protesting the department action has elapsed.

i. Reasons constituting good cause. The financial hardship of the taxpayer as evidenced by the books and records of the taxpayer is an example of a good cause for posting a bond in lieu of paying the tax, penalty, interest, or fees in dispute. In addition, posting of a bond will be allowed upon agreement of the protester and the department.

j. *Form of surety bond.* The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
		SURETY BOND
(Taxpayer's Name,	*	
Address and designate	*	
proceeding, e.g., income,	*	
sales, etc.)	*	
	*	DOCKET NO.

KNOW ALL PERSONS BY THESE PRESENTS:

That we (taxpayer) as principal, and (surety), as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue and Finance for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue and Finance, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest, or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated the _____ day of _____, 19 ____.

_____
Principal

_____
Surety

_____
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA
ss.
COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts", and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution".

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____ Surety (type name)	$ _____	$ _____
_____ Surety (type name)	$ _____	$ _____

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, 19____.

(Seal)

_____
Notary Public in and for the State of Iowa

k. Duration of bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated by the administrative law judge.

l. Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the administrative law judge when any of the following events occur: upon full payment of the tax, penalty, interest, or fees found to be due; upon filing a bond for the purposes of judicial review; or if no additional tax, penalty, interest, or fees are found to be due that have not been previously paid, upon entry of the order resolving the contested case proceedings.

m. Failure to pay amount found to be due. If upon resolution of the contested case proceedings, the taxpayer fails to pay the tax, penalty, interest, or fees assessed or found to be due, the bond shall be forfeited by the administrative law judge and the department may sell or liquidate any property posted by the taxpayer, or bring suit against the surety on the bond and apply the amount recovered to the tax, penalty, interest, or fees due. Any excess over the amount due shall be refunded to the taxpayer or other persons entitled as provided by law, subject to any right of offset.

n. Dismissal of protest—failure to pay or post bond. The administrative law judge must dismiss the protest in the following circumstances:

(1) If the taxpayer fails to pay the amount of the assessed tax, penalty, interest, or fees or fails to post a bond with the administrative law judge for the amount of the assessment in dispute within 30 days after the filing of the department's answer;

(2) The taxpayer fails to pay the disputed tax, penalty, interest, or fees or fails to file an acceptable bond, if permitted by order of the administrative law judge, within 30 days after the order sustaining the department's objection to the bond. The dismissal shall be with prejudice if the time for protesting the department's action has elapsed at the time of dismissal. The dismissal of the protest cannot be avoided or circumvented when payment has not been made or a bond posted by a withdrawal of or amendment to the protest after the answer has been filed.

7.14(2) Demand or request for contested case proceedings. A demand or request by the protester for the commencement of contested case proceedings must be in writing and either be mailed to the department by United States Postal Service ordinary, certified, or registered mail directed to the attention of the administrative law judge, or be served on the department by personal service or by personal delivery of the demand or request to the office of the administrative law judge during business hours. The demand or request is considered filed on the date of the postmark or the date personal service is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

Contested case proceedings will be commenced by the department's administrative law judge by delivery of notice by ordinary mail directed to the parties, after a demand or request is made (1) by the protester and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (2) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the protester. The notice will be given by the department's administrative law judge. Both the department's administrative law judge and the presiding administrative law judge may grant a continuance of the hearing. Any change in the date of the hearing shall be set by the presiding administrative law judge. Either party may apply to the presiding administrative law judge for a specific date for the hearing. The notice shall include:

1. A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted, including the issues.

After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire. However, any pleading or amendment thereto which is filed within seven days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code sections 10A.202(1*m*), 17A.12 and 421.8A.

701—7.15(17A) Discovery. The rules of the Supreme Court of the state of Iowa, as amended, applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings. Disputes concerning discovery shall be resolved by the department's administrative law judge. If necessary a hearing shall be scheduled, with reasonable notice to the parties and upon hearing an appropriate order shall be issued by the department's administrative law judge.

When the department relies on a witness in a contested case, whether or not a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, it shall, on request, make such statements or reports available to a party for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable departmental records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceeding.

This rule is intended to implement Iowa Code sections 10A.202(1*m*), 17A.22 and 421.14.

701—7.16(17A) Prehearing conference. The administrative law judge, upon motion, or upon the written request of a party, shall direct the parties to appear at a specified time and place before the administrative law judge for a prehearing conference to consider:

1. The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent.
2. The necessity or desirability of setting a new date for hearing.
3. The simplification of issues.
4. The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation.
5. The possibility of agreeing to the admission of facts, documents or records not really controverted, to avoid unnecessary introduction of proof.
6. The procedure at the hearing.
7. Limiting the number of witnesses.
8. The names and identification of witnesses and the facts each party will attempt to prove at the hearing.
9. Conduct or schedule of discovery.
10. Such other matters as may aid, expedite or simplify in the disposition of the proceeding.

Since stipulations are encouraged it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or should not fairly be in dispute.

Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the administrative law judge.

When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the administrative law judge that the case has been settled.

If either party to the contested case proceeding fails to appear at the prehearing conference, or fails to request a continuance, or fails to submit evidence or arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.17(3).

This rule is intended to implement Iowa Code section 17A.12.

701—7.17(17A) Contested case proceedings. Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Evidentiary hearings shall be held at the department's principal office, Hoover State Office Building, Des Moines, Iowa 50319, except that a case may be assigned for hearing elsewhere only for extraordinary circumstances or when the protester would otherwise be deprived of due process of law. By agreement of the parties, the hearing may be conducted at another place or by other means, for example, through the fiber optic network or by telephone. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

7.17(1) *Conduct of proceedings.* A proceeding shall be conducted by an administrative law judge who, among other things, shall:

a. Open the record and receive appearances;
b. Administer oaths, and issue subpoenas;
c. Enter the notice of hearing into the record;
d. Receive testimony and exhibits presented by the parties;
e. In the administrative law judge's discretion, interrogate witnesses;
f. Rule on objections and motions;
g. Close the hearing;
h. Issue an order containing findings of fact and conclusions of law.

Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision.

An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the administrative law judge, evidence will be received in the following order:

(1) Protester (2) intervenor (if applicable) (3) department (4) rebuttal by protester (5) oral argument by parties (if necessary).

If the protester or the department appear without counsel or other representative who can reasonably be expected to be familiar with these rules, the administrative law judge shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have such representatives appearing upon their behalf. It should be the purpose of the administrative law judge to assist any party appearing without such representative to the extent necessary to allow the party to fairly present evidence, testimony and arguments on the issues. The administrative law judge shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

If a party fails to appear in a contested case proceeding after proper service of notice, the administrative law judge may, upon the judge's own motion or upon the motion of the party who has appeared, adjourn the hearing or proceed with the hearing and make a decision in the absence of the party.

Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the administrative law judge.

A stipulation by the parties of the issues or a statement of the issues in the notice commencing the contested case cannot be changed by the presiding administrative law judge without the consent of the parties. The presiding law judge shall not on their own motion change or modify the issues agreed upon by the parties. Notwithstanding the provisions of this paragraph, a party within a reasonable time prior to the hearing may request that a new issue be addressed in the proceedings, except that the request cannot be made after the parties have stipulated to the issues.

The department's administrative law judge may forward the appeal file to the division of appeals and fair hearings of the department of inspections and appeals for the purpose of scheduling and conducting a hearing on the protest. Before doing so the department's administrative law judge shall secure the consent of the division of appeals and fair hearings. The parties shall be notified whether or not the division of appeals and fair hearings will schedule and conduct the hearing.

7.17(2) *Rules of evidence.* In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. *Oath.* All testimony presented before the administrative law judge shall be given under oath which the administrative law judge has authority to administer.

b. *Production of evidence and testimony.* The administrative law judge may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

(1) *Subpoena.* When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the department's administrative law judge the name of the case, the docket number and the last-known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the department's administrative law judge, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if it is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the department's administrative law judge.

(2) Reserved.

c. *Admissibility of evidence.*

(1) *Evidence having probative value.* Although the administrative law judge is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the administrative law judge may admit and give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The administrative law judge shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form by the administrative law judge.

Objections to evidentiary offers may be made at the hearing and the administrative law judge's ruling thereon shall be noted in the record.

(2) *Evidence of a federal determination.* Evidence of a federal determination whether it be a treasury department ruling or regulation or determination letter, a federal court decision or an internal revenue service assessment relating to issues raised in the proceeding shall be admissible, and the protester shall be presumed to have conceded the accuracy of it unless the protester specifically states wherein it is erroneous.

(3) *Copies of evidence.* A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) *Stipulations.* Approval of the presiding administrative law judge is not required for stipulations of the parties to be used in contested case proceedings. In the event the parties file a stipulation in the proceedings, the stipulation shall be binding on the parties and the presiding administrative law judge.

d. Exhibits.

(1) *Identification of exhibits.* Exhibits attached to a stipulation or entered in evidence which are offered by protesters shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, those offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

(2) *Disposition of exhibits.* After an order has become final, either party desiring the return, at the party's expense, of any exhibit belonging to the party shall make application in writing to the administrative law judge within 30 days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the administrative law judge deems advisable.

e. Official notice. The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the department. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the administrative law judge determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

f. Evidence outside the record. Except as provided by these rules, the administrative law judge shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

g. Presentation of evidence and testimony. In any hearing each party thereto shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. Persons whose testimony has been submitted in written form, if available, shall also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for redirect examination and recross examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

h. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.17(3) *Motions.* After commencement of contested case proceedings, appropriate motions may be filed by any party with the administrative law judge when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the same are based.

Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the administrative law judge. The administrative law judge shall rule on the motion by issuing an order. A copy of the order containing the ruling on the motion shall be mailed to the parties and authorized representatives. Motions may be made orally during the course of a hearing; however, the administrative law judge may request that it be reduced to writing and filed with the administrative law judge.

To avoid a hearing on a motion, it is advisable to secure the consent of the opposite party prior to filing the motion. If consent of the opposite party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause why the motion should be granted.

The party making the motion may annex thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposite party may reply with counter affidavits.

a. *Types of motions.* Types of motions include but are not limited to:

(1) Motion for continuance.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion to delete identifying details in the decision.

b. *Hearing on motions.* Motions relating to proceedings prior to hearing in contested case proceedings shall be heard by the department's administrative law judge. Motions relating to the contested case hearing shall be heard by the presiding administrative law judge.

c. *Summary judgment procedure.* Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may, after a reasonable time to complete discovery, after completion of discovery, or by agreement of the parties, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 45 days prior to the date the case is set for hearing, unless otherwise ordered by the administrative law judge. Any party resisting the motion shall file within 30 days from the time of service of the motion a resistance; statement of disputed facts, if any; and memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The time fixed for hearing or normal submission on the motion shall be not less than 35 days after the filing of the motion, unless another time is ordered by the administrative law judge. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be annexed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits which support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading, but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge at the hearing of the motion, by examining the pleadings and the evidence before the administrative law judge and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the administrative law judge may refuse the application for judgment, or may order a continuance to permit affidavits to be obtained, or depositions to be taken or discovery to be completed, or may make other order.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.17(5).

7.17(4) *Briefs and oral argument.* At any time, upon the request of any party or in the administrative law judge's discretion, the administrative law judge may require the filing of briefs on any of the issues before the administrative law judge prior to or at the time of hearing or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the administrative law judge so directs.

An original copy only of all briefs shall be filed. Filed briefs shall conform to the requirements of 7.5(17A).

If the parties agree on a schedule for submission of briefs, the schedule shall be binding on the parties and the presiding administrative law judge except that, for good cause shown, the time may be extended upon application of a party.

7.17(5) *Orders.* At the conclusion of the hearing, the administrative law judge, in the administrative law judge's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the administrative law judge shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law.

The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the person presiding at the hearing, unless the person is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record, and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of protester, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of amount of such award, unless the parties agree otherwise.

When a motion has been made to delete identifying details in an order on the basis of personal privacy or trade secrets, the justification for such deletion or refusal to delete shall be made by the moving party and shall appear in the order.

When the director initially presides at a hearing or considers decisions on appeal from, or review of the administrative law judge, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of a second agency within the time provided by statute or rule. When an administrative law judge presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of, the director within 30 days of the date of the order, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.24(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to, or reviewable by the director on the director's motion, until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of or applications for rehearing concerning the administrative law judge's order, the director has all the power which the director would initially have had in making the decision, however, the director will only consider those issues or selected issues presented at the hearing before the administrative law judge or any issues of fact or law raised independently by the administrative law judge, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or certified mail, return receipt requested, except in the case of an order revoking a sales or use tax permit or a motor fuel license which may be delivered by ordinary mail.

A cross-appeal may be taken within the 30-day period for taking an appeal to the director of revenue and finance or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.24(17A), the cross-appeal may be taken within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

7.17(6) *Expedited cases—when applicable.* In case a protest is filed where:

1. The case is not of precedential value, and
2. The parties desire a prompt resolution of the dispute, then the department and the protester may agree to have the case designated as an expedited case.

a. Agreement. The department and the protester shall execute an agreement to have the case treated as an expedited case. In this case, discovery is waived. The provisions of this agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings.

b. Finality of decision. A decision entered in an expedited case proceeding shall not be reviewed by the director, state board of tax review, or any other court and shall not be treated as a precedent for any other case.

c. *Discontinuance of proceedings.* Any time prior to a decision being rendered, the taxpayer or the department may request that expedited case proceedings be discontinued if there are reasonable grounds to believe that the issues in dispute would be of precedential value.

d. *Procedure.* Upon return of an executed agreement for this procedure, the department shall within 14 days file its answer to the protest. The case shall be docketed for hearing as promptly as the presiding administrative law judge can reasonably hear the matter.

7.17(7) *Burden of proof.* The burden of proof with respect to assessments or denials of refunds in contested case proceedings involving notices of assessments or refund denials issued on or after January 1, 1995, is as follows:

a. The department must carry the burden of proof by clear and convincing evidence as to the issue of fraud with intent to evade tax.

b. The burden of proof is on the department for any tax periods for which the assessment was not made within six years after the return became due, excluding any extension of time for filing such return, except where the department's assessment is the result of the final disposition of a matter between the taxpayer and the Internal Revenue Service or where the taxpayer and the department signed a waiver of the statute of limitations to assess.

c. The burden of proof is on the department as to any new matter or affirmative defense raised by the department. "New matter" means an adjustment not set forth in the computation of the tax in the assessment or refund denial, as distinguished from a new reason for the assessment or refund denial. "Affirmative defense" is one resting on facts not necessary to support the taxpayer's case.

d. In all instances where the burden of proof is not expressly placed upon the department in this subrule, the burden of proof is upon the protester.

7.17(8) *Costs.* A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the department, incurred subsequent to the issuance of the notice of assessment or refund denial on or after January 1, 1995, based upon the following:

a. The reasonable expenses of expert witnesses.

b. The reasonable costs of studies, reports, and tests.

c. The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

d. An award for reasonable litigation costs shall not exceed $25,000 per case.

e. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

f. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department, in issuance of the assessment or refund denial, was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

g. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

h. The taxpayer has the burden of establishing the unreasonableness of the department's position.

i. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not per se either authorize an award of reasonable litigation costs or preclude such award.

j. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

k. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the protest or it will not be considered.

l. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

m. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

(1) Whether the department's position was substantially justified;

(2) Whether the protester is the prevailing taxpayer;

(3) The burden is upon protester to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

(4) Whether alleged litigation costs are reasonable or necessary;

(5) Whether protester has met its burden of demonstrating all of these points.

This rule is intended to implement Iowa Code sections 10A.202(1)"*m,*" 17A.15(3), 421.60, 422.57(1) and 452A.68.

701—7.18(17A) Interventions. Interventions shall be governed by the Iowa rules of civil procedure.

701—7.19(17A) Record and transcript. The record in a contested case shall include:

1. All pleadings, motions and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;
6. The order of the administrative law judge.

Oral hearings regarding proceedings on appeal to or considered on motion of the director which are recorded by mechanical means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review if so requested and no objection is made by any other party to the proceeding or the director.

701—7.20(17A) Rehearing. Any party may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the department has issued a final order. See subrule 7.17(5) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule 701—7.21(17A). The director shall have 20 days from the filing of the application to grant or deny the rehearing. If the application is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

The application for rehearing which is filed shall contain:

1. A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	APPLICATION
(state the taxpayer's name, address	*	FOR
and designate type of proceeding,	*	REHEARING
e.g., income tax refund claim)	*	DOCKET NO. _____

2. Substantially state in separate numbered paragraphs the following:

a. Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;

b. Clear and concise statements of all relevant facts upon which the party relies;

c. Refer to any particular statute or statutes and any rule or rules involved;

d. The signature of the party or that of the party's representative, the addresses of the party or the party's representative, and the telephone number of the party or the party's representative.

No applications for rehearing shall be entertained by the department's administrative law judges.

This rule is intended to implement Iowa Code section 17A.16(2).

701—7.21(17A) Service. All papers or documents required by 701—Chapter 7 to be filed with the department, administrative law judge, with the opposing party or other person shall be served by ordinary mail unless another rule specifically refers to another method. All notices required by 701—Chapter 7 to be served on parties or persons by the department or administrative law judge shall be served by ordinary mail unless another rule specifically refers to another method.

This rule is intended to implement Iowa Code chapter 17A.

701—7.22 Reserved.

701—7.23(17A) Ex parte communications.

7.23(1) *Administrative law judges.* Iowa Code section 17A.17 provides that individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any party, or any person with a personal interest in or engaged in prosecuting or advocating in either the case under consideration or a pending factually related case involving the same parties, except upon notice and opportunity for all parties to participate. Therefore, if the administrative law judge desires to communicate with any party or person with a personal interest in or engaged in prosecuting or advocating in either the case under consideration before the administrative law judge or a pending factually related case involving the same parties, the administrative law judge shall notify such persons or parties indicating the time and place at which all affected persons or parties may meet to discuss the matters.

7.23(2) *Parties or their representatives.* Iowa Code section 17A.17 provides further that parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate. Therefore, if any party or their representative desires to discuss certain matters with the administrative law judge the party should notify the administrative law judge and the opposing party of the desire to meet with the administrative law judge and the administrative law judge upon notification of the desire shall advise the parties or their representatives in writing of the time and place at which the affected persons or parties may meet to discuss any matters.

7.23(3) *Sanctions.* Any party to a contested case proceeding may file a timely and sufficient affidavit asserting personal bias of an individual participating in the making of any proposed or final decision in that case. The department shall determine the matter as part of the record in the case. When the department in these circumstances makes such a determination with respect to a department member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

The recipient of a prohibited communication as provided in section 17A.17 may be required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding. As sanctions for violations of any prohibited communication provided in section 17A.17 a decision may be rendered against a party who violates these rules, or for reasonable cause shown the director may censor, suspend, or revoke a privilege to practice before the department, or for reasonable cause shown after notice and opportunity to be heard, the director may censor, suspend, or dismiss any departmental personnel.

701—7.24(17A) Licenses.

7.24(1) *Denial of license, refusal to renew license.* When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, a notice, as prescribed in 7.14(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall give 30 days' written notice to the applicant or licensee in which to appear at a hearing to show cause why a license should not be refused or denied. In addition to the requirements of 7.14(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. If the licensee so desires, the licensee may file a petition as provided in 7.24(3) with the administrative law judge within the 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this chapter governing contested case proceedings shall apply.

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and, in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a latter date fixed by order of the department or the reviewing court. See 195—subrule 20.4(1) regarding gambling license applications.

7.24(2) *Revocation of license.* The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to 7.14(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled or withdrawn is given an opportunity to show at an evidentiary hearing conducted pursuant to the rules governing contested case proceedings in this chapter compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to 7.14(17A) only if the permit holder requests that this be done following notification, by ordinary mail, of the director's intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of 7.14(17A) the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn may file a petition as provided in 7.24(3) with the administrative law judge prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this chapter governing contested case proceedings shall apply.

Notwithstanding the above, if the department finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.24(3) *Petition.* When a person desires to file a petition as provided in 7.24(1) and 7.24(2), the petition to be filed shall contain:

a. A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	PETITION
(state taxpayer's name, address and type of license)	*	DOCKET NO. _____
		(filled in by Department)
	*	

b. Substantially state in separate numbered paragraphs the following:

(1) The full name and address of the petitioner;

(2) Refer to the type of license and the relevant statutory authority;

(3) Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;

(4) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor;

(5) The signature of the petitioner or petitioner's representative, the address of petitioner and of petitioner's representative, and the telephone number of petitioner or petitioner's representative.

701—7.25(17A) Declaratory rulings—in general. Any oral or written advice or opinion rendered to members of the public by departmental personnel not pursuant to a petition for declaratory ruling is not binding upon the department. However, departmental personnel, including field personnel, ordinarily will discuss substantive tax issues with members of the public or their representatives prior to the receipt of a petition for a declaratory ruling, but such oral or written opinions or advice are not binding on the department. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory ruling on a particular question. In these cases, however, the name of the taxpayer shall be disclosed. The department will also discuss questions relating to certain procedural matters as, for example, submitting a request for a declaratory ruling or submitting a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of a return or report required to be filed with the department. Such oral advice is advisory only and the department is not bound to recognize it in the examination of the return, report or records.

7.25(1) *Uniform rules on declaratory rulings.* The department hereby adopts, subject to the exceptions and amendments listed in subrule 7.25(2), the rules of the governor's task force on uniform rules of agency procedure relating to declaratory rulings which are printed in Volume I, pages 2 through 4, of the Iowa Administrative Code as uniform rules X.1(17A) through X.7(17A), as its rules on declaratory rulings the same as if those uniform rules were reprinted herein in full.

7.25(2) *Exceptions and amendments to uniform rules on declaratory rulings.* The following exceptions and amendments are adopted to the uniform rules on declaratory rulings.

a. Add at the end of uniform rule X.1(17A), page 3, the following item of additional information:

9. Whether the petitioner is presently under audit by the department.

b. Whenever the context requires, the term "agency" when it appears in uniform rules X.1(17A) through X.7(17A), pages 2 through 4, means the department of revenue and finance.

c. Add at the end of uniform rule X.5(17A), page 3, the following additional reason for refusal to issue a declaratory ruling:

11. The petition requests a ruling on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

701—7.26(17A) Department procedure for rule making—in general. Prior to the initiation of rule-making proceedings as provided for in this rule, rules which are proposed for adoption are approved by the director. The channeling of rules varies with the circumstances. When a division determines that a rule or rules should be made on a particular subject, the subject matter of the rule or rules is prepared which is reviewed by the policy section of the technical services division and the director. After approval by the director, a draft of the rule is prepared and the rule-making proceedings are initiated.

When a petition for the promulgation, amendment, or repeal of a rule is received from an interested person, a copy of the petition is given to the appropriate section or division, the director, and the legal division for their views and comments as to the propriety of the petition. If it is determined the petition discloses sufficient justification, rule-making proceedings will be initiated.

7.26(1) *Uniform rules for procedure for rule making.* The department hereby adopts, subject to the exceptions and amendments listed in subrule 7.26(2), the rules of the governor's task force on uniform rules of agency procedure relating to rule making which are printed in Volume I, page 1 and pages 5 through 14, of the Iowa Administrative Code as uniform rules X.1(17A) through X.17(17A), as its rules for rule-making procedure the same as if these uniform rules were reprinted herein in full.

7.26(2) *Exceptions and amendments to uniform rules on procedure for rule making.* The following exceptions and amendments are adopted to the uniform rules for rule-making procedure:

a. Whenever the context requires, the term "agency" when it appears in the uniform rules herein adopted means the department of revenue and finance.

b. Inquiries concerning the status of a petition for rule making provided for in uniform rule X.3(17A), page 1 of the uniform rules, may be made to the Deputy Director of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319.

c. The subscription price for copies of future Notices of Intended Action for subscribers is fixed for a one-year basis as provided for in uniform rule X.4(3), page 6 of the uniform rules.

d. The Office of the Deputy Director of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319, is designated as the office where interested persons may submit argument, data and views on proposed rules as provided for in uniform subrule X.5(1), page 6 of the uniform rules.

e. The Office of the Deputy Director of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319, is designated as the office for registering small businesses or organizations of small business for the small business impact list provided for in uniform subrule X.6(3), page 8 of the uniform rules.

f. There are no known categories of rules exempt from the usual public notice and participation requirements as authorized by uniform subrule X.10(2), page 11 of the uniform rules.

g. The Office of the Deputy Director of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319, is the designated office for delivery of a request for a concise statement of reason, provided for in subrule X.11(1), page 11 of the uniform rules.

These rules are intended to implement Iowa Code sections 17A.22 and 421.14 and to implement the uniform rules on agency procedure as accepted and approved by the governor.

701—7.27(9C,91C) Procedure for nonlocal business entity bond forfeitures. Upon the failure of a transient merchant or an out-of-state contractor to pay any taxes payable, the amount of bond posted with the secretary of state by the transient merchant or out-of-state contractor necessary to pay the tax shall be forfeited. The following subrules of this rule shall govern the procedure for that forfeiture.

7.27(1) *Definitions.*

a. *"Nonlocal business entity"* is either an out-of-state contractor or a transient merchant as those terms are defined in paragraphs *"b"* and *"f."*

b. *"Out-of-state contractor"* means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

c. *"Taxes payable by a transient merchant"* refers to all taxes administered by the department, and penalties, interest, and fees which the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

d. *"Taxes payable by an out-of-state contractor"* means tax, penalty, interest, and fees which the department, another state agency, or a subdivision of the state, has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

e. *"Taxes payable"* means any amount referred to in subparagraphs *"c"* and *"d"* above.

f. *"Transient merchant"* shall be defined, for the purposes of this rule, as that phrase is defined in Iowa Code section 9C.1.

7.27(2) *Increases in existing bonds.* If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities which will become due and owing under the contract in the future.

7.27(3) *Responsibility for notification.* Concerning taxes payable by an out-of-state contractor, which are not administered by the department of revenue and finance, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue and finance of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond which the out-of-state contractor must post.

7.27(4) *Initial notification.* After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to a nonlocal business entity and its surety of record, if any. Notice sent to a nonlocal business entity or its surety shall be sent to the last known address as reflected in the records of the secretary of state. The notice sent to an out-of-state contractor shall also be mailed to the contractor's registered agent for service of process, if any, within Iowa. This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity's bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

7.27(5) *Protest to bond forfeiture.* The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for protests to other departmental action in 701—7.8(17A). The caption of the application shall be basically in the form set out in subrule 7.8(1) except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in subrule 7.8(2). However, referring to subrule 7.8(2), paragraph *"a,"* the nonlocal business entity shall state the date of the notice described in subrule 7.27(4). With regard to subrule 7.8(2), paragraph *"c,"* in the case of a tax payable which is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department's administrative law judge in the manner described in 701—7.8(17A). The docketing of an application for hearing shall follow the procedure for the docketing of a protest under that rule.

7.27(6) *Prehearing, hearing and rehearing procedures.* The following Chapter 7 rules are applicable to preliminary and contested case proceedings under this rule: 7.3(17A) to 7.7(17A), 7.9(17A) to 7.13(17A), 7.15(17A) to 7.21(17A), 7.23(17A), and subrule 7.14(2). The strictures of subrule 7.14(1) are not applicable to contested cases arising under this rule.

7.27(7) *Sureties and state departments other than revenue and finance.* A surety shall not have standing to contest the amount of any tax payable.

If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue and finance, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule, and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

Rules 7.1(17A) to 7.27(9C,91C) are intended to implement Iowa Code sections 9C.4, 17A.1(2), 17A.2(2), 17A.11, 91C.7, and 421.8A.

701—7.28 and **7.29** Reserved.

701—7.30(421) Definitions which apply to rules 701—7.31(421) to 701—7.35(421).

7.30(1) The term *"entity"* means any taxpayer other than an individual or sole proprietorship.

7.30(2) The term *"last-known address"* does not necessarily mean the taxpayer's actual address but instead means the last address that the taxpayer makes known to the department by tax type. Thus, for instance, receipt by the department of a taxpayer's change of address from a third person not authorized to act on behalf of the taxpayer (e.g., an employer who had filed a form W-2 showing a new taxpayer address) is not notice to the department of a change of address of the taxpayer. However, the filing by the taxpayer of a tax return for a year subsequent to the year for which a notice is required would be notification to the department of a change of address, provided a reasonable amount of time is allowed to process and transfer such information to the department's central computer system. The meaning of this phrase is important, and taxpayers should be aware of their need to update their address with the department in order to receive refunds of tax and notices of assessments and denial of a claim for refund. When such a notice is sent to a "taxpayer's last-known address" the notice is legally effective even if the taxpayer never receives it.

7.30(3) The term *"taxpayer interview"* means any in-person contact from and after January 1, 1995, between an employee of the department and a taxpayer or a taxpayer's representative which has been initiated by a department employee.

7.30(4) The term *"taxpayer representative"* or *"authorized taxpayer representative"* means an individual authorized to practice before the department under rule 701—7.6(17A); an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14, or a tax return filed under Iowa Code chapter 450, "Inheritance Tax," 450A, "Generation Skipping Tax," or 451, "Estate Tax"; or for proceedings before the department any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.

This rule is intended to implement Iowa Code section 421.60.

701—7.31(421) Abatement of unpaid tax. For assessment notices issued on or after January 1, 1995, if the statutory period for appeal has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines is erroneous, illegal, or excessive. The authority of the director to compromise and settle doubtful and disputed claims for taxes or tax refunds or tax liability of doubtful collectability is not covered by this rule.

This authority exists pursuant to Iowa Code section 421.5.

7.31(1) *Assessments qualifying for abatement.* To be subject to an abatement, an assessment or a portion of an assessment for which abatement is sought must not have been paid and must have exceeded the amount due as provided by the Iowa Code and the administrative rules issued by the department interpreting the Iowa Code. If a taxpayer fails to timely appeal an assessment that is based on the Iowa Code or the department's administrative rules interpreting the Iowa Code within the statutory period, then the taxpayer cannot request an abatement of the assessment, or a portion thereof.

7.31(2) *Procedures for requesting abatement.* The taxpayer must make a written request to the director for abatement of that portion of the assessment that is alleged to be erroneous, illegal, or excessive. A request for abatement which is filed must contain:

a. The taxpayer's name and address, social security number, federal identification number, or any permit number issued by the department;

b. A statement on the type of proceeding, e.g., individual income tax, request for abatement; and

c. The following information:

(1) The type of tax, the taxable period or periods involved, and the amount thereof that was excessive or erroneously or illegally assessed;

(2) Clear and concise statements of each and every error which the taxpayer alleges to have been committed by the director in the notice of assessment and which causes the assessment to be erroneous, illegal, or excessive. Each assignment of error must be separately numbered;

(3) Clear and concise statements of all relevant facts upon which the taxpayer relies (documents verifying the correct amount of tax liability must be attached to this request);

(4) Refer to any particular statute or statutes and any rule or rules involved, if known;

(5) The signature of the taxpayer or that of the taxpayer's representative and the addresses of the taxpayer and the taxpayer's representative;

(6) Description of records or documents which were not available or were not presented to department personnel prior to the filing of this request, if any; and provide copies of any records or documents that were not previously presented to the department; and

(7) Any other matters deemed relevant and not covered in the above paragraphs.

This rule is intended to implement Iowa Code section 421.60.

701—7.32(421) Time and place of taxpayer interviews. The time and place of taxpayer interviews are to be fixed by an employee of the department and employees are to endeavor to schedule a time and place that are reasonable under the circumstances.

7.32(1) *Time of taxpayer interviews.* The department will schedule the day(s) for a taxpayer interview during a normally scheduled workday(s) of the department, during the department's normal business hours. The department will schedule taxpayer interviews throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives. The department will, however, work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of a taxpayer interview.

7.32(2) *Type of taxpayer interview.* The department will determine whether a taxpayer interview will be an office interview (i.e., an interview conducted at a department office) or a field interview (i.e., an interview conducted at the taxpayer's place of business or residence, or some other location that is not a department office) based on which form of interview will be more conducive to effective and efficient tax administration.

The department will grant a request to hold an office interview at a location other than a department office in case of a clear need, such as when it would be unreasonably difficult for the taxpayer to travel to a department office because of the taxpayer's advanced age or infirm physical condition, or when the taxpayer's books, records, and source documents are too cumbersome for the taxpayer to bring to a department office.

7.32(3) *Place of taxpayer interview.* The department will make an initial determination of the place for an interview, including the department region office to which an interview will be assigned, based on the address shown on the return for the tax period to be examined. Requests by taxpayers to transfer the place of interview will be resolved on a case-by-case basis, using the criteria set forth in paragraph *"c"* of this subrule.

a. Office taxpayer interviews. An office interview of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office interview of a taxpayer which is an entity generally is based on the location where the taxpayer entity's original books, records, and source documents are maintained.

b. Field taxpayer interviews. A field interview generally will take place at the location where the taxpayer's original books, records, and source documents pertinent to the interview are maintained. In the case of a sole proprietorship or taxpayer entity, this usually will be the taxpayer's principal place of business. If an interview is scheduled by the department at the taxpayer's place of business, which is a small business and the taxpayer represents to the department in writing that conducting the interview at the place of business would essentially require the business to close or would unduly disrupt business operations, the department upon verification will change the place of interview.

c. Requests by taxpayers to change place of interview. The department will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the department has set for an interview. In considering these requests, the department will take into account the following factors:

(1) The location of the taxpayer's current residence;

(2) The location of the taxpayer's current principal place of business;

(3) The location where the taxpayer's books, records, and source documents are maintained;

(4) The location at which the department can perform the interview most efficiently;

(5) The department resources available at the location to which the taxpayer has requested a transfer; and

(6) Other factors that indicate that conducting the interview at a particular location could pose undue inconvenience to the taxpayer.

A request by a taxpayer to transfer the place of interview generally will be granted under the following circumstances:

1. If the current residence of the taxpayer in the case of an individual or sole proprietorship, or the location where the taxpayer's books, records, and source documents are maintained, in case of a taxpayer entity, is closer to a different department office than the office where the interview has been scheduled, the department normally will agree to transfer the interview to the closer department office.

2. If a taxpayer does not reside at the residence where an interview has been scheduled, the department will agree to transfer the examination to the taxpayer's current residence.

3. If, in the case of an individual, a sole proprietorship, or a taxpayer entity, the taxpayer's books, records, and source documents are maintained at a location other than the location where the interview has been scheduled, the department will agree to transfer the interview to the location where the taxpayer's books, records, and source documents are maintained.

4. The location of the place of business of a taxpayer's representative generally will not be considered in determining the place for an interview. However, the department in its sole discretion may determine, based on the factors described in paragraph *"c"* of this subrule, to transfer the place of interview to the representative's office.

5. If any applicable period of limitations of assessment and collection provided in the Iowa Code will expire within 13 months from the date of a taxpayer's request to transfer the place of interview, the department may require, as a condition to the transfer, that the taxpayer agree in writing to extend the limitations period up to one year.

6. The department is not required to transfer an interview to an office that does not have adequate resources to conduct the interview.

7. Notwithstanding any other provision of this rule, employees of the department may decline to conduct an interview at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the department may transfer an interview to a department office and take any other steps reasonably necessary to protect its employees.

8. Nothing in this rule shall be interpreted as precluding the department from initiating the transfer of an interview if the transfer would promote the effective and efficient conduct of the interview. Should a taxpayer request that such a transfer not be made, the department will consider the request according to the principles and criteria set forth in paragraph *"c"* of this subrule.

9. Regardless of where an examination takes place, the department may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The department generally will visit for these purposes on a normal workday of the department during the department's normal business hours.

7.32(4) *Audio recordings of taxpayer interviews.*

a. A taxpayer is permitted, upon advance notice to the department, to make an audio recording of any interview of the taxpayer by the department relating to the determination or collection of any tax. The recording of the interview is at the taxpayer's own expense and must be with the taxpayer's own equipment.

Requests by taxpayers to make audio recordings must be addressed to the department employee who is conducting the interview and must be received by no later than ten calendar days before the interview. If ten calendar days' advance notice is not given, the department may, in its discretion, conduct the interview as scheduled or set a new date.

The department employee conducting the interview will approve the request to record the interview if:

(1) The taxpayer (or representative) supplies the recording equipment;

(2) The department may produce its own recording of the proceedings;

(3) The recording takes place in a suitable location; and

(4) All participants in the proceedings other than department personnel consent to the making of the audio recording, and all participants identify themselves and their role in the proceedings.

b. A department employee is also authorized to record any taxpayer interview, if the taxpayer receives prior notice of the recording and is provided with a transcript or a copy of the recording upon the taxpayer's request.

Requests by taxpayers (or their representatives) for a copy or transcript of an audio recording produced by the department must be addressed to the employee conducting the interview and must be received by the department no later than 30 calendar days after the date of the recording. Taxpayers must pay the costs of duplication or transcription.

c. At the beginning of the recording of an interview the department employee conducting the interview must state the employee's name, the date, the time, the place, and the purpose of the interview.

At the end of the interview, the department employee will state that the interview has been completed and that the recording has ended.

d. When written records are presented or discussed during the interview being recorded, they must be described in sufficient detail to make the audio recording a meaningful record when matched with the other documentation contained in the case file.

This rule is intended to implement Iowa Code section 421.60.

701—7.33(421) Mailing to the last-known address. If the department fails to mail a notice of assessment to the taxpayer's last-known address or fails to personally deliver the notice to the taxpayer, on or after January 1, 1995, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

In addition, on or after January 1, 1995, if the department fails to mail a notice of assessment or denial of a claim for refund to the taxpayer's last-known address or fails to personally deliver the notice to a taxpayer and, if applicable, to the taxpayer's authorized representative, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

Collection activities, except when a jeopardy situation exists, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

7.33(1) The department will make the determination of the taxpayer's last-known address on a tax-type-by-tax-type basis. However, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to an address used for another tax type.

A notice of assessment mailed to one of two addresses used by a taxpayer was sufficient. L. P. Marvin, Sr., 40TC 982.Dec. 26, 313; U.C. Massengale, (CA-4) 69-1 USTC paragraph 9310, 408 F.2d 1372.

7.33(2) The last-known address is the address used on the most recent filed and processed return. The following principles, established by case law, for the Internal Revenue Service (IRS) also will be applied in determining the taxpayer's last-known address for purposes of this rule.

Although the taxpayer filed a tax return showing a new address, the IRS had not processed the return sufficiently for the new address to be available by computer to the IRS agent who sent the notice of deficiency. Before a change of address is considered available, a reasonable amount of time must be allowed to process and transfer information to the IRS' central computer system. *Diane Williams v. Commissioner of Internal Revenue*, U.S. Court of Appeals, 9th Circuit; 935 F. 2d 1066. Affirming the Tax Court, 57 TCM 1357, Dec. 45, 953(M), TAC Memo. 1989-439.

If the department knows the taxpayer has moved but does not know the new mailing address, the prior mailing address is the proper place to send a deficiency notice. M. Kaestner, CDC 71-2 USTC paragraph 9512, 329 F. Supp. 1082. Aff'd per curiam, (CA-9) 73-1 USTC paragraph 9266, 473 F. 2d 1294. H. Kohn, DC Mass, 85-2 USTC paragraph 9725.

Knowledge acquired by a collection agent regarding the taxpayer's address in an unrelated investigation was not required to be imputed to the examination division responsible for mailing a notice of deficiency. R. H. Wise, DC Mont., 88-1 USTC paragraph 9365, 688 F. Supp. 1164.

However, information acquired by the department in a related investigation of the taxpayer is binding upon the department, e.g., where the taxpayer files a power of attorney showing a change of address.

7.33(3) Procedures for notifying the department of a change in taxpayer's address. The department generally will use the address on the most recent filed and properly processed return by tax type as the address of record for all notices of assessment and denial of claims for refund. If a taxpayer no longer wishes the address of record to be the address on the most recently filed return, the taxpayer must give clear and concise written notification of a change in address to the department. Notifications of a change in address should be addressed to: Changes in Name or Address, Iowa Department of Revenue and Finance, P.O. Box 10413, Des Moines, Iowa 50306.

If after a joint return or married filing separately on a combined return is filed either taxpayer establishes a separate residence, each taxpayer should send clear and concise written notification of a current address to the department.

If a department employee contacts a taxpayer in connection with the filing of a return or an adjustment to a taxpayer's return, the taxpayer may provide clear and concise written notification of a change of address to the department employee who initiated the contact.

A taxpayer should notify the U.S. Postal Service facility serving the taxpayer's old address of the taxpayer's new address in order that mail from the department can be forwarded to the new address. However, notification to the U.S. Postal Service does not constitute the clear and concise written notification that is required to change a taxpayer's address of record with the department.

This rule is intended to implement Iowa Code section 421.60.

701—7.34(421) Power of attorney. No attorney, accountant, or other representative will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization.

7.34(1) A power of attorney is required by the department when the taxpayer wishes to authorize an individual to perform one or more of the following acts on behalf of the taxpayer:

a. To receive copies of any notices or documents sent by the department, its representatives or its attorneys.

b. To receive, but not to endorse and collect, checks in payment of any refund of Iowa taxes, penalties, or interest.

c. To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

d. To execute consents extending the statutory period for assessment or collection of taxes.

e. To fully represent the taxpayer(s) in any hearing, determination, final or otherwise, or appeal.

f. To enter into any compromise with the director of revenue and finance's office.

g. To execute any release from liability required by the department of revenue and finance prerequisite to divulging otherwise confidential information concerning taxpayer(s).

h. Other acts as stipulated by the taxpayer.

7.34(2) A power of attorney to be valid must contain all of the following information:

a. Name and address of the taxpayer;

b. Identification number of the taxpayer (i.e., social security number and/or federal identification number, or any state-issued tax identification number relative to matters covered by the power of attorney);

c. Name, mailing address, and social security number of the representative; and

d. Description of the matter(s) for which representation is authorized which if applicable, must include:

(1) The type of tax(es) involved;

(2) The specific year(s) or period(s) involved; and

(3) In estate matters, decedent's date of death;

e. A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s).

7.34(3) A power of attorney may not be used for tax periods that end more than three years after the date on which the power of attorney is received by the department. A power of attorney may concern an unlimited number of tax periods which have ended prior to the date on which the power of attorney is received by the department; however, each tax period must be separately stated.

7.34(4) The individual who must execute a power of attorney depends on the type of taxpayer involved as follows:

a. Individual taxpayer. In matters involving an individual taxpayer, a power of attorney must be signed by the individual.

b. Husband and wife. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife.

In any matters concerning a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are not to be represented by the same representatives, the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

c. Corporation. In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that the officer has such authority.

d. Association. In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, who must certify that the officer has such authority.

e. Partnership. In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that the partner(s) has such authority.

7.34(5) A power of attorney is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450, 450A or 451.

7.34(6) A new power of attorney for a particular tax type(s) and tax period(s) revokes a prior power of attorney for that tax type(s) and tax period(s).

EXAMPLE. A taxpayer executes a power of attorney for the taxpayer's accountant to represent the taxpayer during an audit of the taxpayer's books and records. After the department issues a notice of assessment, the taxpayer wishes to have the taxpayer's attorney-at-law as an authorized representative in addition to the taxpayer's accountant. The taxpayer must list both the taxpayer's accountant and attorney-at-law on the taxpayer's new power of attorney form.

7.34(7) A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of revocation with the department. The statement of revocation must indicate that the authority of the previous power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the power of attorney must be attached).

7.34(8) A representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with the department. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

7.34(9) A properly completed Form 14-101, State of Iowa Department of Revenue and Finance Power of Attorney Form, satisfies the requirements of this rule.

The department cannot accept Internal Revenue Service Form 2848 even if references to the "Internal Revenue Service" are crossed out and "Iowa Department of Revenue and Finance" is inserted in lieu thereof. The department will accept any other document which satisfies the requirements of this rule.

7.34(10) The department will not recognize as a valid power of attorney a power of attorney form attached to a tax return filed with the department except in the instance of a form attached to a fiduciary return of income form, inheritance tax return, generation skipping tax return, or estate tax return.

7.34(11) The department will accept either the original or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (fax) will be accepted.

7.34(12) If an individual desires to represent a taxpayer through correspondence with the department, the individual must submit a power of attorney even though no personal appearance is contemplated.

7.34(13) Any notice or other written communication (or copy thereof) required or permitted to be given to the taxpayer in any matter before the department must be given to the taxpayer and, unless restricted by the taxpayer, to the taxpayer's representative. If the taxpayer designates more than one recognized representative to receive notices and other written communications, it will be the practice to give copies to the individuals so designated.

7.34(14) Information from powers of attorney forms, including the representative's social security number, is utilized by department personnel to:

a. Determine whether a representative is authorized to receive or inspect confidential tax information;

b. Determine whether the representative is authorized to perform the acts set forth in subrule 7.34(1);

c. Send copies of computer-generated notices and communications to the representative as authorized by the taxpayer; and

d. Ensure that the taxpayer's representative receives all notices and communications authorized by the taxpayer, but notices and communications are not sent to a representative with the same or similar name.

This rule is intended to implement Iowa Code section 421.60.

701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.

7.35(1) A taxpayer may designate in separate written instructions accompanying the payment the type of tax and tax periods to which any voluntary payment is to be applied. The taxpayer may not designate the application of payments which are the result of enforced collection.

7.35(2) Enforced collection includes, but is not limited to garnishment of wages, bank accounts, or payments due the taxpayer, or seizure of assets.

This rule is intended to implement Iowa Code section 421.60.

DIVISION II
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES
APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS
COMMENCED ON OR AFTER JULY 1, 1999

701—7.36(421,17A) Applicability and scope of rules. Effective July 1, 1999, the rules contained in this division pertain to practice and procedure and are designed to implement the requirements of the Act, and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules shall govern the practice, procedure and conduct of the informal proceedings, contested case proceedings, licensing, rule making, and declaratory orders involving taxation and other areas within the department's jurisdiction which includes the following:

1. Sales tax—Iowa Code sections 422.42 to 422.59;
2. Use tax—Iowa Code chapter 423;
3. Individual and fiduciary income tax—Iowa Code sections 422.4 to 422.31 and 422.110 to 422.112;
4. Franchise tax—Iowa Code sections 422.60 to 422.66;
5. Corporate income tax—Iowa Code sections 422.32 to 422.41 and 422.110 to 422.112;
6. Withholding tax—Iowa Code sections 422.16 and 422.17;
7. Estimated tax—Iowa Code sections 422.16, 422.17 and 422.85 to 422.92;
8. Motor fuel tax—Iowa Code chapter 452A;
9. Property tax—Iowa Code chapters 421, 425, 426A, 427, 427A, 428, 428A and 433 to 441;
10. Cigarette and tobacco tax—Iowa Code chapters 421B and 453A;
11. Inheritance, generation skipping transfer, and estate tax—Iowa Code chapters 450, 450A, 450B and 451;
12. Local option taxes—Iowa Code chapter 422B;
13. Hotel and motel tax—Iowa Code chapter 422A;
14. Drug excise tax—Iowa Code chapter 453B;
15. Automobile rental excise tax—Iowa Code chapter 422C;
16. Environmental protection charge—Iowa Code chapter 424;
17. Replacement taxes—Iowa Code chapter 437A;
18. Statewide property tax—Iowa Code chapter 437A;
19. Set-off procedures—Iowa Code section 421.17(29);
20. Other taxes and activities as may be assigned to the department from time to time; and
21. The Taxpayer's Bill of Rights—Iowa Code section 421.60.

As the purpose of these rules is to facilitate business and advance justice, any rule contained herein, pursuant to statutory authority, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.37(421,17A) Definitions. These definitions apply to the rules contained in Division II, unless the text otherwise states to the contrary:

"Act" means the Iowa administrative procedure Act.

"Affiliate or subsidiary of an entity dominant in its field of operation" means an entity which is at least 20 percent owned by an entity that is dominant in its field of operation, or by a partner, officer, director, majority stockholder or the equivalent, of an entity dominant in that field of operation.

"Agency" means each board, commission, department, officer, or other administrative office or unit of the state.

"Contested case" means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing. This term also includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Declaratory order" is an order issued pursuant to 1998 Iowa Acts, chapter 1202, section 13.

"Department" means the Iowa department of revenue and finance.

"Department of inspections and appeals" means the state department created by Iowa Code chapter 10A.

"Director" means the director of the department or the director's authorized representative.

"Division of administrative hearings" means the division of the department of inspections and appeals responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

"Dominant in its field of operation" means having more than 20 full-time equivalent positions and more than $1 million in annual gross revenues.

"Intervene" means to file a petition with the department requesting that the petitioner be allowed to intervene in the processing of a declaratory order currently under the department's consideration.

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

"License" means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

"Licensing" means the department process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

"Motion" has the same meaning as the term is defined in rule 100 of the Iowa Rules of Civil Procedure.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including intervenors.

"Person" means any individual; estate; trust; fiduciary; partnership, including limited liability partnership; corporation, including limited liability corporation; association; governmental subdivision; or public or private organization of any character or any other person covered by the Act other than an agency.

"Petition" means application for declaratory order, request to intervene in a declaratory order under consideration, application for initiation of proceedings to adopt, amend or repeal a rule or document filed in licensing.

"Pleadings" means protest, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

"Presiding officer" means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to 1998 Iowa Acts, chapter 1202, section 3. In cases in which the department is not a party, at the director's discretion, the presiding officer may be the director or the director's designee. A presiding officer of an administrative appeal is the director of the department.

"Proceeding" means informal, formal and contested case proceedings.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside.

"Protester" means any person entitled to file a protest which can culminate in a contested case proceeding.

"Provision of law" means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or rule of the department.

"Review unit" means the unit composed of department employees designated by the director and the attorney general's staff who have been assigned by the director to review protests filed by taxpayers.

"Rule" means a statement by the department of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of the department. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include the excluded items set forth in Iowa Code section 17A.2(10).

"Small business" means any entity including, but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. A "small business" is not an affiliate of an entity dominant in its field or operation. A small business has either 20 or fewer full-time equivalent positions or less than $1 million in annual gross revenues in the preceding fiscal year.

Unless otherwise specifically stated, the terms used in these rules promulgated by the department shall have the meanings defined by the Act.

This rule is intended to implement Iowa Code section 10A.202(1)*"m,"* Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 421.14.

701—7.38(421,17A) Applicability of rules set forth in Division I of Chapter 7. Many of the rules governing informal, administrative and judicial review proceedings were not required to be changed by 1998 Iowa Acts, chapter 1202. Accordingly, the following rules are incorporated by reference into this division and will govern their respective topics in relation to proceedings under this division:

701—7.4(17A) Computation of time, filing of documents;
701—7.5(17A) Form and style of papers;
701—7.7(17A) Resolution of tax liability;
701—7.18(17A) Interventions;
701—7.27(9C,91C) Procedure for nonlocal business entity bond forfeitures;
701—7.30(421) Definitions which apply to rule 701—7.31(421) to 701—7.35(421);
701—7.31(421) Abatement of unpaid tax;
701—7.32(421) Time and place of taxpayer interviews;
701—7.33(421) Mailing to the last-known address;
701—7.34(421) Power of attorney; and
701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.

701—7.39(17A) Business hours. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall be open between the hours of 8 a.m. and 4:30 p.m. each weekday except Saturdays, Sundays and legal holidays as prescribed in Iowa Code section 4.1(34), for the purpose of receiving protests, pleadings, petitions, motions, requests for public information, copies of official documents, or for the opportunity to inspect public records.

All documents or papers required to be filed with the department by these rules shall be filed with the designated clerk of the hearings section in the principal office of the department in the Hoover State Office Building, Des Moines, Iowa 50319. Requests for public information or copies of official documents or the opportunity to inspect public records shall be made in the director's office at the department's principal office.

701—7.40(17A) Persons authorized to represent themselves or others. Due to the complex questions involved and the technical aspects of taxation, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys and certified public accountants.

The right to represent one's self or others in connection with any proceeding before the department or administrative hearings division shall be limited to the following classes of persons:

1. Taxpayers who are natural persons representing themselves;
2. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;
3. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with Court Rule 113 of the Iowa Bar Rules of the Iowa Supreme Court;
4. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542C;
5. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer, excluding attorneys who are acting in the capacity of a director or officer of a corporation and who have not met the requirements of the third classification above;
6. Partners representing their partnership;
7. Fiduciaries;
8. Government officials authorized by law; or
9. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II of Iowa Code chapter 422.

No person who has served as an official or employee of the department shall within a period of two years after the termination of such service or employment appear before the department or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and in which the person personally participated during the period of service or employment.

Any person appearing in any proceeding involving the department, regardless of whether the department is a party, must have on file with the department a valid Iowa power of attorney.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.41(17A) Protest. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must be either delivered to the department by electronic means, United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section for the department, personally delivered to the clerk of the hearings section for the department, or be served on the clerk of the hearings section for the department by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

The period for appealing department action relating to refund claims is the same statutory period for contesting an assessment. Failure to timely file a written protest will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised. The review unit, created within the department by the director to review protests as provided in 701—7.44(17A), may seek dismissal of protests which are not in the proper form as provided by this rule. See subrule 7.44(2) for dismissals.

If the department has not granted or denied a filed refund claim within six months of filing the claim, the refund claimant may file a protest. Even though a protest is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

Notwithstanding the above, the taxpayer who fails to timely protest an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty and by filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes, which are not timely protested, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer can contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment would be canceled. *Flora v. United States,* 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct. 630 (1960); *Higginbotham v. United States,* 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States,* 280 F.2d 89 (8th Cir. 1960); *Stern v. United States,* 563 F.Supp. 484 (D. Nev. 1983); *Drake v. United States,* 355 F. Supp. 710 (E.D. Mo. 1973). Any such protest filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file a protest as authorized by this rule.

All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A. X is assessed withholding income taxes, penalty and interest, as a responsible party on eight employees. X fails to timely protest the assessment. X contends that X is not a responsible party. If X is a responsible party, X was required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X can pay an amount of tax, penalty and interest attributable to one employee for one month and file a refund claim within the time period provided by law since if X is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B. Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely protest the assessment. Y was billed monthly for electricity by the power company to whom Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y can pay an amount of tax, penalty and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since if Y is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a variance in the name set forth in the protest and the correct name, a statement of the reason for the discrepancy shall be set forth in the protest. A protest which is filed shall contain:

7.41(1) A caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name and address and designate type of proceeding, e.g., income tax refund claim).	PROTEST DOCKET NO._____ (filled in by department)

7.41(2) Substantially state in separate numbered paragraphs the following:

a. Proper allegations showing:

(1) Date of assessment;

(2) Date of refund denial;

(3) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing the refund claim;

(4) Whether the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;

(5) Attach a copy of the assessment, refund claim, and refund denial;

(6) Other items that the protester wishes to bring to the attention of the department; and

(7) Request for attorney fees, if applicable.

b. The type of tax, the taxable period or periods involved and the amount in controversy;

c. Each error alleged to have been committed listed in a separate paragraph. For each error listed, provide an explanation of the error and all relevant facts related to the error;

d. Reference to any particular statute or statutes and any rule or rules involved, if known;

e. Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest, if any, and provide copies of any records or documents that were not previously presented to the department;

f. Any other matters deemed relevant and not covered in the above paragraphs;

g. The desire of protester to waive informal or contested case proceedings if it is desired; unless the protester so indicates a waiver, informal procedures will be initiated;

h. A statement setting forth the relief sought by the protester;

i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative; and

j. Attach a copy of power of attorney for protester's representative.

Upon receipt of the protest, the clerk of the hearings section for the department shall register the receipt of the protest, docket the protest, and shall assign a number to the case. The assigned number shall be placed on all subsequent pleadings filed in the case. An original and two copies of the protest shall be filed with the clerk of the hearings section of the department.

The protester may amend the protest at any time prior to the commencement of the evidentiary hearing. The department can request that protester amend the protest for purposes of clarification.

Upon the filing of an answer or if a demand for contested case is made by the protester, the clerk of the hearings section of the department will transfer the protest file to the division of administrative hearings established by 1998 Iowa Acts, chapter 1202, section 3, within 30 days of the date of the filing of the answer or the demand for contested case, unless the director determines not to transfer the case. If a party objects to a determination under 701—7.50(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

7.41(3) Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license. A person who has had an application for renewal of vehicle registration denied or has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file a protest with the clerk of the hearings section for the department if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

The issues raised in a protest by the person, which are limited to a mistake of fact, may include but are not limited to:

1. The person has the same name as the obligor but is not the correct person;
2. The amount in question has been paid; or
3. The person has made arrangements with the department to pay the amount.

701—7.42(17A) Identifying details. Any person may at any time file a motion to delete identifying details concerning the person from any document relating to any proceedings as defined in rule 701—7.37(17A) prior to disclosure to members of the public. Such a motion must be filed with the clerk of the hearings section for the department if the motion is filed prior to the commencement of a contested case, which is before the Notice for Hearing is issued. If the motion is filed during a contested case, but prior to an interagency appeal, then the motion must be filed with the presiding officer. If such a motion is filed during or after an interagency appeal has been filed, then the motion must be filed with the office of the clerk of the hearings section for the department.

If the motion concerns information which is not a part of a contested case, the motion shall be in the form of a request to delete identifying details; if part of a contested case, the motion shall be in the form of a motion to delete identifying details. All motions to delete shall conform to subrule 7.50(4). The motion or request shall contain the following:

1. The name of the person requesting deletion and the docket number of the proceeding, if applicable;

2. The legal basis for the request for deletion; such as, release of the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret or of advantage to competitors. A corporation may not claim an unwarranted invasion of privacy;

3. A precise description of the document, report, or other material in the possession of the department from which the deletion is sought, and a precise description of the information to be deleted. If deletion is sought from more than one document, each document and the materials sought to be deleted from it shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, such as, the material sought to be deleted is a trade secret or its release would give advantage to competitors and serve no public purpose;

4. An affidavit in support of deletion must accompany each motion or request. The affidavit must be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying deletion, not merely the legal basis for deletion; and

5. All affidavits shall contain a general and truthful statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect, and whether the grounds for deletion is that the release of information would give advantage to competitors, and a general statement that the release would serve no public purpose.

701—7.43(17A) Docket. The clerk of the hearings section for the department shall maintain a docket of all proceedings and each of the proceedings shall be assigned a number. Every matter coming within the purview of these rules shall be assigned a docket number which shall be the official number for the purposes of identification. Upon receipt of a protest, petition for declaratory order or petition to initiate rule-making proceedings, the proceeding will be docketed and assigned a number, and the parties notified thereof. The number shall be placed by the parties on all papers thereafter filed in the proceeding.

701—7.44(17A) Informal procedures and dismissals of protests.

7.44(1) *Informal procedures.* Persons are encouraged to utilize the informal procedures provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protester indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protester, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

a. *Review unit.* A review unit is created within the department and, subject to the control of the director, the unit will:

(1) Review and evaluate the validity of all protests made by taxpayers from the department action.

(2) Determine the correct amount of tax owing or refund due.

(3) Determine the best method of resolving the dispute between the protester and the department.

(4) Assign protests to the appropriate divisions or sections of the department for resolution.

(5) Take further action regarding the protest, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the protest, including a request for an informal conference.

(6) Determine whether the protest complies with rule 701—7.41(17A) and request any amendments to the protest or additional information.

After assignment of the protest, the section or division responsible may concede any items contained in the protest which it determines should not be controverted by the department. If the protester has not waived informal procedures, the section or division responsible may request the protester and the protester's representative, if any, to attend an informal conference with the responsible section or division to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or of narrowing the issues presented in the protest if no settlement can be made.

Findings dealing with the issues raised in the protest may be issued unless the issues may be more expeditiously determined in another manner or it is determined that findings are unnecessary. The protester will be notified of the decision on the issues in controversy.

Nothing herein will prevent the section or division responsible and the protester from mutually agreeing on the manner in which the protest will be informally reviewed.

b. *Settlements.* If a settlement is reached during informal procedures, the clerk of the hearings section must be notified. An order shall be issued and served upon all parties, stating that a settlement was reached by the parties and that the case is terminated.

7.44(2) *Dismissal of protests.*

a. Whether informal procedures have been waived or not, the failure of the protester to timely file a protest or to pursue the protest may be grounds for dismissal of the protest by the director or the director's designee. If the protest is so dismissed, the protester may file an application for reinstatement of the protest for good cause as provided in paragraph *"c"* of this subrule. Such application must be filed within 30 days of the date of the dismissal notice. Thereafter, the procedure in paragraph *"c"* of the subrule should be followed. If informal procedures have not been waived, the failure of the protester to present evidence or information requested by the review unit shall constitute grounds for the director or the director's designee to dismiss the protest. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. The failure of protester to file a protest in the format required by rule 7.41(17A) may be grounds for dismissal of the protest by the director or the director's designee.

b. If the department seeks to have the protest dismissed, the review unit shall file a motion to dismiss with the clerk of the hearings section for the department and serve a copy of the motion on the protester. Protester may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the protest. If a resistance is filed, the review unit has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the clerk of the hearings section for the department and protester. If no such notice is issued by the review unit within the ten-day period, the protest file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 7.47(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be dismissed. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such dismissal proceedings.

c. If a motion to dismiss is filed and is unresisted, a protest so dismissed may be reinstated by the director or the director's designee for good cause as interpreted by the Iowa Supreme Court in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993) if an application for reinstatement is filed with the clerk of the hearings section for the department within 30 days of the date the protest was dismissed. The application shall set forth all reasons and facts upon which the protester relies in seeking reinstatement of the protest. The review unit shall review the application and notify the protester whether the application is granted or denied. If the review unit denies the application to reinstate the protest, the protester has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. When a written request is received, the protest file will be transferred to the division of administrative hearings which shall issue a notice as prescribed in rule 701—7.47(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be reinstated. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such reinstatement proceedings.

d. Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a protester has either failed to diligently pursue the protest or refuses to comply with requests for discovery set forth in rule 701—7.47(17A). Such a motion must be filed with the presiding officer.

701—7.45(17A) Answer. The department may, in lieu of findings, file an answer. When findings are issued, the department will file an answer within 30 days of receipt of written notification from protester stating disagreement with the findings. The answer shall be filed with the clerk of the hearings section for the department.

In the event that the protester does not so respond in writing to the findings issued on matters covered by subrule 7.44(1) within 30 days after being notified, the department may seek dismissal of the protest pursuant to subrule 7.44(2).

The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the protest. An original copy only of the answer shall be filed with the clerk of the hearings section for the department and shall be signed by the department's counsel or representative.

The department shall forthwith serve a copy of the answer upon the representative of record or, if there is no representative of record, then upon the protester and shall file proof of service with the clerk of the hearings section of the department at the time of filing of the answer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

The provisions of rule 701—7.45(17A) shall be considered as a part of the informal procedures since a contested case proceeding, at the time of filing the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the protester or the department.

Notwithstanding the above portions of this rule, if a taxpayer makes a written demand for a contested case proceeding, as authorized by rule 701—7.47(17A), after a period of six months from the filing of a proper protest, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be suspended, if the protest involves an assessment, from the time that the department was required to answer until the date that the department files its answer and, if the protest involves a refund, interest shall accrue on the refund at double the rate from the time the department was required to answer until the date that the department files its answer.

The department's answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

The department's answer should set forth the basis for retention of the case by the director as provided in subrule 7.50(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings, unless the director determines on the director's own motion that the case should be retained by the director.

This rule is intended to implement Iowa Code section 10A.202(1)*"m,"* Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 421.14 and 421.60.

701—7.46(17A) Subpoenas. Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code section 10A.202(1)*"m,"* Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 421.14.

701—7.47(17A) Commencement of contested case proceedings. A demand or request by the protester for the commencement of contested case proceedings must be in writing and filed with the clerk of the hearings section by electronic means, by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk of the hearings section of the department, or by personal service on the office of the clerk of the hearings section for the department during business hours. The demand or request is considered filed on the date of the postmark. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

Contested case proceedings will be commenced by the presiding officer by delivery of notice by ordinary mail directed to the parties after a demand or request is made (1) by the protester and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (2) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the protester. The notice will be given by the presiding officer.

The presiding officer may grant a continuance of the hearing. Any change in the date of the hearing shall be set by the presiding officer. Either party may apply to the presiding officer for a specific date for the hearing. The notice shall include:

1. A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;

2. A statement of the legal authority and jurisdiction under which the hearing is held;
3. A reference to the particular sections of the statutes and rules involved; and
4. A short and plain statement of the matters asserted, including the issues.

After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire. However, any pleading or amendment thereto which is filed within seven days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code sections 10A.202(1)*"m,"* 17A.12 as amended by 1998 Iowa Acts, chapter 1202, and 421.8A.

701—7.48(17A) Discovery. The rules of the Supreme Court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings. Disputes concerning discovery shall be resolved by the presiding officer. If necessary a hearing shall be scheduled, with reasonable notice to the parties and upon hearing an appropriate order shall be issued by the presiding officer.

When the department relies on a witness in a contested case, whether or not a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, it shall, on request, make such statements or reports available to a party for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable departmental records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceeding.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 421.14 and 10A.202(1)*"m."*

701—7.49(17A) Prehearing conference. Upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

1. The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent;
2. The necessity or desirability of setting a new date for hearing;
3. The simplification of issues;
4. The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation;
5. The possibility of agreeing to the admission of facts, documents or records not really controverted, to avoid unnecessary introduction of proof;
6. The procedure at the hearing;
7. Limiting the number of witnesses;

8. The names and identification of witnesses and the facts each party will attempt to prove at the hearing;

9. Conduct or schedule of discovery; and

10. Such other matters as may aid, expedite or simplify in the disposition of the proceeding.

Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not, or should not be, fairly in dispute.

Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the grounds that it does not fully or correctly embody the agreements at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, consent order, or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue an order to reflect such a disposition.

Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under these sets of rules governing the contested case proceedings. However, the department reserves the right to refuse a waiver if, among other reasons, such waiver would not be consistent with the public interest.

If either party to the contested case proceeding fails to appear at the prehearing conference, fails to request a continuance, or fails to submit evidence or arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.50(4).

This rule is intended to implement Iowa Code section 17A.12 as amended by 1998 Iowa Acts, chapter 1202.

701—7.50(17A) Contested case proceedings. Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public.

Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings, shall be held at the location designated in the notice of evidentiary hearing. Generally, the location for evidentiary hearings in such cases will be at the principal office of the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

If the director retains a contested case, generally, the location for the evidentiary hearing will be at the main office of the department at the Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50309. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

7.50(1) *Determination of presiding officer.* If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. If the department is not a party to the contested case retained by the director, the presiding officer may be the director or the director's designee. Upon determining that a case will be retained and not transferred to the division of administrative hearings, the director shall issue written notification to the parties of the determination which states the basis for retaining the case for evidentiary hearing.

A protester may file a written objection to the director's determination to retain the case for evidentiary hearing and request that the contested case be heard by an administrative law judge presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk of the hearings section for the department within 20 days of the notice issued by the director of the director's determination to retain the case. The director may deny the request only upon a finding that one or more of the following apply:

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

b. A qualified administrative law judge is unavailable to hear the case within a reasonable time;

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

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

e. The case involves an issue or issues the resolution of which would create important precedent;

f. The case involves complex or extraordinary questions of law or fact;

g. The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;

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

i. The request was not timely filed; and

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

The director shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the protest file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing if a qualified administrative law judge will be available.

The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa, unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

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 director.

7.50(2) *Conduct of proceedings.* A proceeding shall be conducted by a presiding officer who, among other things, shall:

a. Open the record and receive appearances;

b. Administer oaths and issue subpoenas;

c. Enter the notice of hearing into the record;

d. Receive testimony and exhibits presented by the parties;

e. In the presiding officer's discretion, interrogate witnesses;

f. Rule on objections and motions;

g. Close the hearing; and

h. Issue an order containing findings of fact and conclusions of law.

The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof, shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order: (1) protester, (2) intervenor (if applicable), (3) department, (4) rebuttal by protester, (5) oral argument by parties (if necessary).

If the protester or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have such representatives appearing upon their behalf. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to fairly present evidence, testimony, and arguments on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the presiding officer's own motion or upon the motion of the party who has appeared, adjourn the hearing, enter a default decision, or proceed with the hearing and make a decision on the merits in the absence of the party.

Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

A stipulation by the parties of the issues or a statement of the issues in the notice commencing the contested case cannot be changed by the presiding officer without the consent of the parties. The presiding officer shall not, on the presiding officer's own motion, change or modify the issues agreed upon by the parties. Notwithstanding the provisions of this paragraph, a party within a reasonable time prior to the hearing may request that a new issue be addressed in the proceedings, except that the request cannot be made after the parties have stipulated to the issues.

7.50(3) *Rules of evidence.* In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. *Oath.* All testimony presented before the presiding officer shall be given under oath which the presiding officer has authority to administer.

b. Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

c. Subpoena. When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number and the last-known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if it is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. Admissibility of evidence.

(1) Evidence having probative value. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

Objections to evidentiary offers may be made at the hearing and the presiding officer's ruling thereon shall be noted in the record.

(2) Evidence of a federal determination. Evidence of a federal determination whether it be a treasury department ruling, regulation or determination letter, a federal court decision or an Internal Revenue Service assessment relating to issues raised in the proceeding shall be admissible, and the protester shall be presumed to have conceded the accuracy of it unless the protester specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of the parties to be used in contested case proceedings. In the event the parties file a stipulation in the proceedings, the stipulation shall be binding on the parties and the presiding officer.

e. Exhibits.

(1) Identification of exhibits. Exhibits attached to a stipulation or entered in evidence which are offered by protesters shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, those offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

(2) Disposition of exhibits. After an order has become final, either party desiring the return, at the party's expense, of any exhibit belonging to the party, shall make application in writing to the clerk of the hearings section for the department within 30 days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the clerk of the hearings section for the department deems advisable.

f. Official notice. The presiding officer may take official notice of all facts of which judicial notice may be taken. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the presiding officer determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

g. Evidence outside the record. Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

h. Presentation of evidence and testimony. In any hearing each party thereto shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. Persons whose testimony has been submitted in written form, if available, shall also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for re-direct examination and re-cross examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

i. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.50(4) *Motions.* After commencement of contested case proceedings, appropriate motions may be filed by any party with the presiding officer when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the same are based.

Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the presiding officer. The presiding officer shall rule on the motion by issuing an order. A copy of the order containing the ruling on the motion shall be mailed to the parties and authorized representatives. Motions may be made orally during the course of a hearing; however, the presiding officer may request that it be reduced to writing and filed with the presiding officer.

To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause why the motion should be granted.

The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

a. Types of motions. Types of motions include, but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the following:

1. Unavailability of a party, a party's representative or a witness;
2. Incompletion of discovery; and
3. Possibility of settlement of the case.

(2) Motion for dismissal;

(3) Motion for summary judgment;
(4) Motion to delete identifying details in the decision;
(5) Motion for default; and
(6) Motion to vacate default.

b. Hearing on motions. Motions subsequent to the commencement of a contested case proceeding shall be determined by the presiding officer.

c. Summary judgment procedure. Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may, after a reasonable time to complete discovery, after completion of discovery, or by agreement of the parties, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 45 days prior to the date the case is set for hearing, unless otherwise ordered by the presiding officer. Any party resisting the motion shall file within 30 days from the time of service of the motion a resistance; statement of disputed facts, if any; and memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The time fixed for hearing or normal submission on the motion shall be not less than 35 days after the filing of the motion, unless another time is ordered by the presiding officer. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits which support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading, but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually, and in good faith, controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.50(7).

7.50(5) *Briefs and oral argument.* At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the presiding officer so directs.

An original copy only of all briefs shall be filed. Filed briefs shall conform to the requirements of 701—7.5(17A).

If the parties agree on a schedule for submission of briefs, the schedule shall be binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

7.50(6) *Defaults.* 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.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department action 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 in subrule 7.50(7). A motion to vacate must state all facts relied upon by the moving party which establish that 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, and such affidavit(s) must be attached to the motion.

c. 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.

d. 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.

e. "Good cause" for purposes of this rule shall have the same meaning as "good cause" as interpreted in the case of *Purethane, Inc. v. Iowa State Board of Tax Review,* 498 N.W.2d 706 (Iowa 1993).

f. 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 as provided in subrule 7.50(12).

g. 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.

h. A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues; but unless the defaulting party has appeared, it cannot exceed the relief demanded.

i. 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 a stay.

7.50(7) *Orders.* At the conclusion of the hearing, the presiding officer in the presiding officer's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law.

The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the person presiding at the hearing, unless the person is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record, and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of protester, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award, unless the parties agree otherwise.

When a motion has been made to delete identifying details in an order on the basis of personal privacy or trade secrets, the justification for such deletion or refusal to delete shall be made by the moving party and shall appear in the order.

When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of the director within 30 days of the date of the order, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.55(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will only consider those issues or selected issues presented at the hearing before the presiding officer or any issues of fact or law raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact, or may reverse or modify any conclusion of law that the director finds to be in error.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or certified mail, return receipt requested, except in the case of an order revoking a sales or use tax permit or a motor fuel license which may be delivered by ordinary mail.

A cross-appeal may be taken within the 30-day period for taking an appeal to the director of revenue and finance or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.55(17A), the cross-appeal may be taken within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

7.50(8) *Stays.* During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file an application for a stay with the director. The application shall set forth the reasons in detail why the applicant is entitled to a stay and shall specifically address the following four factors:

a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter;

b. The extent to which the applicant will suffer irreparable injury if the stay is not granted;

c. The extent to which the grant of a stay to the applicant will substantially harm the other parties to the proceedings; and

d. The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

7.50(9) *Expedited cases—when applicable.* In case a protest is filed where the case is not of precedential value and the parties desire a prompt resolution of the dispute, the department and the protester may agree to have the case designated as an expedited case.

a. Agreement. The department and the protester shall execute an agreement to have the case treated as an expedited case. In this case, discovery is waived. The provisions of this agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings. Within 30 days of written notice to the clerk of the hearings section for the department sent by the parties stating that an agreement to expedite the case has been executed, the clerk of the hearings section for the department must transfer the protest file to the division of administrative hearings.

b. Finality of decision. A decision entered in an expedited case proceeding shall not be reviewed by the director, state board of tax review, or any other court, and shall not be treated as a precedent for any other case.

c. Discontinuance of proceedings. Any time prior to a decision's being rendered, the taxpayer or the department may request that expedited case proceedings be discontinued if there are reasonable grounds to believe that the issues in dispute would be of precedential value.

d. Procedure. Upon return of an executed agreement for this procedure, the department shall within 14 days file its answer to the protest. The case shall be docketed for hearing as promptly as the presiding officer can reasonably hear the matter.

7.50(10) *Burden of proof.* The burden of proof with respect to assessments or denials of refunds in contested case proceedings is as follows:

a. The department must carry the burden of proof by clear and convincing evidence as to the issue of fraud with intent to evade tax.

b. The burden of proof is on the department for any tax periods for which the assessment was not made within six years after the return became due, excluding any extension of time for filing such return, except where the department's assessment is the result of the final disposition of a matter between the taxpayer and the Internal Revenue Service or where the taxpayer and the department signed a waiver of the statute of limitations to assess.

c. The burden of proof is on the department as to any new matter or affirmative defense raised by the department. "New matter" means an adjustment not set forth in the computation of the tax in the assessment or refund denial, as distinguished from a new reason for the assessment or refund denial. "Affirmative defense" is one resting on facts not necessary to support the taxpayer's case.

d. In all instances where the burden of proof is not expressly placed upon the department in this subrule, the burden of proof is upon the protester.

7.50(11) *Costs.* A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the department incurred subsequent to the issuance of the notice of assessment or refund denial based upon the following:

a. The reasonable expenses of expert witnesses.

b. The reasonable costs of studies, reports, and tests.

c. The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

d. An award for reasonable litigation costs shall not exceed $25,000 per case.

e. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

f. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

g. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

h. The taxpayer has the burden of establishing the unreasonableness of the department's position.

i. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

j. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

k. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the protest or it will not be considered.

l. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

m. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

(1) Whether the department's position was substantially justified;

(2) Whether the protester is the prevailing taxpayer;

(3) The burden is upon protester to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

(4) Whether alleged litigation costs are reasonable or necessary;

(5) Whether protester has met its burden of demonstrating all of these points.

7.50(12) *Interlocutory appeals.* Upon written request of a party or on the director's own motion, the director may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the director at the time of the review of the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

Interlocutory appeals do not apply to licensing.

7.50(13) *Consolidation and severance.*

a. *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

This rule is intended to implement Iowa Code sections 10A.202(1)"*m,*" 17A.15(3) as amended by 1998 Iowa Acts, chapter 1202, 421.60, 422.57(1) and 452A.68.

701—7.51(17A) Record and transcript. The record in a contested case shall include:

1. All pleadings, motions and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;

6. All orders of the presiding officer; and
7. The order of the director on appeal or review.

Oral hearings regarding proceedings on appeal to or considered on motion of the director which are recorded by mechanical means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk of the hearings section for the department who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review, if so requested, and no objection is made by any other party to the proceeding or the director. Upon request, the department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

Where the administrative hearings division issues a proposed order which becomes the final order of the department because of lack of timely appeal to or review by the director, the division, upon receiving notice from the director or the director's designee, shall promptly forward the record of the contested case proceeding to the director.

701—7.52(17A) Rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. See subrule 7.50(7) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule 701—7.53(17A). The director shall have 20 days from the filing of the application to grant or deny the rehearing. If the application is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

The application for rehearing which is filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name and address and designate type of proceeding, e.g., income tax refund claim).	APPLICATION FOR REHEARING DOCKET NO._____

The application for rehearing shall substantially state in separate numbered paragraphs the following:

1. Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;
2. Clear and concise statements of all relevant facts upon which the party relies;
3. Reference to any particular statute or statutes and any rule or rules involved;
4. The signature of the party or that of the party's representative, the address of the party or the party's representative, and the telephone number of the party or the party's representative.

No applications for rehearing shall be filed with or entertained by an administrative law judge.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.53(17A) Service. All papers or documents required by 701—Chapter 7 to be filed with the department or the presiding officer and served upon the opposing party or other person shall be served by ordinary mail unless another rule specifically refers to another method. All notices required by 701—Chapter 7 to be served on parties or persons by the department or presiding officer shall be served by ordinary mail unless another rule specifically refers to another method.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.54(17A) Ex parte communications and disqualification.

7.54(1) *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk of the hearings section for the department. The clerk of the hearings section for the department is to transfer the filed copy of the prohibited communication to the presiding officer.

a. 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 department 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 this rule, 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.

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.

b. "Ex parte" communication defined. Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

c. How to avoid prohibited communications. 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 rules in this division and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls, including all parties or their representatives.

d. Joint presiding officers. 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.

e. Advice to presiding officer. Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 the rules in this division.

f. Procedural communications. 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.

g. 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.

h. Disclosure by presiding officer. 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.

i. Sanction. 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, suspension, or revocation of the privilege to practice before the department or the administrative hearings division. Violation of ex parte communication prohibitions by department personnel or their representatives shall be reported to the clerk of the hearings section for the department for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

7.54(2) *Disqualification of a presiding officer.* Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings pursuant to 1998 Iowa Acts, chapter 1202, section 15, if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. Grounds for disqualification. 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:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) 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.

(3) 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;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) 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;

(6) 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

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. "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 department 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 1998 Iowa Acts, chapter 1202, section 19(3), and these rules.

c. Disqualification and the record. 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.

d. Motion asserting disqualification. If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay as provided under this division.

701—7.55(17A) Licenses.

7.55(1) *Denial of license, refusal to renew license.* When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, a notice, as prescribed in 701—7.47(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall give 30 days' written notice to the applicant or licensee in which to appear at a hearing to show cause why a license should not be refused or denied. In addition to the requirements of 701—7.47(17A) the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. If the licensee so desires, the licensee may file a petition as provided in subrule 701—7.55(3) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this division governing contested case proceedings shall apply.

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court. See 195—subrule 20.4(1) regarding gambling license applications.

7.55(2) *Revocation of license.* The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to 701—7.47(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled or withdrawn, is given an opportunity to show at an evidentiary hearing conducted pursuant to the rules governing contested case proceedings in this chapter compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to 701—7.47(17A) only if the permit holder requests that this be done following notification, by ordinary mail, of the director's intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of 701—7.47(17A) the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn, may file a petition as provided in subrule 7.55(3) with the clerk of the hearings section for the department prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this division governing contested case proceedings shall apply.

Notwithstanding the above, if the department finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.55(3) *Petition.* When a person desires to file a petition as provided in subrules 7.55(1) and 7.55(2), the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name, and address and type of license).	}	PETITION DOCKET NO._____ (filled in by Department)

The petition shall substantially state in separate numbered paragraphs the following:

1. The full name and address of the petitioner;
2. Reference to the type of license and the relevant statutory authority;
3. Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;
4. Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and
5. The signature of the petitioner or petitioner's representative, the address of petitioner and of petitioner's representative, and the telephone number of petitioner or petitioner's representative.

701—7.56(17A) Declaratory order—in general. Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department. However, department personnel, including field personnel, ordinarily will discuss substantive tax issues with members of the public or their representatives prior to the receipt of a petition for a declaratory order, but such oral or written opinions or advice are not binding on the department. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory order on a particular question. In these cases, however, the name of the taxpayer shall be disclosed. The department will also discuss questions relating to certain procedural matters as, for example, submitting a request for a declaratory order or submitting a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of a return or report required to be filed with the department. Such oral advice is advisory only and the department is not bound to recognize it in the examination of the return, report or records.

7.56(1) *Petition for declaratory order.* Any person may file a petition with the Clerk of the Hearings Section for the Department of Revenue and Finance, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319, seeking a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department. A petition is deemed filed when it is received by the clerk of the hearings section for the department. The clerk of the hearings section for the department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the clerk of the hearings section for the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE AND FINANCE

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER Docket No._____

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 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 decided 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 presented in the petition;

h. Any request by petitioner for a meeting provided for by this rule; and

i. Whether the petitioner is presently under audit by the department.

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

7.56(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the clerk of the hearings section for the department shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The clerk of the hearings section for the department may also give notice to any other persons.

7.56(3) *Intervention.*

a. 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.

b. 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 department.

c. A petition for intervention shall be filed with the Clerk of the Hearings Section for the Department of Revenue and Finance, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the clerk of the hearings section for the department. The clerk of the hearings section for the department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE AND FINANCE

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original Petition).	PETITION FOR INTERVENTION Docket No._____

The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention;

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome;

(4) 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;

(5) 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;

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding;

(7) Whether the intervenor is presently under audit by the department; and

(8) Consent of the intervenor to be bound by the declaratory order.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. The petition for intervention must not correct or raise any additional facts that are in the petition for declaratory order. To have standing, the intervenor must have a legally protectible and tangible interest at stake in the petition for declaratory order under consideration by the director for which the party wishes to petition to intervene. Black's Law Dictionary, Centennial Edition, p. 1405, citing, Guidry v. Roberts, 331 So. 44, 50 (La.App.). Based on Iowa case law, the department may refuse to entertain a petition from one whose rights will not be invaded or infringed. Bowers v. Bailey 237 Iowa 295, 21 N.W.2d 773 (1946). The department may, by rule, impose a requirement of standing upon those that seek a declaratory order at least to the extent of requiring that they be potentially aggrieved or adversely affected by the department action or failure to act. Bonfield, "The Iowa Administrative Procedure Act, Background, Construction, Applicability and Public Access to Agency Law, The Rule-making Process," 60 Iowa Law Review 731, 805 (1975). The department adopts this requirement of standing for those seeking a petition for a declaratory order and those seeking to intervene in a petition for a declaratory order.

An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

If a party seeks to have an issue determined by declaratory order, but the facts are different from a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director's consideration. Instead, the party should file a separate petition for a declaratory order and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

7.56(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

7.56(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to Administrator of the Compliance Division, Department of Revenue and Finance, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7.56(6) *Service and filing of petitions and other papers.*

a. *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 their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. *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 Clerk of the Hearings Section for the Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, 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 department.

c. *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided in 701—7.41(17A) and 701—7.53(17A).

7.56(7) *Department consideration.* Upon request by petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department, to discuss the questions raised. The department may solicit comments or information from any person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

7.56(8) *Action on petition.*

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 701—7.37(17A).

7.56(9) *Refusal to issue order.*

a. The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form;

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;

(3) The department does not have jurisdiction over the questions presented in the petition;

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them;

(5) 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;

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

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;

(9) 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner;

(10) The petitioner requests the department to determine whether a statute is unconstitutional on its face; or

(11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. 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 the department's refusal to issue an order.

7.56(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

7.56(11) *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.

7.56(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition.

7.56(13) *Prejudice or no consent.* The department will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

701—7.57(17A) Department procedure for rule making.

7.57(1) The department hereby adopts and incorporates by reference the following Uniform Rules on Agency Procedure for Rule Making, which are printed in the first volume of the Iowa Administrative Code, with the additions, changes, and deletions to those rules listed below:

X.2(17A) Advice on possible rules before notice of proposed rule adoption.

X.4(1) Notice of proposed rule making—contents.

X.4(3) Copies of notices. In addition to the text of this subrule, the department adds that the payment for the subscription and the subscription term is one year.

X.5(17A) Public participation. In addition to the text of this rule, the department also adds that written submissions should be submitted to the coadministrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. Also, any requests for special requirements concerning accessibility are to be made to the Clerk of the Hearings Section, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, telephone (515)281-7081;

X.6(17A) Regulatory analysis. In addition to the text of this rule, the department also adds that small businesses or organizations of small businesses may register on the department's small business impact list by making a written application to the Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319;

X.7(17A,25B) Fiscal impact statement;

X.8(17A) Time and manner of rule adoption;

X.9(17A) Variance between adopted rule and published notice of proposed rule adoption; and

X.10(17A) Exemptions from public rule-making procedures. In addition to the text of this rule, the department also adds that exempt categories are generally limited to rules for nonsubstantive changes to a rule, such as rules for correcting grammar, spelling or punctuation in an existing or proposed rule.

X.11(17A) Concise statement of reasons. In addition to the text of this rule, the department also adds that a request for a concise statement of reasons for a rule must be submitted to the Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

X.12(1) Contents, style and form of rule—contents;

X.12(4) Contents, style and form—style and form;

X.14(17A) Filing of rules;
X.15(17A) Effectiveness of rules prior to publication;
X.16(17A) General statement of policy; and
X.17(17A) Review by agency of rules.

7.57(2) The department hereby states that the following cited Uniform Rules on Agency Procedure for Rule Making are not adopted by the department:
X.1(17A) Applicability;
X.3(17A) Public rule-making docket;
X.4(2) Notice of proposed rule making—incorporated by reference;
X.12(2) Contents, style, and form of rule—incorporation by reference;
X.12(3) Contents, style and form of rule—references to materials not published in full; and
X.13(17A) Agency rule-making record.

701—7.58(17A) Public inquiries on rule making and the rule-making records. The department maintains records of information obtained and all actions taken and criticisms received regarding any rule within the past five years. The department also keeps a record of the status of every rule within the rule-making procedure. Inquiries concerning the status of rule making may be made by contacting the Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. For additional information regarding criticism of rules see 701—7.59(17A).

701—7.59(17A) Criticism of rules. The Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, is designated as the office where interested persons may submit by electronic means or by mail criticisms, requests for waivers, or comments regarding a rule. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 421.60.

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Example (b) — Timely Filed No Remit

a. Tax due is $1,000.
b. Return timely filed.
c. $0 paid.

The calculation for the total amount due five months after the due date is shown below:

Tax	$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	35.00	(5 months interest)
Total due	$1,085.00	

The department bills the additional tax in the fifth month after the due date and the taxpayer pays the additional amount in the eighth month after the due date. The payment is applied as follows:

Tax	$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	56.00	(8 months interest)
Total due	$1,106.00	
Amount paid	$1,085.00	

Balance tax due $21.00 subject to interest until paid.
The balance due was not paid.

Three years after the due date the taxpayer forwards a copy of an Internal Revenue Service audit which increases the taxpayer's income to the department. The department recomputes the taxpayer's liability as follows:

Tax as redetermined by the department	$1,200.00	
Less paid per prior audit	979.00	
Balance due	$ 221.00	(includes the balance due of $21)
Penalty	10.00	(5% failure to pay penalty on $200, the $21.00 already bears penalty)
Interest	54.52	(36 months interest on $200 and 28 months interest on $21)
Total due	$ 285.52	

10.115(1) *Refunds.* In those instances where an audit reduced the amount of tax, penalty, and interest due over the amount paid, the department will reapply payments so that amount refunded is tax on which interest will accrue as set forth in the Iowa Code.

10.115(2) *Partial payments made after notices of assessments issued.* Where partial payments are made after a notice of assessment is issued, the department will reapply payments to penalty, interest, and then to tax due until the entire assessed amount is paid.

Where there are both agreed and unagreed to items as a result of an examination, the taxpayer and the department may agree to apply payments to the penalty, interest, and then to tax due on the agreed to items of the examination when all of the penalty, interest, and tax on the agreed to items are paid. In these instances, subsequent payments will not be applied to penalty and interest accrued on the agreed to items of the examination.

This rule is intended to implement 1994 Iowa Acts, chapter 1133, section 1.

JEOPARDY ASSESSMENTS

701—10.116(422,453B) Jeopardy assessments. A jeopardy assessment may be made where a return has been filed and the director believes for any reason that assessment or collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. In addition, all assessments made pursuant to Iowa Code chapter 453B are jeopardy assessments. The department is authorized to estimate the applicable tax base and the tax upon the basis of available information, add penalty and interest, and demand immediate payment.

A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.117(422,453B) Procedure for posting bond. In the event a taxpayer seeks to post a bond in lieu of summary collection of a jeopardy assessment, pending final determination of the amount of tax legally due, an original and four copies of a separate written bond application conspicuously titled "Jeopardy Assessment Bond Request" must be filed with the clerk of the hearings section for the department. Thereafter, if the taxpayer and the department agree on an appropriate bond, the clerk of the hearings section for the department shall be notified and the bond shall be approved by the clerk of the hearings section for the department.

If the clerk of the hearings section for the department has not been notified that an agreement on the bond has been reached within ten days after the date upon which the bond request was filed, the clerk of the hearings section for the department shall transfer the file to the director who shall promptly schedule a hearing on the bond request with written notice to be given the taxpayer and the department at least ten days prior to the hearing.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.118(422,453B) Time limits. Bond requests may be made anytime after a timely protest to the jeopardy assessment has been filed with the clerk of the hearings section for the department, except that any bond request whereby the taxpayer seeks to postpone a scheduled sale of assets seized by or on behalf of the department must be filed with the clerk of the hearings section for the department no later than ten days from the date on which notice of the sale was mailed to, or otherwise served upon, the taxpayer. Portions of an assessment which are undisputed must be paid in full at the time a bond request is filed.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.119(422,453B) Amount of bond. In the event no agreement on the bond is reached, bonds must be posted in an amount to be determined by the director consistent with the following:

10.119(1) If property has been seized or a lien has been filed and the taxpayer seeks only to postpone the sale of property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the expected depreciation loss, storage cost, insurance costs and any and all other costs associated with the distraint and storage of the property pending such final determination.

10.119(2) If property has been seized or a lien has been filed and the taxpayer seeks to prevent the sale of property and to have the property returned for the taxpayer's own use, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the sale price the department can reasonably expect to realize on any property seized plus all costs related to the distraint and storage of the property.

10.119(3) If a taxpayer seeks to prevent the department from seizing property or placing a lien upon property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the total amount of the department's assessment including interest to the date of the bond.

Bonds may not be required in excess of double the amount of the department's jeopardy assessment.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.120(422,453B) Posting of bond. If the taxpayer fails to post the bond as agreed upon within 15 days from the date the bond is approved by the clerk of the hearings section for the department, no bond will be allowed and the director shall dismiss the bond request. If no agreement was reached and a bond order is issued by the director, the taxpayer has ten days to post the bond. If the bond is not posted within the ten-day period, the director shall dismiss the bond request.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.121(422,453B) Order. The director's order shall be in writing and shall include findings of fact based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. Findings of fact shall be prefaced by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.122(422,453B) Director's order. The director's order constitutes the final order of the department for purposes of judicial review. Parties shall be promptly notified of the director's order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.123(422,453B) Type of bond. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings up to the amount of the bond. Upon application of the taxpayer or the department, the director may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days' prior notice is given to the department or the taxpayer as the case may be.

A personal bond, without a surety, is only permitted if the taxpayer posts with the clerk of the hearings section for the department, cash, a cashier's check, a certificate of deposit, or other marketable securities which are approved by the director with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 636 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of this subrule.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.124(422,453B) Form of surety bond. The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
	*	
(Taxpayer's Name, Address and	*	SURETY BOND
designate proceeding, e.g.,	*	
income, sales, etc.)	*	DOCKET NO.
	*	

KNOW ALL PERSONS BY THESE PRESENTS:

That we ____(taxpayer)____ as principal, and ____(surety)____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue and Finance for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue and Finance, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, 19 ____.

_____
Principal

_____
Surety

_____
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
ss.
COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____ Surety (type name)	$ _____	$ _____
_____ Surety (type name)	$ _____	$ _____

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, 19 ____.

(Seal)

_____
Notary Public in and
for the State of Iowa

701—10.125(422,453B) Duration of the bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.126(422,453B) Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the director when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying protest.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

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*Inadvertently omitted IAC 12/20/95; inserted 2/14/96.

150.4(3) *Semiannual certification of file.* Each agency maintaining a liability file will be required to certify the file to the department semiannually. This certification will be made in a manner prescribed by the director. Debtors not certified in the manner prescribed will be removed from the liability file.

150.4(4) *Notification to debtor.* The agency shall send notification to the debtor within ten calendar days from the date the agency was notified by the department of a potential offset. This notification shall include:

a. The agency's right to the payment in question.

b. The agency's right to recover the payment through this offset procedure.

c. The basis of the agency's case in regard to the debt.

d. The right of the debtor to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

e. The debtor's right to appeal the offset and the procedure to follow in that appeal.

f. The agency or division and a telephone number for the person owing to contact in the case of questions.

The department may require a copy of this notice be sent to it. Once the offset has been completed, the agency shall notify the debtor of the action taken along with the balance, if any, still due to the agency. It is the responsibility of the agency to make payment to the person owing the state any payment offset by the department to which the state is not entitled, in accordance with established procedures.

701—150.5(421) Duties of the department—performance of the offset. The department will develop procedures for administering each offset program request on an individual basis. Procedures will vary in order to achieve the greatest efficiency in administering each offset.

Before issuing an authorized payment to a person or entity, the department will match against a debt listing provided by the state agencies participating in this offset program. The department will notify the state agency of the person's or entity's name, address, identifying number, and amount of the entitled payment.

The department shall hold the payment which offsets the liquidated sum due and payable for a period not to exceed 45 days awaiting notification from the agency as to the amount required to satisfy the person's or entity's debt to the state. If notification is not made to the department by the state agency within 45 days, the amount of the payment shall be released to the person or entity.

The offset will be made by the department only after the state agency has notified the debtor as prescribed in subrule 150.4(4). The department shall then refund any balance amount due from the state to the person or entity.

701—150.6(421) Multiple claims—priority of payment. In the case of multiple claims to payments filed under Iowa Code section 421.17, subsections 21, 23, 25, and 29, priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21. Next priority shall be given to claims filed by the college aid commission under subsection 23. Next priority shall be given to claims filed by the office of investigations under subsection 21. Next priority shall be given to claims filed by a clerk of the district court under subsection 25. Last priority shall be given to claims filed under subsection 29.

The order of priority for offset against multiple claims by more than one state agency shall be determined by the date the liability was listed with the department. Subsequent entries of claims by state agencies shall be offset in order of the date the listing was made with the department.

701—150.7(421) Payments of offset amounts. Payments to the agency requesting the offset shall be made by the department on the twenty-fifth day of each month.

701—150.8(421) Reimbursement for offsetting liabilities. Costs incurred by the department in administering the offset program will be charged to the state department requesting offset. The costs will be deducted from the gross proceeds collected through offset and may include direct expenses such as salaries, supplies, equipment, and system modification and development costs; or indirect costs such as space, security, or utility costs. If the above-described procedure is prohibited by paramount state or federal law, the director shall allow reimbursement in a manner which conforms to the paramount law.

701—150.9(421) Confidentiality of information. Information shared between state agencies shall be deemed confidential and shall be disclosed only to the extent that sufficient information is given that is relevant to the identification of persons liable to or claimants of state agencies. The information is to be used for the purpose of offset only.

These rules are intended to implement Iowa Code sections 421.17, 422.16, 422.20, and 422.72.

JUDICIAL OFFSET PROCEDURES BEGINNING APRIL 17, 1998

701—150.10(421) Incorporation by reference. In providing judicial offset procedures beginning April 17, 1998, the department incorporates by reference the following rules and subrules to be applied to the substance and procedure under this heading:

1. 701—150.2(421) Scope and purpose.
2. 701—150.3(421) Participation guidelines.
3. 701—subrule 150.4(1) Duties of the agency—Notification to the department.
4. 701—subrule 150.4(2) Duties of the agency—Change in status of debt.
5. 701—subrule 150.4(3) Duties of the agency—Semiannual certification of file.
6. 701—150.5(421) Duties of the department—Performance of the offset.
7. 701—150.7(421) Payments of offset amounts.
8. 701—150.8(421) Reimbursement for offsetting liabilities.
9. 701—150.9(421) Confidentiality of information.

701—150.11(421) Definitions. The definitions set forth in 701—150.1(421) are incorporated by reference and are applicable to rules 701—150.10(421) to 150.16(421) except the definitions of "liability" or "debt" and "offset" which shall be defined for the purpose of these rules as follows:

"Liability" or *"debt"* means any liquidated sum due and owing to any clerk of the Iowa district court which has accrued through, but not limited to, fines, judgments, court costs, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person's original liability to a state agency must be at least $50, unless otherwise provided as based on the discretion of the department.

"Offset" shall mean to set off or compensate any clerk of the Iowa district court which has a legal claim against a person or entity where there exists a person's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person's claim on a state agency shall be at least the minimum amount as indicated in the definition of "liability" or "debt" as set forth in this rule. If the source of a person's claim is a tax refund or tax rebate, the minimum will be $25.

701—150.12(421) Applicability and procedure. For liabilities accrued and owing on or after April 17, 1998, to any and all clerks of the Iowa district court, the department shall issue a written notice informing any person that has a valid claim against a state agency that is a liquidated sum, due, owing, and payable and in which such a person is liable for the liability owed to any and all clerks of the Iowa district court that an offset will be performed. The department will perform the offsets for such clerks as provided in Iowa Code section 421.17(29) and the department will send a written notice to the person liable for such a liability prior to and after the offset has been performed. Subsequently, the department will also provide administrative procedures and available remedies for contesting the validity of such an offset. The Iowa district court will provide the procedures and remedies for challenging the underlying liability at issue. This rule applies only to liabilities and debts owed to the clerks of the Iowa district court.

701—150.13(421) Notice of offset. The department shall send written notification of the offset to the person that has a valid claim against any state agency that is a liquidated sum, due and payable and in which such a person is liable for a liability owed to any and all clerks of the Iowa district court within ten calendar days from the date the department is notified by the judicial branch of the uncollected liability. This notification must include:

1. The judicial branch's right to the payment in question;
2. The judicial branch's right to recover the payment through this offset procedure;
3. The basis of the judicial branch's case in regard to the debt;
4. The right of the person who owes the liability to request, within 15 days of the mailing of the notice, that the payment between parties be split when the payment in question is jointly owned or otherwise owned by two or more persons;
5. The right of the person liable to contest the right of offset and the validity of such offset with the department by mailing, to the clerk of the hearings section for the department, a protest within 15 days of the mailing of such notice and that the procedure to follow in that appeal will conform, according to the context, to the rules of the department involving protests and contested case proceedings in 701—Chapter 7 of the department's rules of practice and procedure;
6. The agency or division and the telephone number for the person liable for the liability to contact concerning questions regarding the validity of the offset and the procedures for the offset;
7. That the person liable for the liability has the opportunity to contest the validity and amount of the liability by mailing, within 15 days of mailing of the notice of offset, a written application to contest the liability to the appropriate clerk of the Iowa district court; and
8. The clerk of the district court and the telephone number for the person liable for the liability to contact concerning questions relating to the validity of the underlying liability and regarding the validity of the amount owed.

701—150.14(421) Procedure for contesting. A person liable for a liability under this subheading may contest the validity or amount of the underlying liability by mailing written notification to the appropriate clerk of the Iowa district court of the person's intent to contest such a liability. The Iowa district court will provide the person liable with the procedure and remedies for contesting the validity and amount of the underlying liability.

A person liable for a liability payable to the judicial branch that has been deemed qualified for offset may contest the validity of the offset or the right of the offset by mailing written notification to the Department of Revenue and Finance, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. The department will provide the procedure and remedies for contesting the validity of the offset and right of offset pursuant to the applicable contested case rules set forth in 701—Chapter 7.

If a person liable to the judicial department gives written notice of intent to contest either the validity or the amount of the liability or the validity of the offset or right of offset, the judicial department and the department will hold a payment in abeyance until the final disposition of the contested liability or offset.

701—150.15(421) Postoffset notification and procedure. Following the offset, the department will notify the person liable that the offset was performed. It is the responsibility of the department to make payment to the person liable to the Iowa district court clerk of any amount to which the Iowa district court clerk is not entitled to receive under the offset, in accordance with established procedures.

701—150.16(421) Report of satisfaction of obligations. At least monthly, the department will file with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. No additional or separate written notice from the department regarding the performed offsets is required.

These rules are intended to implement Iowa Code sections 421.16, 421.17, 422.20 and 422.72.

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LOTTERY DIVISION[705]

[Prior to 1/14/87; Iowa Lottery Agency[526], renamed Lottery Division[705] under the "umbrella" of Revenue and Finance Department[701] by 1986 Iowa Acts, chapter 1245]

CHAPTER 1
GENERAL OPERATION OF THE LOTTERY
[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 1]

705—1.1(17A) Purpose. The Iowa lottery board and the lottery division were established by Iowa Code chapter 99E to operate the state lottery.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

705—1.2(17A) Organization. The lottery is a division of the department of revenue and finance which is administered by the director of the department of revenue and finance. The lottery is supervised by the lottery board and the commissioner of the lottery. The lottery board has rule-making authority for the lottery.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

705—1.3(17A) Location. Lottery headquarters is located at 2015 Grand Avenue, Des Moines, Iowa 50312. The lottery has regional offices located at the following addresses: 2015 Grand Avenue, Des Moines, Iowa 50312; 2345 Blairs Ferry Road N.E., Cedar Rapids, Iowa 52402; 1612 Avenue D, Council Bluffs, Iowa 51501; 810-12th N.W., Mason City, Iowa 50401; and 822 Flindt Drive, Storm Lake, Iowa 50588. The lottery board may be contacted through lottery headquarters. Office hours at all offices are 8 a.m. to 4:30 p.m., Monday through Friday. Prize redemption departments close at 4 p.m.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

705—1.4(17A) Board meetings. The lottery board meets no fewer than four times a year and may meet more often if necessary. The commissioner, the chairperson of the board, or a majority of the board may call a special board meeting. Board meetings are generally held at the lottery office at 2015 Grand Avenue, Des Moines, Iowa 50312. Board meetings may be held by teleconference.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

705—1.5(17A,22) Public records and fair information practices. The lottery board adopts by reference the rules of the department of revenue and finance which address the availability and nature of records held by the lottery and fair information practices applicable to the lottery. The department's rules became effective June 22, 1988, and were published in the Iowa Administrative Code as 701—Chapter 5. This rule does not adopt by reference future amendments to the department's rules.

Notwithstanding any statutory confidentiality provision, the agency may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

Records possessed by the lottery division, including confidential records and those containing personally identifiable information, are identified in the department's rules. The department's rules also contain the procedures to be used to obtain access to lottery records. Copies of the rules of the department of revenue and finance may be obtained at cost upon request from the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312.

This rule is intended to implement Iowa Code section 22.11 and Iowa Code section 252J.2 and chapter 598.

705—1.6(99E) Specific game rules. Specific game rules as authorized in Iowa Code section 99E.9(3)*"b"* shall be made available by the lottery as necessary for the efficient conduct of specific lottery games. These rules may include, but are not limited to, descriptions of specific games, special promotions, and drawing procedures. Specific game rules shall comply with these rules except where these rules indicate that variance by the specific game rules is permitted. Specific game rules shall be provided to board members as soon as is practical following issuance by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

705—1.7(99E) Lottery contracting authority. The commissioner shall enter into contracts necessary for day-to-day operations, including without limitation, contracts for accounting services, security services, annuity purchases, equipment and production, communications, auditing services, legal services, space planning, and remodeling. The commissioner may enter into these contracts without presenting these contracts to the board for approval or ratification. Contracts for consulting services which are expected to cost in excess of $25,000, all contracts for major procurements as defined in Iowa Code section 99E.9(2), and all contracts for advertising or public relations services must be ratified by the board in order to be binding on the lottery.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—1.8(99E) Location of ticket sales by retailers. Tickets may be sold on premises specified on a lottery license. Tickets may be sold on premises where alcoholic beverages, beer, or wine are sold or served pursuant to Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"i."*

705—1.9(99E) Sale of tickets by lottery division. The lottery itself may sell lottery tickets. Ticket sales may be made by the lottery at any location or event deemed appropriate by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"i"* and 99E.16(1).

705—1.10(99E) Ticket purchase restrictions. Tickets shall not be purchased by those persons designated in Iowa Code section 99E.18(3) or by the assistant attorney general assigned to the lottery. The lottery may restrict the purchase of tickets by lottery contractors through contractual provisions if the lottery determines that restrictions are appropriate.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.18(3).

705—1.11(99E) Employee incentive programs. The lottery may design lottery employee incentive programs intended to increase lottery revenues. All employee incentive programs shall be approved by the board before implementation.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"n"*(3).

705—1.12(99E) Advertising. Advertising for lottery games may include print advertisements, radio and television advertisements, billboards, and point of purchase display materials. Promotional and advertising items may be used, including brochures; posters; signs; buttons; hats; T-shirts; video and audio tapes; hot air balloons; umbrellas; canopies; slides; pictures; food items; bags; flyers; pins; coins; certificates; cups; fans; glasses; pens; pencils; and any other materials deemed appropriate advertising, informational, and educational media by the lottery. The lottery shall produce special posters, brochures, or flyers describing the use of lottery revenue. These materials shall be provided to lottery retailers for posting or distribution.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"m."*

705—1.13(99E) Promotional agreements with businesses. The commissioner may enter into agreements with business entities for the purpose of promoting any lottery game. Promotional agreements may require a business entity to fund or provide prizes or advertising.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(5).

705—1.14(99E) Claiming prizes.

1.14(1) A prize claim shall be entered in the name of a single individual or organization. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses or has applied for a federal employer's identification number (FEIN) as issued by the Internal Revenue Service. Groups, family units, organizations, clubs, or other organizations which are not legal entities or which do not possess a FEIN or which have not applied for a FEIN must designate one individual in whose name the claim will be entered.

1.14(2) By submitting a claim, a player agrees that the state, the lottery board, the lottery, and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize.

1.14(3) By submitting a claim, the player also agrees that the prize winner's name may be used for publicity purposes by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* and 99E.19.

705—1.15(99E) Claim period. A prize must be claimed within the time limit specifically designated in these rules or as specified by the lottery in the specific game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* and 99E.19(1).

705—1.16(99E) Invalid tickets not entitled to prize payment. If a ticket presented to the lottery is invalid pursuant to the terms of these rules or the specific game rules, the ticket is not entitled to prize payment.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"e."*

705—1.17(99E) Ticket is a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature if a signature space is provided. The person who signs the ticket is thereafter considered the owner of the ticket. Payment of any prize may be made to the physical possessor of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the lottery board, the lottery, the commissioner, and the employees of the lottery, terminates upon payment.

This rule is intended to implement Iowa Code sections 99E.9(3), and 99E.9(3)*"e,"* and 99E.19.

705—1.18(99E) Assignment of prizes. Payments of prizes shall be made as follows:

1.18(1) The lottery shall pay all prizes to only one person or one legal entity per winning ticket.

1.18(2) If a prize is payable in installments, all future installments of the prize must be made to the person or legal entity that received the initial installment of the prize or to a person designated by the court to receive payment following the prize winner's death.

1.18(3) Payment of a prize may be made to the estate of a deceased prize winner or to another person pursuant to an appropriate judicial order.

1.18(4) The right to control receipt of a lottery prize shall be substantially limited. See 26 U.S.C. 451 and Treas. Reg. 1.451-2(a). The right to receive payment of a lottery prize or a future installment of a lottery prize shall not be sold, assigned or otherwise transferred in any manner without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

1.18(5) In the event that a legal entity other than an individual is entitled to a lottery prize won jointly by more than one individual, the individuals originally entitled to share the prize cannot sell, assign or otherwise transfer their interest in the legal entity receiving prize payment or their right to receive future payments from the legal entity without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* and 99E.19(2).

705—1.19(99E) Prize payment to minors. If the person entitled to a prize is under the age of 18, the payment of the prize may be made by delivery of a draft payable to the order of the minor or to a parent or legal guardian of the minor. Claim forms submitted by minors must be signed by a parent or legal guardian of the minor.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* and 99E.19(2).

705—1.20(99E) Time of prize payment. All prizes shall be paid within a reasonable time after a claim is verified by the lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments shall be the date the claim is validated and processed unless a different date is specified for a particular game in these rules or the specific game rules. Subsequent installment payments shall be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The lottery may, at any time, delay any prize payment in order to review a change in circumstances relative to the prize awarded, the payee, or the claim.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* and 99E.19.

705—1.21(99E) Prizes payable for the life of the winner. If any prize is payable for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner shall be deemed to be 20 years.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"e."*

705—1.22(99E) Prizes payable after death of winner. All prizes and portions of prizes which remain unpaid at the time of the prize winner's death shall be payable to the court-appointed representative of the prize winner's estate or to a single individual pursuant to the terms of a final order closing the estate. The lottery may withhold payment until it is satisfied that the proper payee has been identified or it may petition the court to determine the proper payee. In making payment the lottery may rely wholly on the presentation of a certified copy of the letters of appointment as an administrator, executor, or other personal representative for the prize winner's estate or on a certified copy of the final order closing the estate. Payment to the representative of the estate of the deceased owner of any prize winnings or to another individual pursuant to a final order closing the estate shall absolve the lottery and employees of the lottery of any further liability for payment of prize winnings.

If the winner received an annuitized prize funded through the Multi-State Lottery Association (MUSL), the MUSL board, in its sole discretion, upon the petition of the estate of the lottery winner (the "estate"), may accelerate the payment of all of the remaining lottery proceeds to the estate. If the winner received an annuitized prize funded solely through the sales from the Iowa Lottery, the lottery board, in its sole discretion, upon the petition of the estate of the lottery winner (the "estate"), may accelerate the payment of all of the remaining lottery proceeds to the estate. If such a determination is made, then securities or cash held for the deceased lottery winner, which represents the present value of that portion of the future lottery payments that are to be accelerated, shall be distributed to the estate. The valuation of the securities and determination of the present value of the accelerated lottery payments shall be at the sole discretion of the board granting the petition.

This rule is intended to implement Iowa Code chapter 99E.

705—1.23(99E) Disability of prize winner. The lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings which are or may become due a person under a disability because of, but not limited to, underage, mental deficiency, or physical or mental incapacity.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* and 99E.19(2).

705—1.24(99E) Stolen or lost tickets. The lottery has no responsibility for paying prizes attributable to stolen or lost tickets.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* and 99E.9(3)*"f."*

705—1.25(99E) Effect of game rules. In purchasing a ticket the player agrees to comply with Iowa Code chapter 99E, these rules, the specific game rules, lottery instructions and procedures, and the final decisions of the lottery. The lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery. If a dispute between the lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the lottery may, solely at the lottery's option, replace the ticket with an unplayed ticket of equivalent price from any game or refund the price of the ticket. This shall be the sole and exclusive remedy of the player.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.9(3)*"f."*

705—1.26(99E) Disputed prizes. If there is a dispute, or it appears that a dispute may occur relative to the payment of any prize, the lottery may refrain from making payment of the prize pending a final determination by the lottery or by a court of competent jurisdiction as to the proper payment of the prize.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"e,"* 99E.9(3)*"f,"* and 99E.19.

705—1.27(99E) Agreements for the sale of advertising. The lottery may enter into agreements with other units of state government or with individuals, corporations, or other entities outside of state government for the purpose of selling advertising space on such items as lottery tickets or equipment and in lottery publications or promotional materials. The lottery may also enter into such agreements to sell merchandise marked with the lottery logo.

This rule is intended to implement Iowa Code sections 23A.2, 99E.9(2), 99E.9(3), and 99E.9(5).

705—1.28(99E) Promotional use of tickets by persons without lottery licenses. Other than the lottery, no person, business, or other organization may sell lottery tickets unless licensed by the lottery. Tickets may, however, be given away for promotional purposes. Tickets may be given away for promotional purposes in conjunction with the required purchase of a product or service or an admission fee without violating this provision provided that the actual cost of the product or service or admission fee is not calculated to include the ticket price, and the promotion is not designed, intended, or conducted to circumvent the lottery's licensing requirements.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.18(1).

705—1.29(99E) Prize payment for prizes paid over a term exceeding ten years.

1.29(1) A prize winner who wins a prize that is payable over a term exceeding 10 years may, not later than 60 days after the player became entitled to the prize, elect to have the prize paid in cash or by annuity consistent with 26 U.S.C. §451. If the payment election is not made by the prize winner at the time of purchase or is not made within 60 days after the prize winner becomes entitled to the prize, then the prize shall be paid as an annuity prize. An election for an annuity payment made by a prize winner before the ticket purchase or by system default or design may be changed to a cash payment at the election of the prize winner until the expiration of 60 days after the prize winner becomes entitled to the prize. The election to take the cash payment may be made at the earlier of the following dates:

a. The time of the prize claim; or

b. Within 60 days after the prize winner becomes entitled to the prize.

An election made after the prize winner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed.

1.29(2) In the event there is more than one prize winner for a prize paid over a period exceeding 10 years, the shares of the prize shall be determined by dividing the cash available in the prize pool equally among all the winners of the prize. Winners who elect a cash payment shall be paid their share in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the prize pool by the annuity factor used by the lottery. The lottery's annuity factor is determined by the best price obtained through a competitive bid of qualified, preapproved brokers or insurance companies made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the prize winner becomes entitled to the prize.

1.29(3) The lottery shall not be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount of the prize value purchased from the time the player becomes eligible for the prize and the time the prize winner claims the prize.

1.29(4) A prize winner who won a prize before the effective date of 26 U.S.C. §451, which prize is being paid out over a period greater than 10 years, may elect to be paid in cash consistent with 26 U.S.C. §451 and 26 U.S.C. §5301. A prize winner qualifying for this election may make the election on or after July 1, 1999, until December 31, 2000. In the event a prize winner makes such an election, the lottery shall distribute cash in amounts equal to the present value of that portion of the future lottery payments due to the prize winner that the lottery can obtain by either selling financial instruments held by the lottery to fund the prize or by requesting the payment of the present value of an annuity held by the lottery and used to fund the prize winner's prize. The lottery will provide a notice to all eligible prize winners within ten days after the effective date of this rule advising them of the cash-out option and the assignment option provided for in rule 1.18(99E) in such a manner so as to allow the prize winner to consider all options available to the prize winner. Prize winners will be provided a second notice at the time they contact the lottery regarding the cash-out option. The notice may include among other things, the amount of the payment the lottery is able to provide on a date certain and information regarding other options, including the assignment and loan options available in the marketplace for the prize winner consistent with rule 1.18(99E). The lottery will not endorse any option available to the prize winner, nor will it provide legal or financial advice to the prize winners with regard to the options available. The lottery may recommend in its notices that prize winners consult with legal and financial professionals.

a. A prize winner's election to take cash is final and cannot be revoked, withdrawn or otherwise changed.

b. The lottery shall not be responsible or liable for changes in the present value of amounts payable to a prize winner after the election is made due to changes in the price of qualified securities or financial instruments used to fund the prize.

c. A prize winner making this election will be required to make the election in writing on a claim form approved by the lottery.

d. A prize winner making this election will be solely responsible for the tax consequences of this election.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*e,*" and 99E.19(2).

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CHAPTER 2
LICENSING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 3]

705—2.1(99E) License eligibility criteria. An applicant is eligible to hold a license to sell lottery tickets or shares only if all of the following requirements are satisfied: the applicant must be at least 18 years old; the applicant has not been convicted of a fraud or felony; the applicant has not been convicted of violating or found to have violated any provision of Iowa Code chapter 99E; the applicant has not had a license issued pursuant to chapter 99E revoked; the applicant has not had a license to sell lottery tickets in another jurisdiction suspended or revoked; the applicant has demonstrated financial responsibility; the applicant is the true owner of the business where tickets will be sold; the applicant disclosed all persons owning at least 10 percent of the business where tickets will be sold; the applicant has not knowingly made a false statement of fact to the lottery or lottery board; the applicant is not an employee of the lottery or lottery board or a spouse, child, brother, sister or parent of a lottery employee or board member residing in the same household as an employee or board member; the applicant is not affiliated with or controlled by a vendor providing tickets or data processing services to the lottery; if the applicant is a foreign corporation, the applicant is registered with the Iowa secretary of state; the applicant is not exclusively engaged in the business of selling lottery tickets, or if the applicant is a nonprofit organization, the applicant must have a purpose apart from the sale of lottery tickets.

The lottery will deny a license to any applicant, who is an individual, if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16(1), 99E.16(7), and 99E.17(3), and Iowa Code 252J.2.

705—2.2(99E,252J) Factors relevant to license issuance. The lottery may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code chapter 99E and these rules. In exercising its licensing discretion the lottery shall consider the following factors: the background and reputation of the applicant in the community for honesty and integrity; the financial responsibility and security of the person and business or activity; the type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery; the accessibility of the applicant's place of business or activity to the public; the sufficiency of existing licenses to serve the public convenience; the volume of expected sales; the accuracy of the information supplied in the application for a license; the applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; if an individual, indebtedness owed for child support payments; and any other criteria or information relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16, and 252J.2.

705—2.3(99E) Applicant or person defined. For purposes of determining whether an applicant or person is eligible for a license, the terms "applicant" or "person" shall include the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a corporation, and any legal entity applying for a license.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"k,"* and 99E.16.

705—2.4(99E,252J) Lottery licenses.

2.4(1) The lottery has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: scratch tickets; pull-tab tickets; and computerized game tickets, if available. The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product. A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

2.4(2) Any eligible applicant may apply for a license to act as a retailer by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

2.4(3) The fee for a lottery license varies based upon the type of lottery product which the applicant wishes to sell. All license applications must be accompanied by the minimum, nonrefundable fee of $25. Applications to sell computerized game tickets, if available, must be accompanied by an additional fee of $100 for a total fee of $125. The additional fee shall be refunded to an applicant in the event the computerized license portion of the application is denied.

2.4(4) Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements. If a current retailer requests that the existing license be modified to allow the sale of scratch tickets or pull-tab tickets, no additional application fee will be charged. If a current retailer requests a modification of an existing license to allow the sale of computerized game tickets, if available, a nonrefundable fee of $100 will be charged.

2.4(5) The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

2.4(6) A limited number of retailers may be selected as licensees from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The lottery may refuse to accept license applications for a period of time if the lottery determines that the number of existing retailers is adequate to market any lottery product.

2.4(7) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"a,"* 99E.9(3)*"k,"* 99E.16, 252J.2 and 252J.8.

705—2.5(99E) Transfer of licenses prohibited. Lottery licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than the licensed premises specified on the license.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.16(3).

705—2.6(99E) Expiration of licenses. A license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or until it is revoked by the lottery. A license which does not have an expiration date will continue indefinitely until surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"k,"* and 99E.16.

705—2.7(99E) Provisional licenses. The lottery may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization of a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional license to any applicant, who is an individual, if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"k,"* 99E.16(1), 99E.16(3), 99E.16(4), 252J.2 and 252J.8.

705—2.8(99E) Off-premises licenses. Any licensed retailer who has been issued a license or provisional license to sell tickets may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The lottery must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the lottery to govern off-premises sales. An off-premises license shall expire at the time designated on the off-premises license. An off-premises license may be renewed at the lottery's discretion.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"k,"* 99E.16(1), and 99E.16(2).

705—2.9(99E) Duplicate licenses. Upon the loss, mutilation, or destruction of any license issued by the lottery, application for a duplicate shall be made. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," and 99E.16(3).

705—2.10(99E) Reporting changes in circumstances of the retailer. Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16(3), 99E.16(7), and 99E.16(8).

705—2.11(99E) License not a vested right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity is a privilege personal to that person and is not a legal right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity does not automatically entitle that person to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," and 99E.16.

705—2.12(99E) Suspension or revocation of a license.

2.12(1) The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons: failure to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code chapter 99E or these rules; violation of any of the provisions of chapter 99E, these rules, or the license terms and conditions; failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery; if public convenience is adequately served by other licensees; failing to sell a minimum number of tickets as established by the lottery; a history of thefts or other forms of losses of tickets or revenue from the business; violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control; obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake; making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery; denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted; failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license; systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery; failing to follow the instructions of the lottery for the conduct of any particular game or special event; failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event; making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event; for a licensee who is an individual, where the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance; or allowing activities on the licensed premises which could compromise the dignity of the state.

2.12(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

2.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 705—2.13(99E,252J).

2.12(4) Upon revocation or suspension of a retailer's license, the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16, 99E.17, and 252J.8.

705—2.13(99E,252J) Methods of service. The notice required by Iowa Code Supplement section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel.

Notice of a license revocation or a suspension for the reasons described in 705—2.12(99E) shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," and 99E.16, and 252J.8.

705—2.14(99E,252J) Licensee's obligation. Licensees and license applicants shall keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16, and 252J.8.

705—2.15(99E,252J) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16, 252J.8 and 252J.9.

705—2.16(99E) Financial responsibility. The lottery shall use the following guidelines to determine financial responsibility for a retailer seeking a license to sell lottery products.

2.16(1) *Sole proprietorship.* If the license applicant is a sole proprietor, during the past two years, the applicant may have up to four accounts past due and no accounts over 90 days past due. The lottery will not require a bond with this credit history.

2.16(2) *Partnership.* If the license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 2.16(1). If the requirements of subrule 2.16(1) are satisfied, the lottery will not require a bond with this credit history.

2.16(3) *Fraternal or civic associations.* If the license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 2.16(1). If the requirements of subrule 2.16(1) are satisfied, the lottery will not require a bond with this credit history. If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 2.16(1). If the requirements of subrule 2.16(1) are satisfied, the lottery will not require a bond with this credit history.

2.16(4) *Corporations and limited liability companies—two years or more.* If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application, the license applicant must meet all of the following financial responsibility guidelines:

a. The license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk class provided by a financial and credit reporting entity of less than 5 or an equivalent rating.

If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

2.16(5) *Corporations and limited liability companies—less than two years.* If a corporation has been in existence for less than two years from the date of the application, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 2.16(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 2.16(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

2.16(6) *Bonding requirements.* With respect to any license applicant whose credit history does not meet the guidelines described in subrules 2.16(1) and 2.16(4), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The following minimum amounts will be required:

a.	Sale of pull-tab tickets only	$500
b.	Sale of pull-tab and instant tickets only	$1,500
c.	Sale of all products including on-line games	$2,500

2.16(7) *Holding period for bond.* The lottery will hold the bond provided by license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code section 99E.16(4).

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CHAPTER 4
PURCHASING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 5]

705—4.1(99E) Applicability of competitive bidding. All "major procurements" shall be obtained as a result of competitive bidding. "Major procurements" includes consulting agreements and the major procurement contract with a business organization for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game.

Items, including goods or services, other than "major procurements," which are expected to cost in the aggregate in excess of $500 will be obtained as a result of competitive bidding conducted by the lottery or through the department of general services whenever feasible and when such procurement is in the best interests of the lottery. Items other than major procurements expected to cost less than $500 in the aggregate may be obtained in any manner deemed appropriate by the lottery.

The lottery may exempt an item from competitive bidding if the item is noncompetitive, is purchased in quantities too small to be effectively purchased through competitive bidding, if there is an immediate or emergency need for the item, if the purchase of the item facilitates compliance with set-aside procurement provisions, or if the lottery determines that the best interests of the lottery will be served by exemption from the bidding process and the item to be purchased is not a major procurement.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.2(99E) Methods of obtaining bids or proposals used by the lottery. Bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the lottery shall choose the method of bidding to be utilized.

4.2(1) Formal bids may be required for any item if cost is the major criterion for selection. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than $5000.

The lottery shall prepare a written invitation-to-bid form and shall mail the form, along with a specially marked return envelope or identifying label to be used on the return envelope, to selected vendors in the business of providing the goods or services sought by the lottery.

The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

Bids received prior to the time set for the bid opening on the bidding document shall be opened publicly and made available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations will be maintained at the lottery for one year following the date on which the bids were opened.

An award shall be made within 60 calendar days from the date of the bid opening unless a different time frame is stated by the lottery in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

4.2(2) Informal bids may be required for any item if cost is the major criterion for selection and if the item is expected to cost in the aggregate less than $5000. Informal bids may be obtained by the lottery either through use of a written bid form or over the telephone. When requesting informal bids, the lottery shall contact selected vendors supplying the goods or services sought by the lottery and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid.

Written informal bids shall be opened as received and informal telephone bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. Following the bid due date, the lottery shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the bid due date and shall be maintained by the lottery for one year following the date on which the bids were due.

If an award is not made within the time frame indicated by the lottery when requesting bids, all bids shall be deemed rejected.

4.2(3) Whenever a requirement exists for an item and cost may not be the sole criterion for selection, the lottery may issue a request for proposal. The purpose of a request for proposal is to provide the vendor with sufficient information about the lottery's requirements and goals to allow the vendor to propose a solution to the lottery's requirements.

The lottery shall prepare a written request for proposal and shall mail the proposal, along with a specially marked envelope or label, to selected vendors in the business of supplying the goods or services sought by the lottery.

Proposals shall be opened publicly at the time designated in the proposal and made available to any interested party on the date and hour designated in the proposal.

An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the lottery in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

At a minimum, a request for proposal shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the due date for the proposal and the date and hour of the proposal opening; administrative requirements for submitting the proposal and the format required by the lottery; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the lottery anticipates may affect the terms of the vendor's proposal.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.3(99E) Items purchased through the department of general services. Goods and services may be obtained by the lottery through the department of general services whenever procurement through general services is possible and in the best interests of the lottery. Items procured through general services may be obtained by general services in any manner deemed appropriate by general services.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.4(99E) Advertising solicitations. Formal bids and requests for proposals issued by the lottery shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.5(99E) Contract purchases. The lottery may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.6(99E) Blanket purchase agreements. If the lottery foresees a requirement for frequent purchases of off-the-shelf items, the lottery may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.7(99E) Prospective vendor selection.

4.7(1) Any firm or business legally conducting business within Iowa may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the lottery. The lottery may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor which the lottery chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons: failure to respond to three consecutive solicitations; failure to deliver within specified delivery dates; failure to deliver in accordance with specifications; attempts to influence the decision of any state employee involved in the procurement process; evidence of agreements by the vendor to restrain trade or impede competitive bidding; and any other activities of the vendor which the lottery determines would render the vendor unsuitable.

The lottery shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the lottery. If the lottery ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the lottery's action to the lottery board pursuant to the criteria for vendor appeals contained in these rules.

4.7(2) The lottery shall select vendors to receive solicitation documents based on the lottery's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the lottery. The lottery shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.8(99E) Bids and proposals to conform with specifications. All bids and proposals must conform to the specifications indicated by the lottery. Bids and proposals which do not conform to the specifications stated may be rejected. The lottery reserves the right to waive deficiencies in the bids or proposals if in the judgment of the lottery the best interests of the lottery would be served by the waiver.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.9(99E) Time of delivery. When evaluating bids or proposals the lottery may consider the time of delivery when determining the successful vendor.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.10(99E) Cash discounts. When evaluating bids or proposals the lottery may consider cash discounts.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.11(99E) Tie bids. The lottery shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses.

If it is necessary to draw lots the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the lottery shall document the drawing.

This rule is intended to implement Iowa Code sections 99E.9(2), 99E.9(3) and 99E.9(6).

705—4.12(99E) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the lottery prior to the date and time set for the opening of the bids or proposals. All informal bids shall be submitted by the vendor in time to reach the lottery prior to the time specified by the lottery. Bids and proposals shall be marked by the lottery with the date and time received by the lottery. Bids and proposals received after the date and time set for opening or for submission shall be returned to the vendor unopened. All vendors to whom invitations to bid or proposals are sent shall be notified of any changes in the time of submission.

If a formal invitation to bid or request for proposal is canceled prior to the time set for opening the bids or proposals any responses already received shall be returned unopened. If an informal invitation to bid is canceled prior to the time set for receiving bids, any bids already received shall be destroyed.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.13(99E) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope which properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the lottery if the lottery finds that an honest error was made by the vendor which will cause undue financial hardship to the vendor and which will not cause undue financial hardship or inconvenience to the lottery.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.14(99E) Financial security. The lottery may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the lottery, or any other form specified by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.15(99E) Rejection of bids and proposals. The lottery reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the lottery's requirements, or for any other reason if the lottery determines that the best interests of the lottery will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the lottery at any time deemed convenient by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.16(99E) Background and informational statements. Bidders may be required to submit to criminal history checks and background investigations as conditions for submitting a bid. Bidders may also be required to describe their organizational structure, to identify key personnel and to submit personnel to criminal history checks and background investigations. Any changes in key personnel during the bidding process or during the contract term must be reported to the lottery before the change occurs.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

705—4.17(99E) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may appeal the decision by filing a written notice of appeal before the Iowa Lottery Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

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CHAPTER 5
Reserved

*Effective date of 5.8 delayed 70 days by the Administrative Rules Review Committee at its meeting held February 11, 1986.

CHAPTER 6
CONTESTED CASES
[Prior to 8/31/94, see 705—Chapter 7]

705—6.1(17A) Scope and applicability. This chapter applies to contested case proceedings related to lottery licensees and lottery licenses.

705—6.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code subsection 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Hearing board" means the board designated to resolve license disputes pursuant to Iowa Code subsection 99E.17(2).

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the hearing board did not preside.

705—6.3(17A) Time requirements.

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

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

705—6.4(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 agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency 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.

705—6.5(17A) Notice of hearing.

6.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

6.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the lottery or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the lottery or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the hearing board, the commissioner of the lottery, members of the lottery board of directors, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) as amended by 1998 Iowa Acts, chapter 1202, and rule 6.6(17A), that the presiding officer be an administrative law judge.

705—6.6(17A) Presiding officer.

6.6(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 agency head or members of the agency.

6.6(2) The commissioner of the lottery may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency 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. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

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

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

f. The request was not timely filed.

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

h. The contested case involves a license dispute which must be decided by the hearing board pursuant to Iowa Code section 99E.17(2).

6.6(3) The commissioner of the lottery shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

6.6(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 agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

6.6(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, 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.

705—6.7(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

705—6.8(17A) Disqualification.

6.8(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.

6.8(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 agency 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 6.8(3) and 6.22(9).

6.8(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.

6.8(4) If a party asserts disqualification on any appropriate grounds, including those listed in subrule 6.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 6.24(17A) and seek a stay under rule 6.28(17A).

705—6.9(17A) Consolidation and severance.

6.9(1) *Consolidation.* The presiding officer may 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.

6.9(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

705—6.10(17A) Pleadings.

6.10(1) *Requirement.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.10(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 laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.10(3) *Answer.* An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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.

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.

6.10(4) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

705—6.11(17A) Service and filing of pleadings and other papers.

6.11(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discover 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 agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

6.11(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

6.11(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Commissioner, Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously in the office of the commissioner.

6.11(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commissioner's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

6.11(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States Post Office mail box with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

705—6.12(17A) Discovery.

6.12(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be provided in the Iowa Rules of Civil Procedure.

6.12(2) Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 6.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

6.12(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

705—6.13(17A) Subpoenas.

6.13(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.13(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

705—6.14(17A) Motions.

6.14(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.

6.14(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the lottery or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.14(3) The presiding officer may schedule oral argument on any motion.

6.14(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 lottery or an order of the presiding officer.

6.14(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 45 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 20 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 6.27(17A) and appeal pursuant to rule 6.26(17A).

705—6.15(17A) Prehearing conference.

6.15(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than 15 days prior to the hearing date. A prehearing conference shall be scheduled not less than 10 business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

6.15(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

6.15(3) In addition to the requirements of subrule 6.15(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;
b. Enter into stipulations on the admissibility of exhibits;
c. Identify matters which the parties intend to request be officially noticed;
d. Enter into stipulations for waiver of any provision of law; and
e. Consider any additional matters which will expedite the hearing.

6.15(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

705—6.16(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.16(1) A written application for continuance shall:

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

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

6.16(2) In determining whether to grant a continuance, the presiding officer may consider:

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

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

705—6.17(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

705—6.18(17A) Intervention.

6.18(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.

6.18(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. 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 ordinarily be denied.

6.18(3) *Grounds for intervention.* The movant shall demonstrate that: *(a)* intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; *(b)* the movant is likely to 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.

6.18(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

705—6.19(17A) Hearing procedures.

6.19(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

6.19(2) All objections shall be timely made and stated on the record.

6.19(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

6.19(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.19(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

6.19(6) Witnesses may be sequestered during the hearing.

6.19(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

705—6.20(17A) Evidence.

6.20(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.20(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.20(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

6.20(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 should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

6.20(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.20(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.

705—6.21(17A) Default.

6.21(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.

6.21(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.

6.21(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 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 6.26(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

6.21(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.

6.21(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.

6.21(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 236.

6.21(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 6.24(17A).

6.21(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.

6.21(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed the relief demanded.

6.21(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 6.28(17A).

705—6.22(17A) Ex parte communication.

6.22(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 communications, 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 lottery 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 6.8(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.

6.22(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.

6.22(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.22(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 6.11(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.22(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.

6.22(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 6.22(1).

6.22(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 6.16(17A).

6.22(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.

6.22(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.

6.22(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 lottery. Violation of ex parte communication prohibitions by agency personnel shall be reported to the commissioner of the lottery for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

705—6.23(17A) Record costs. Upon request, the Iowa lottery shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporter rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

705—6.24(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the hearing board may review an interlocutory order of the presiding officer. In determining whether to do so, the hearing board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

705—6.25(17A) Final decision.

6.25(1) When the hearing board presides over the reception of evidence at the hearing, its decision is a final decision.

6.25(2) When the hearing board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of the hearing board within the time provided in rule 6.26(17A).

705—6.26(17A) Appeals and review.

6.26(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the hearing board within 30 days after issuance of the proposed decision.

6.26(2) *Review.* The hearing board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

6.26(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Iowa lottery. 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;

e. The grounds for relief.

6.26(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 non-appealing party, within 14 days of service of the notice of appeal. The hearing board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

6.26(5) *Scheduling.* The presiding officer shall issue a schedule for consideration of the appeal.

6.26(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 20 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 hearing board may resolve the appeal on the briefs or provide an opportunity for oral argument. The hearing board may shorten or extend the briefing period as appropriate.

705—6.27(17A) Applications for rehearing.

6.27(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

6.27(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.26(4), the applicant requests an opportunity to submit additional evidence.

6.27(3) *Time of filing.* The application shall be filed with the Iowa lottery within 20 days after issuance of the final decision.

6.27(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the Iowa lottery shall serve copies on all parties.

6.27(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

705—6.28(17A) Stays of agency actions.

6.28(1) *When available.*

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

b. Any party to a contested case proceeding may petition the lottery 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.

6.28(2) *When granted.* In determining whether to grant a stay, the presiding officer or hearing board shall consider the factors listed in 17A.19(5) as amended by 1998 Iowa Acts, chapter 1202, section 23(5c).

6.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the lottery or any other party.

705—6.29(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.

705—6.30(17A) Emergency adjudicative proceedings.

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

a. Whether there has been a sufficient factual investigation to assure that the lottery 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 agency is necessary to avoid the immediate danger.

6.30(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 lottery'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 agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

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

6.30(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.30(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency 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 agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

705—6.31(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 agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

These rules are intended to implement Iowa Code section 99E.17 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 7
DECLARATORY ORDERS
[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 7]

705—7.1(17A) Petition for declaratory order. Any person may file a petition with the lottery for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the lottery, at the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. A petition is deemed filed when it is received by that office. The lottery shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the lottery an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

THE IOWA LOTTERY

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 7.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

705—7.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the lottery shall give notice of the petition to all persons not served by the petitioner pursuant to 7.6(17A) to whom notice is required by any provision of law. The lottery may also give notice to any other persons.

705—7.3(17A) Intervention.

7.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

7.3(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 lottery.

7.3(3) A petition for intervention shall be filed at the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. Such a petition is deemed filed when it is received by that office. The lottery will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

THE IOWA LOTTERY

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

705—7.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The lottery may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

705—7.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Commissioner, Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

705—7.6(17A) Service and filing of petitions and other papers.

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

7.6(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 Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the lottery.

7.6(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 705 IAC 6.11(17A).

705—7.7(17A) Consideration. Upon request by petitioner, the lottery must schedule a brief and informal meeting between the original petitioner, all intervenors, and the lottery, a member of the lottery board, or a member of the staff of the lottery, to discuss the questions raised. The lottery may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the lottery by any person.

705—7.8(17A) Action on petition.

7.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the commissioner of the lottery or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

7.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 705—6.2(17A).

705—7.9(17A) Refusal to issue order.

7.9(1) The lottery shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the lottery to issue an order.
3. The lottery does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. 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 agency decision already made.

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the lottery to determine whether a statute is unconstitutional on its face.

7.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

7.9(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 the refusal to issue an order.

705—7.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

705—7.11(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.

705—7.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the lottery, the petitioner, and any intervenors who consent to be bound 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 lottery. The issuance of a declaratory order constitutes final agency action on the petition.

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

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CHAPTER 8
SCRATCH TICKET GENERAL RULES

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 8]
[Prior to 11/30/88, Instant Game General Rules[705] Ch 8]

705—8.1(99E) Authorization of scratch ticket games. The lottery board authorizes the sale of scratch tickets which meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

705—8.2(99E) Definitions.

"Play symbols" means the numbers or symbols appearing under the removable covering on the ticket.

"Scratch ticket" as used in this chapter means an instant lottery ticket which is played by removing a rub-off covering on the ticket.

"Validation number" means the characters or numbers found on a ticket or ticket stub.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

705—8.3(99E) Scratch ticket price. The lottery shall specify the price of scratch tickets in the specific game rules for each game. At all times the lottery will offer at least one scratch ticket game in which the tickets sell for $1. All ticket prices shall include applicable sales tax.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"c."*

705—8.4(99E) Method of play. Winners of a prize may be determined by such activities as locating, matching, or adding the play symbols on the tickets. The exact method of designating a winning ticket shall be determined by the lottery and shall be set forth in the specific game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"e."*

705—8.5(99E) Prizes.

8.5(1) The number and amount of prizes shall be determined by the lottery and set forth in the specific game rules.

8.5(2) At the lottery's discretion, a scratch ticket game may include a special prize event. The number of prizes and the amount of each prize in the prize event shall be determined by the lottery. The dates and times, as well as the procedures for conducting any elimination drawings or prize events, shall be determined by the lottery in the specific game rules. Finalists for prize events shall be selected in the manner stated in the specific game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"d,"* 99E.9(3)*"g,"* and 99E.9(3)*"h."*

705—8.6(99E) Annuity prizes. If a prize offered in a scratch game is an annuity, the prize shall consist of an initial prize payment followed by yearly installments as described in the specific game rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than $100,000, the lottery may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"e."*

705—8.7(99E) Disclosure of odds. The overall probability of purchasing a winning ticket shall be displayed on each ticket.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"j."*

705—8.8(99E) Claiming prizes.

8.8(1) *Claim period.* Prizes must be claimed within 90 days of the announced end of the scratch game.

8.8(2) *Prizes claimed at retailer.* The specific game rules shall specify prizes which shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the wining ticket and fill out a claim form if required by the specific game rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery. If the claim is validated by the lottery, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

8.8(3) *Prizes claimed at lottery.* The specific game rules shall specify prizes which may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery, P.O. Box Lottery, Des Moines, Iowa 50306-0474. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

8.8(4) *Prizes in special events.* The specific game rules shall set forth the manner in which prizes won in special events or drawings may be claimed.

8.9(5) *Variation by specific game rules.* The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch game or special event.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.19.

705—8.9(99E) Ticket validation requirements.

8.9(1) To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued by the lottery in an authorized manner.

b. Not be altered, unreadable, reconstructed or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. Have a bar code, pack-ticket number, retailer verification code and validation number.

h. Have a validation number and, if the ticket is an apparent high-tier winning ticket, the number shall appear on the lottery's official list of validation numbers of winning high-tier tickets. A ticket with that validation number shall not have been previously paid.

i. Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

8.9(2) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The commissioner's determination that a ticket is invalid is final.

The commissioner, in the commissioner's sole discretion, may choose to pay an amount equal to the prize which would have been won on an invalid ticket if the lottery is able to determine the prize which would have been won by use of a symbol, number, color code, or other mechanism. The commissioner's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is final.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery shall be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* 99E.9(3)*"f,"* and 99E.19.

705—8.10(99E) Official end of game. The lottery shall announce the official end of each scratch game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code section 99E.9(3).

705—8.11(99E) Board approval of games. The lottery shall provide board members with a written description of each specific scratch game. The chairperson or a quorum of the board may call a special meeting to review the instant game selection. The board shall not contest the selection of a scratch game more than five days after receiving written notice of the selection.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

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CHAPTER 9
DAILY DEAL

Rescinded IAB 10/12/94, effective 9/23/94; see 705—Chapter 13.

CHAPTER 10
IOWA LOTTO

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 10]
Rescinded IAB 10/12/94, effective 9/23/94; see 705—Chapter 13.

CHAPTER 11
PULL-TAB GENERAL RULES

705—11.1(99E) Authorization of pull-tab games. The lottery board authorizes the lottery to sell pull-tab tickets which meet the criteria specified in this chapter.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

705—11.2(99E) Definitions. As used in this chapter the following definitions are applicable.

"Low-tier prizes" are prizes which are included in the guaranteed low-end prize structure of a pull-tab game.

"Pull-tab tickets" are instant lottery tickets that are played by opening tabs to reveal if a prize was won. "Pull-tab tickets" do not include "scratch tickets" that are played by removing a rub-off covering from the play area.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

705—11.3(99E) Pull-tab ticket price. The price of a pull-tab ticket shall not exceed $2, including sales tax, and shall be specified in the specific game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"c."*

705—11.4(99E) Method of play. Each pull-tab ticket shall have tabs under which play symbols shall appear. A winning ticket shall be determined by matching, aligning, adding, or locating symbols or numbers under the tabs.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"e."*

705—11.5(99E) Ticket validation requirements.

11.5(1) Winning tickets shall be validated by use of a symbol, number, or color-coded marking. A ticket is not valid if it fails to meet any of the following requirements. The ticket must:

a. Have been issued by the Iowa Lottery in an authorized manner.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be stolen or appear on any list of omitted tickets on file with the lottery.

d. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed in error.

e. Have the exact play symbols and captions specified in the specific game rules.

f. Pass all validation tests including confidential validation tests.

If a ticket is invalid when sold it is not eligible to receive any prize, and the purchaser's sole remedy is to submit the ticket to lottery headquarters to obtain a refund of the retail sale price. The lottery shall have no liability or responsibility for tickets invalidated after the time of sale.

The commissioner may, in the commissioner's sole discretion, choose to pay a sum equal to the prize on an invalid ticket if the lottery is able to determine the prize which would have been won on the invalid ticket by use of a symbol, number, color code or other mechanism. The commissioner's determinations that a ticket is valid or invalid, that a ticket was valid when sold and was subsequently invalidated, and whether a sum equal to the prize on an invalid ticket will be paid shall be final.

11.5(2) Reserved.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* 99E.9(3)*"f"* and 99E.19.

705—11.6(99E) Prizes. The top prize won on any pull-tab ticket shall not exceed $500. All prizes awarded in a pull-tab game shall be low-tier prizes.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"d."*

705—11.7(99E) Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the ticket.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"j."*

705—11.8(99E) Prize claims. All prizes must be claimed only at the place of business of the retailer which sold the ticket. Prizes must be claimed prior to the retailer's first close of business following the sale of the ticket. The winning ticket must be submitted to the retailer to obtain payment of any prize.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.19.

705—11.9(99E) Owner of ticket. Retailers shall pay prizes only to persons who present winning tickets. The person in physical possession of a pull-tab ticket shall be deemed to be the owner of the ticket who is entitled to prize payment regardless of any signature or other writing which may have been placed on the ticket after purchase.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.19.

705—11.10(99E) Disputed claim. If a purchaser and a retailer cannot agree as to whether a prize should be paid on any ticket, the purchaser may submit the ticket to any lottery office. The commissioner's determination as to whether a prize shall be awarded is final.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.19.

705—11.11(99E) Lottery logo. All pull-tab tickets sold by the Iowa Lottery shall be conspicuously marked with the logo of the lottery.

This rule is intended to implement Iowa Code section 99E.9(3).

705—11.12(99E) End of game. The commissioner shall announce the end of any pull-tab game or games.

This rule is intended to implement Iowa Code section 99E.9(3).

705—11.13(99E) Board approval of game. After selection of a particular pull-tab game, the lottery shall provide board members with written notification that a particular game has been selected. The chairperson of the board or a quorum of the board may call a meeting to review the game selection. If the lottery board does not disapprove of the game within five working days following receipt of notice that the game has been selected, the board may not later disapprove of the game.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

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CHAPTER 12
LOTTO AMERICA

Rescinded IAB 10/12/94, effective 9/23/94; see 705—Chapter 13.

CHAPTER 13
COMPUTERIZED LOTTERY GAMES—GENERAL RULES

[Prior to 10/12/94, see 705—Chapters 9, 10, 12, 13, 14, 15]

705—13.1(99E) Authorization of computerized lottery games. The lottery board authorizes the sale of computerized games to be played in compliance with the criteria set forth in this chapter.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

705—13.2(99E) Computerized lottery definitions. For the purposes of interpreting this chapter, the following definitions are applicable unless the context requires a different meaning.

"Central computer" or *"central computer system"* is a computer system designated to control, monitor, and communicate with the terminals and to record the transactions processed by the terminals.

"Drawing" means that process which is used to randomly select a winning combination for the game plays.

"Easy pick" means the random selection by the computer terminal of a valid play for the game which was selected.

"Game" shall mean any computerized game conducted by the lottery.

"Game ticket" or *"ticket"* means a ticket produced by a terminal which is the tangible evidence to prove participation in a game.

"Panel" or *"game panel"* means that area of a play slip which contains marked squares which may be played.

"Play" or *"game plays"* means the selection of an appropriate number of available variables which constitutes a valid entry in the game or the purchase of a ticket with a sequentially generated variable appearing on the face of the ticket which constitutes a valid entry in a pool exhaustion game.

"Play slip" means a card used by the player in marking a player's game plays.

"Pool exhaustion game" means a game where a predetermined pool of plays is established.

"Retailer" means the person or entity licensed by the Iowa lottery to sell game plays.

"Specific game rules" means the rules promulgated by the lottery pursuant to Iowa Code section 99E.9(3) which contains the features of a particular computerized game or promotion.

"Terminal" means a device which is authorized by the lottery to function with a central computer system for the purpose of issuing, entering, receiving, and processing lottery transactions.

"Winning numbers" means the selection of an appropriate number of the variables, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)*"b."*

705—13.3(99E) Method of play. If required by the specific game rules, a player must select an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer or by verbally requesting "easy pick" from a retailer. Players may also purchase game plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"j."*

705—13.4(99E) Cancellation by a player. A ticket may be canceled by returning the ticket to the selling retailer provided that the ticket is returned to the retailer the same day it was purchased prior to 11 p.m. or in time to permit canceling to be fully completed prior to the closing time for that drawing, whichever is earlier. In the event that a ticket is canceled, the player will be entitled to a refund from the retailer equal to the purchase price of the ticket.

Certain games will not allow cancellations as outlined in the specific game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"j."*

705—13.5(99E) Prizes and odds. The amount of prizes and the odds of winning shall be set forth in the specific game rules. Specific game rules may allow alternative prize structures.

705—13.6(99E) Payment of annuity jackpot prizes. If the jackpot prize or share of the jackpot prize will be paid as an annuity, it will consist of the initial payment followed by 24 yearly installments unless the cash value of the annuity prize attributable to a single play is less than $100,000. If the cash value of the annuity prize attributable to a single play is under $100,000, the lottery may elect to pay the cash value of the prize in one lump-sum prize payment. This rule does not apply to multistate lottery games.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"e."*

705—13.7(99E) Unclaimed prizes. Unclaimed jackpot prizes, shares of the jackpot prize, and other lotto prizes do not increase a prize simultaneously won by any other player in the game. Unclaimed jackpot shares shall be added to future jackpot prize pools at times determined by the lottery. Other unclaimed prizes shall be added to future prize pools for any lottery game.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.19.

705—13.8(99E) Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the game ticket and in the game literature made available by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"j."*

705—13.9(99E) Price. The price of a game play shall be outlined in the specific game rules. The sale price shall include sales tax.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"c."*

705—13.10(99E) Changes for special promotions. The lottery may alter the price of the tickets, features, or prizes of the game or drawings to accommodate special promotions. Alterations made by the lottery shall be contained in the specific rules for the promotion.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"c,"* 99E.9(3)*"d,"* and 99E.9(3)*"h."*

705—13.11(99E) Ticket ownership and prize entitlement.

13.11(1) Until a signature is placed on the back of a ticket in the area designated for signature, a ticket is owned by its physical possessor. When a signature is placed on the back of the ticket in the designated space, the person whose signature appears in the designated space is the owner of the ticket and is entitled to any prize attributable to the ticket.

13.11(2) Notwithstanding any name or names submitted on a claim form, the lottery shall make payment to the person whose signature appears on the back of the ticket in the designated space. If the signatures of more than one person appear in that space, the lottery shall make payment to the person identified on the winner's claim form to receive payment, which designation shall be made by all persons whose signatures appear on the reverse side of the ticket. In the event that all persons whose signatures appear in the appropriate space cannot identify one person to whom payment should be made, the lottery may withhold payment until the proper payee is determined. In no event shall more than one person be entitled to a particular prize.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.19.

705—13.12(99E) Ticket validation requirements.

13.12(1) All claims for prizes are subject to validation by the lottery. To be a valid ticket and eligible to receive a prize, all of the following requirements must be satisfied.

a. The ticket must have been issued by the lottery directly or through a retailer, via a terminal, in an authorized manner.

b. The information on the ticket must correspond precisely with the lottery's computer record.

c. The ticket serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket.

d. A ticket shall be void unless the ticket is printed on a paper stock roll which was validly issued to and used, at the time of the play, by the retailer from whom the ticket was purchased.

e. The ticket must not be produced in error, counterfeit in whole or in part, altered, mutilated, unreadable, tampered with in any manner, incomplete, blank or partially blank, miscut, or defective.

f. The ticket must pass all other security criteria determined by the lottery.

g. The ticket must not be stolen.

h. The ticket must not be canceled.

i. The ticket must pass additional validation requirements which may be stated in the specific game rules.

13.12(2) In the event that a ticket fails to pass all of the validation criteria set forth in this rule and the specific game rules, it is invalid and ineligible for any prize. The lottery, in its sole discretion, may choose to pay a sum equal to the prize on an invalid ticket if the lottery can determine the prize which would have been won by the ticket by use of a symbol, code number, color code, or other mechanism. The lottery's decisions as to whether a ticket is invalid and whether a sum equal to the prize on an invalid ticket will be paid are final. If the lottery determines that a ticket is not eligible to receive a prize or a sum equivalent to the prize amount, the lottery may replace the invalid ticket with a ticket of equivalent sale price from any current lottery game or refund the purchase price of the ticket. Replacement of the ticket or refund of the purchase price shall be the claimant's sole and exclusive remedy.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* 99E.9(3)*"f,"* and 99E.19.

705—13.13(99E) Claim period. All prizes for games not associated with another state's lottery must be claimed as directed within 90 calendar days of the drawing in which the prize was won. All prizes for games associated with another state's lottery must be claimed as directed within the specific game rules. For purposes of determining the claim period, the drawing date shall not be counted. If a prize is claimed by mail, the lottery must actually receive the ticket and claim form within the claim period. Any prize not properly claimed within the specified period shall be forfeited. The claim period for a game may be altered by the lottery in the specific game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.19.

705—13.14(99E) Manner of claiming prizes.

13.14(1) To receive payment for a prize or prizes on any single game ticket which total $600 or less, the winner may take the signed ticket directly to any lottery retailer authorized to sell and validate the game, or to any lottery office, or mail the signed ticket, along with a completed claim form, to Iowa Lottery Headquarters, P.O. Box Lottery, Des Moines, Iowa 50306-0474.

If there is any alteration, mutilation, tear, or other ambiguity on the ticket, the retailer is not authorized to make direct payment of a prize and a claim form and the ticket must be submitted to the lottery.

13.14(2) To receive payment for a prize or prizes on any single game ticket which total more than $600, the winner may submit the signed ticket and a completed claim form directly to any lottery office. The winner may also mail the signed ticket and claim form to Iowa Lottery Headquarters, P.O. Box Lottery, Des Moines, Iowa 50306-0474.

13.14(3) Claim forms are available at all computerized lottery retailers and lottery offices. The lottery or, at the lottery's direction, a lottery retailer may require the person claiming a prize of any amount to fill out a claim form.

13.14(4) If a prize is claimed by mail, the ticket and the claim form must actually be received by the lottery within the claim period.

This rule is intended to implement Iowa Code sections 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.19.

705—13.15(99E) Presentation of ticket. No prize payments shall be made unless the player submits a valid, uncanceled ticket. A play slip has no pecuniary or prize value and is not evidence of ticket purchase or of numbers selected.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.19.

705—13.16(99E) One prize per game play. The holder of a winning ticket may win only one prize per game play in connection with the winning numbers drawn and shall be entitled only to the prize won by those numbers in the highest matching prize category.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"d."*

705—13.17(99E) Corrections. The lottery reserves the right to correct and adjust, up or down, the amount of any prize or prizes, whether all or part of the prize or prizes has been paid, if it is determined that one or more players are entitled to a portion of a prize and were not included in the prize calculations or were included in the prize calculations by mistake.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"d."*

705—13.18(99E) Risk of error. The placing of plays is done at the player's own risk. It is solely the player's responsibility to verify the accuracy of game plays and all other data printed on the ticket. In the event of any error, the player's only remedy is cancellation of the ticket according to the procedure specified in this chapter. The lottery and lottery retailers have no other responsibility for tickets printed in error.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"d."*

705—13.19(99E) Multidraw plays and advance plays. Multidraw plays and advance plays may be available.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"j."*

705—13.20(99E) Drawings. Drawings will be held as specified in the game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* and 99E.9(3)*"d."*

705—13.21(99E) Cancellation or delay of play. The lottery reserves the right to cancel or delay drawings or ticket sales on days of special importance or on days the drawings would be impractical or inappropriate.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.9(3)*"g."*

705—13.22(99E) Pool exhaustion game—method of play.

13.22(1) Players may purchase tickets for a specific game. Each ticket sold for a pool exhaustion game will be generated separately. Tickets shall be sold against the pool until the pool of plays is exhausted or until the game ends in accordance with the specific game rules.

13.22(2) Each ticket will bear a sequentially generated variable on the face of the ticket.

13.22(3) Drawings for the prizes for a specific game shall randomly select a winner or winners from the tickets actually sold. The drawing method shall be described in the specific game rules.

13.22(4) Prizes shall be awarded in conformance with the specific game rules.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.9(3)*"g."*

705—13.23(99E) Prize insurance fund. The prize insurance fund may be used for any of the following purposes:

1. To pay prizes for any on-line game prize obligation if the amount available to fund an on-line game prize is insufficient;
2. To support a special promotion to retire an on-line game, e.g., a television show or a second chance drawing;
3. To transfer amounts to a successor game to pay prize obligations for a different on-line game.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)*"b,"* 99E.9(3)*"e,"* and 99E.9(3)*"g."*

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CHAPTER 14
AGENCY PROCEDURE FOR RULE MAKING

705—14.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the lottery are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

705—14.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the lottery 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 lottery by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

705—14.3(17A) Public rule-making docket.

14.3(1) *Docket maintained.* The lottery shall maintain a current public rule-making docket.

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

14.3(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 agency determinations with respect thereto;

h. Any known timetable for agency 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.

705—14.4(17A) Notice of proposed rule making.

14.4(1) *Contents.* At least 35 days before the adoption of a rule the lottery 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 lottery 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 lottery for the resolution of each of those issues.

14.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 14.12(2) of this chapter.

14.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the lottery 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 lottery 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 lottery 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 six months.

705—14.5(17A) Public participation.

14.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999, or the person designated in the Notice of Intended Action.

14.5(2) *Oral proceedings.* The lottery may, at any time, schedule an oral proceeding on a proposed rule. The lottery 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 lottery 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.

14.5(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* 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 lottery board, a member of the lottery board, or another person designated by the lottery board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the lottery board 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.

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 lottery 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 lottery board'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 lottery.

(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.

14.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the lottery may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

14.5(5) *Accessibility.* The lottery shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999, telephone number (515)281-7900 in advance to arrange access or other needed services.

705—14.6(17A) Regulatory analysis.

14.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

14.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the lottery's small business impact list by making a written application addressed to the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. 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 lottery 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 lottery may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

14.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the lottery 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 lottery shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

14.6(4) *Qualified requesters for regulatory analysis—economic impact.* The lottery 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;

b. The administrative rules review committee.

14.6(5) *Qualified requesters for regulatory analysis—business impact.* The lottery 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;

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

14.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the lottery shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

14.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the lottery. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

14.6(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).

14.6(9) *Publication of a concise summary.* The lottery shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

14.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

14.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

705—14.7(17A,25B) Fiscal impact statement.

14.7(1) A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities 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.

14.7(2) If the lottery determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the lottery shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

705—14.8(17A) Time and manner of rule adoption.

14.8(1) *Time of adoption.* The lottery 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 lottery shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

14.8(2) *Consideration of public comment.* Before the adoption of a rule, the lottery shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

14.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the lottery may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

705—14.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

14.9(1) The lottery shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

14.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the lottery shall consider the following factors:

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

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

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

14.9(3) The lottery 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 lottery finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

14.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the lottery to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

705—14.10(17A) Exemptions from public rule-making procedures.

14.10(1) *Omission of notice and comment.* To the extent the lottery 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 lottery 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 lottery shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

14.10(2) *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 lottery games.

b. Reserved.

14.10(3) *Public proceedings on rules adopted without them.* The lottery may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 14.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the lottery shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 14.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the lottery may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 14.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

705—14.11(17A) Concise statement of reasons.

14.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the lottery shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

14.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

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

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

14.11(3) *Time of issuance.* After a proper request, the lottery 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.

705—14.12(17A) Contents, style, and form of rule.

14.12(1) *Contents.* Each rule adopted by the lottery shall contain the text of the rule and, in addition:

a. The date the lottery 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 lottery 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 lottery in its discretion decides to include such reasons; and

g. The effective date of the rule.

14.12(2) *Incorporation by reference.* The lottery 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 lottery board finds that the incorporation of its text in the lottery's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the lottery'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 lottery may incorporate such matter by reference in a proposed or adopted rule only if the lottery 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 lottery, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The lottery shall retain permanently a copy of any materials incorporated by reference in a rule of the lottery.

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

14.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the lottery 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 lottery. The lottery 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 lottery shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

14.12(4) *Style and form.* In preparing its rules, the lottery shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

705—14.13(17A) Agency rule-making record.

14.13(1) *Requirement.* The lottery shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

14.13(2) *Contents.* The lottery 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 agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the lottery'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 lottery, 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 lottery and considered by the commissioner of the lottery, 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 lottery 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 lottery 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 amendments 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 agency response to that objection;

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

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

14.13(3) *Effect of record.* Except as otherwise required by a provision of law, the lottery rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

14.13(4) *Maintenance of record.*

a. The lottery 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 or the date of the Notice of Intended Action.

b. The lottery will maintain a separate file of any written criticism received regarding any of its rules for a period of not less than five years from the date the first written criticism for a rule was received as described in 14.13(2)*"g," "h," "i,"* or *"j."*

705—14.14(17A) Filing of rules. The lottery 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 lottery shall use the standard form prescribed by the administrative rules coordinator.

705—14.15(17A) Effectiveness of rules prior to publication.

14.15(1) *Grounds.* The lottery 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 lottery shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

14.15(2) *Special notice.* When the lottery 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 lottery 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 lottery 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 lottery of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 14.15(2).

705—14.16(17A) General statements of policy.

14.16(1) *Compilation, indexing, public inspection.* The lottery 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.

14.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the lottery to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 14.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

705—14.17(17A) Review by agency of rules.

14.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the lottery to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the lottery shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The lottery 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.

14.17(2) In conducting the formal review, the lottery 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 lottery'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 lottery or granted by the lottery. 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 lottery'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.

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 15
POWERBALL LOTTERY GAME

Rescinded IAB 10/12/94, effective 9/23/94; see 705—Chapter 13.

SECRETARY OF STATE[721]

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CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The secretary of state adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

721—5.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "secretary of state".

721—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "secretary of state". In lieu of the words "(insert agency name and address)", insert "the Secretary of State, Statehouse, Des Moines, Iowa 50319".

5.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday, except for state holidays".

5.3(7) *Fees.*

c. Supervisory fee. In lieu of the words "(specify time period)", insert the words "one hour". Delete the words "(An agency wishing to deal with search fees authorized by law should do so here.)"

721—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the Secretary of State, Statehouse, Des Moines, Iowa 50319".

721—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(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 5.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency 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 agency 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 fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

721—5.10(17A,22) Routine use.

5.10(1) Defined. "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).

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

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

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

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

721—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(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 agency 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.

721—5.12(17A,22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency 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. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interests in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

721—5.13(17A,22) Availability of records.

5.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be witheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

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

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

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

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

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

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

(1) Enable law violators to avoid detection.

(2) Facilitate disregard of requirements imposed by law.

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Agricultural reports defined as confidential reports in Iowa Code section 172C.14.

i. Any other records made confidential by law.

5.13(3) *Authority to release confidential records.* The agency 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 5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

721—5.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22). All records described in this rule are public records. For each record system, this rule describes the legal authority for the collection of that information, and the means of storage of that information. The agency maintains no record systems in which a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

5.14(1) *Liens on personal property.* The agency maintains records of liens on personal property, pursuant to Iowa Code section 554.9401(1)"*c*," the Uniform Commercial Code, pursuant to Iowa Code section 570A.4, agricultural supply dealer's liens, pursuant to Iowa Code section 571.3, thresher's or cornsheller's liens, and pursuant to Iowa R.C.P. 260, levies on personalty. Personally identifiable information includes the name and address of the debtor and the secured party, and the time and date of filing of the lien or levy. The information is stored in a computer database, and is indexed by the name of the debtor.

5.14(2) *Candidates for public office.* The agency maintains records of candidates for public office, pursuant to Iowa Code sections 43.11, 43.18, 44.3, 44.4, and 45.3. Personally identifiable information includes the name, address, and political party affiliation of the candidate, and the name of the public office sought by the candidate. The information is stored in a computer database, and is indexed by the name of the candidate.

5.14(3) *Donor and donee records.* The agency maintains records of gifts made to certain public officials, pursuant to Executive Order number 31, and Iowa Code section 68B.11(2). Personally identifiable information includes the name of the donor or donee, the nature, amount, and date of gifts made to a donee in excess of $15 in cumulative value in any calendar day, the title, agency or organization of the donor or donee, and the mailing address of a donor. The information is stored in a manual filing system, and indexed by the name of the donor or the donee.

5.14(4) *County auditors.* The agency maintains records of county auditors in the state of Iowa, pursuant to Iowa Code section 47.1. Personally identifiable information includes the name and address of the county auditor. The information is stored in a computer database, and is indexed by the name of the county auditor.

5.14(5) *Substitute service of process.* The agency maintains records of plaintiffs to litigation in which service of process is achieved pursuant to Iowa Code section 617.3, the "long-arm statute." Personally identifiable information includes the name of the plaintiff and other information included in the document by the plaintiff. The information is stored in a manual filing system, and is indexed by the name of the plaintiff.

5.14(6) *Commissions.* The agency maintains records of commissions issued by the governor, pursuant to Iowa Code section 9.3. Personally identifiable information includes the name and address of the recipient of the commission. The information is stored in a manual filing system, and is indexed by the name of the recipient of the commission.

5.14(7) *Patents and deeds.* The agency maintains records of land patents and deeds to property, pursuant to Iowa Code chapter 10. Personally identifiable information includes the name of the recipient of the land patent or the conveyor of the deed, the county in which the land is located, and a legal description of the land. The information is stored in a manual filing system, and is indexed by the name of the recipient of the land patent or the conveyor of the deed.

5.14(8) *Notary public records.* The agency maintains records of notaries public commissioned pursuant to Iowa Code chapter 77. The records include the name, address, and county of residence of the notary public, the beginning and ending date of the commission, status as a new or renewal notary public, a certificate number, and an audit number. The information is stored in a computer database and on microfilm, and is indexed by the name of the notary public.

5.14(9) *Transient merchants.* The agency maintains records containing information about transient merchants, pursuant to Iowa Code chapter 9C. The records include the name and address of the merchant, and other information required by Iowa Code section 9C.3. The information is stored in manual files and indexed by the name of the transient merchant.

721—5.15(17A,22) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary 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 2.7(11).

721—5.16(17A,22) Other groups of records. This rule describes records maintained by the agency other than record systems as defined in rule 5.14(17A,22). These records are routinely available to the public except records maintained pursuant to Iowa Code chapter 172C. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(17A,22). The records may contain information about individuals.

Records are maintained regarding:

a. Corporations organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapters 491, 496A, 496B, 496C, 504, and 504A.

b. Cooperative associations organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapters 497, 498, 499, and 499A.

c. Limited partnerships organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapter 487.

d. Farm operations subject to Iowa Code chapters 9H and 567.

e. Athlete agents registered pursuant to Iowa Code chapter 9A.

f. Out-of-state contractors pursuant to Iowa Code section 103A.24.

g. Postsecondary educational institutions pursuant to Iowa Code chapter 261B.

h. Organizations soliciting public donations pursuant to Iowa Code chapter 13C.

i. Agreements relating to the joint exercise of governmental powers filed pursuant to Iowa Code chapter 28E.

j. Files relating to administration of the election laws found in Iowa Code chapters 39 through 41, 43 through 55, 57 through 63, 66, 69, 75, 145A, 161A, 174, 260C, 273, 274, 275, 277, 278, 279, 296, 297, 298, 300, 303, 303B, 306C, 330, 331, 336, 347, 347B, 349, 357, 357B, 357C, 357D, 358, 359 through 362, 368, 372, 376, 384, 392, 394, 400, 420, 422A, 422B, 442, 456, 462, 602, 659, 720, 721, and 722.

k. Administrative records including documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions, and other documents associated with the management of the agency.

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CHAPTER 6
ELECTRONIC FILING OF DOCUMENTS

721—6.1(554) Electronic filing—definitions. In this chapter:

"Electronically filed document" means a financing statement, amendment, continuation statement, termination including a partial release, or assignment, filed pursuant to this chapter.

"Electronic filing" means the authorized electronic transmission of information required by the uniform commercial code and these rules, from a secured party to the secretary of state, for the filing in the office of the secretary of state of a financing statement, amendment, continuation statement, termination including a partial release, or assignment pursuant to Iowa Code section 554.9402, 554.9404, or 554.9405.

721—6.2(554) Electronic filing—authorized. A filing party may be authorized for electronic filing upon the written authorization of the secretary of state.

The secretary of state shall authorize a filing party for electronic filing if the filing party holds an account for the billing of fees by the agency, and if the agency determines, after appropriate testing in accordance with the agency's specifications, that the agency is capable of receiving, indexing, and retrieving the data transmitted by the filing party. The secretary of state may suspend or revoke authorization for electronic filing when, in the secretary of state's discretion, it is determined that a filing party's transmissions are incompatible with the agency's electronic filing system.

A request to be authorized for electronic filing shall be addressed to the Secretary of State, Business Services Division, Hoover State Office Building, Des Moines, Iowa 50319. Upon a request for authorization, the agency shall provide the filing party with necessary information on the record layout for the transmission, including record length, format, and other specifications necessary to test the filing party's electronic filing capabilities.

721—6.3(554) Standard form. Except as otherwise provided in this rule, an electronically filed document is in standard form for the purpose of fees imposed under the uniform commercial code.

An electronically filed document is in nonstandard form if a description of collateral is required and the description exceeds 250 characters in length, exclusive of characters used as standard collateral codes.

721—6.4(554) Contents of transmissions. Each transmission of one or more documents for electronic filing shall include identification of the filing party in a form approved by the secretary of state and the filing party's account number for the purpose of billing fees. Each electronically filed document shall be identified by a number assigned by the filing party in a form approved by the secretary of state. An electronically filed document that requires identification of a debtor shall contain the federal tax identification number or social security number of the debtor and shall indicate whether the debtor is an individual or an entity other than an individual. In addition, an electronically filed document shall contain all the information required by this rule.

6.4(1) An electronically filed original financing statement shall contain all the following information in designated, machine readable fields:

a. The code "1".

b. The name of the debtor.

c. The mailing address of the debtor.

d. The signature of the debtor.

e. The name of the secured party.

f. An address of the secured party from which information concerning the security interest may be obtained.

g. A statement indicating the types, or describing the items, of collateral. An identification number or serial number of a piece of equipment or other collateral may be transmitted in a field designated for that purpose provided that a description of the equipment or other collateral is also transmitted in an associated field. The statement indicating the types of collateral may consist of one or more of the standard collateral codes adopted in rule 721—6.6(554).

The name and address of an assignee may be transmitted in an electronically filed original financing statement.

h. If applicable, an indication that the debtor is a transmitting utility, or that the financing statement relates to a lien, pledge, or security interest incident to bonds issued under Iowa Code chapter 419.

6.4(2) An electronically filed continuation statement shall contain all the following information in designated, machine readable fields:

a. The code "A".

b. The name of the secured party of record.

c. The signature of the secured party of record.

d. The file number of the original financing statement.

6.4(3) An electronically filed partial release must contain all the following information in designated, machine readable fields:

a. The code "B".

b. The file number of the original financing statement.

c. The name of the secured party of record.

d. The signature of the secured party of record.

e. A statement indicating the types, or describing the items, of collateral that remain secured under the security agreement. An identification number or serial number of a piece of equipment or other collateral may be transmitted in a field designated for that purpose provided that a description of the equipment or other collateral is also transmitted in an associated field. The statement indicating the types of collateral may consist of one or more of the standard collateral codes adopted in rule 721—6.6(554).

6.4(4) An electronically filed assignment shall contain all the following information in designated, machine readable fields:

a. The code "C".

b. The name of the debtor.

c. The name of the secured party of record.

d. The signature of the secured party of record.

e. The file number of the original financing statement.

f. The date on which the original financing statement was filed.

g. A description of the collateral assigned. An identification number or serial number of a piece of equipment or other collateral may be transmitted in a field designated for that purpose provided that a description of the equipment or other collateral is also transmitted in an associated field. The statement indicating the types of collateral may consist of one or more of the standard collateral codes adopted in rule 721—6.6(554).

h. The name and address of the assignee.

i. An indication as to whether the assignment is a full or partial assignment of collateral described in the financing statement.

6.4(5) An electronically filed termination statement shall contain all the following information in designated, machine readable fields:

a. The code "D".

b. The file number of the original financing statement.

c. The name of the secured party of record.

d. The signature of the secured party of record.

6.4(6) An electronically filed amendment to a financing statement, other than an amendment merely to change the name of the secured party, shall contain all the following information in designated, machine readable fields:

a. The code "E".

b. The file number of the original financing statement.

c. A restatement of the financing statement in its entirety, incorporating all amendments into the financing statement, and including all information required by subrule 6.4(1), paragraphs "*b*" through "*g.*"

d. The name of the debtor.

e. The signature of the debtor.

f. The name of the secured party of record.

g. The signature of the secured party of record.

6.4(7) An electronically filed amendment to a financing statement for the sole purpose of changing the name of the secured party shall contain all the following information in designated, machine readable fields:

a. The code "F".

b. The file number of the original financing statement.

c. The name of the debtor.

d. The new name of the secured party of record.

e. The signature of the secured party of record.

721—6.5(554) Signature of debtor or secured party. An electronically filed document shall contain the signature of the debtor or secured party when required in these rules. The signature of the debtor or secured party shall be as follows.

1. For the signature of the debtor, the name of the debtor shall be transmitted in a field designated as the debtor signature fields. The transmission of the debtor's name in the debtor signature field shall indicate that the secured party maintains a writing signed by the debtor in which the debtor adopts the contents of the debtor signature field with the intent to authenticate the electronically filed document. The writing may be in the following form, although the form is not mandatory:

AUTHENTICATION OF ELECTRONICALLY FILED DOCUMENT

A. The secured party is authorized to transmit to the secretary of state of Iowa for the purpose of authenticating an electronically filed document, described as follows:

	Document	Description	Date
_____	UCC1 financing statement	_____	_____
_____	UCC3-A continuation	_____	_____
_____	UCC3-B partial release	_____	_____
_____	UCC3-C assignment	_____	_____
_____	UCC3-D termination	_____	_____
_____	UCC3-E amendment	_____	_____

B. I hereby adopt the symbol transmitted to the secretary of state of Iowa and designated in paragraph A, with the intent to authenticate the document described above, as required by the provisions of the Uniform Commercial Code, Iowa Code chapter 554.

_____ (name of debtor)

_____ (signature)

_____ (date)

2. For the signature of the secured party, a symbol designated as the secured party's signature shall be transmitted in the secured party signature field. The transmission of the symbol in the secured party signature field shall indicate that the secured party maintains a writing signed by the secured party in which the secured party adopts the symbol with the intent to authenticate the electronically filed document.

721—6.6(554) Standard collateral codes. For the purpose of electronic filing, a standard collateral code is a description of collateral that has been assigned a code and adopted by rule by the secretary of state. The secretary of state, in responding to a request for a paper copy of an electronically filed document, shall print the full text of the statement corresponding to the code. Secured parties authorized for electronic filing are encouraged, whenever appropriate in the discretion of the secured party, to use standard collateral codes in electronically filed documents in order to minimize magnetic media storage space. Any secured party authorized for electronic filing may petition the secretary of state to adopt a standard collateral code by sending a letter of request to the Business Services Division, Hoover State Office Building, Des Moines, Iowa 50319. The following standard collateral codes are adopted:

X1 INVENTORY: All inventory of the borrower, whether now owned or hereafter acquired, and wherever located.

X2 EQUIPMENT: All equipment of the borrower, whether now owned or hereafter acquired, including, but not limited to, all present and future machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record-keeping equipment, parts and tools, and the goods described in any equipment list or schedule herewith or hereafter furnished to the lender by the borrower (but no such schedule or list need be furnished in order for the security interest granted herein to be valid as to all of the borrower's equipment).

X3 FARM PRODUCTS: All farm products of the borrower, whether now owned or hereafter acquired, including but not limited to (i) all poultry and livestock and their young, products thereof and produce thereof, (ii) all crops, whether annual or perennial, and the products thereof and (iii) all feed, seed, fertilizer, medicines and other supplies used or produced by the borrower in farming operations.

X4 ACCOUNTS AND OTHER RIGHTS TO PAYMENT: Each and every right of the borrower to the payment of money, whether such right to payment now exists or hereafter arises, whether such right to payment arises out of a sale, lease, or other disposition of goods or other property by the borrower, out of a rendering of services by the borrower, out of a loan by the borrower, out of the overpayment of taxes or other liabilities by the borrower or otherwise arises under any contract or agreement whether such right to payment is or is not already earned by performance, and howsoever such right to payment may be evidenced, together with all of the rights and interest (including all liens and security interest) which the borrower may at any time have by law or agreement against any account debtor or other obligor obligated to make any such payment or against any of the property of such account debtor; all including, but not limited to, all present and future debt instruments, chattel papers, accounts, loans and obligations receivable and tax refunds.

X5 GENERAL INTANGIBLES: All general intangibles of the borrower, whether now owned or hereafter acquired, including, but not limited to, tax refunds, applications for patents, patents, copyrights, trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to use the borrower's name.

X6 GOVERNMENT PROGRAMS: All government payments or entitlements including, but not limited to, deficiency, set-aside, conservation, PIK, sealed grain, reserve grain and storage.

721—6.7(554) Filing type codes. An electronically filed document shall be identified by one of the codes required in rule 721—6.4(554). The codes shall have the meanings designated in this rule. The secretary of state, in responding to a request for a paper copy of an electronically filed document, shall print the full text of the statement corresponding to the code.

6.7(1) The code "1" shall be deemed as the following statement: "UCC-1 FINANCING STATEMENT—This financing statement is presented to the secretary of state for filing pursuant to the uniform commercial code."

6.7(2) The code "A" shall be deemed as the following statement: "UCC-3 CONTINUATION—The original financing statement bearing the file number transmitted in this document is still effective."

6.7(3) The code "B" shall be deemed as the following statement: "UCC-3 PARTIAL RELEASE—The secured party releases property described in the financing statement bearing the file number transmitted in this document. This document contains a description of all collateral that remains secured under the security agreement."

6.7(4) The code "C" shall be deemed as the following statement: "UCC-3 ASSIGNMENT—The secured party certifies that the assignee named in this document has been assigned the secured party's rights under the financing statement bearing the file number transmitted in this document."

6.7(5) The code "D" shall be deemed as the following statement: "UCC-3 TERMINATION—The secured party certifies that a security interest no longer is claimed under the financing statement bearing the file number shown on this document."

6.7(6) The code "E" shall be deemed as the following statement: "UCC-3 AMENDMENT—The financing statement bearing the file number shown on this document is restated in its entirety, as described in this document."

6.7(7) The code "F" shall be deemed as the following statement: "UCC-3 AMENDMENT—The financing statement bearing the file number shown on this document is amended to change the name of the secured party."

721—6.8(554) Identification of secured party. When a rule governing electronic filing requires the name of the secured party, the name of the secured party of record, or the address of the secured party, the filing party shall transmit to the secretary of state a secured party identification number designated by the secretary of state. The secretary of state, in responding to a request for a paper copy of an electronically filed document, shall print the full name and address of the secured party corresponding to the identification number. A list of secured parties identified by the secretary of state pursuant to this rule shall be maintained for inspection by the secretary of state in the Hoover State Office Building, Des Moines, Iowa.

721—6.9(554) Date of electronically filed document. An electronically filed document is filed on the date and at the time the transmission is received by the secretary of state.

6.9(1) The secretary of state shall provide the filing party with a confirmation of all documents in a transmission that meet the requirements of this chapter and the date and time of filing.

6.9(2) A record transmitted to the secretary of state that does not contain the information required by this chapter shall not be filed, and the secretary of state shall provide the filing party with a notice that identifies the record and states the reason for rejection of the record.

These rules are intended to implement Iowa Code section 554.9402.

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CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

721—7.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

721—7.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency 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 agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

721—7.3(17A) Public rule-making docket. The agency shall maintain a current public rule-making docket. 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:

1. The subject matter of the proposed rule;
2. A citation to all published notices relating to the proceeding;
3. Where written submissions on the proposed rule may be inspected;
4. The time during which written submissions may be made;
5. 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;
6. 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;
7. The current status of the proposed rule and any agency determinations with respect thereto;
8. Any known timetable for agency decisions or other action in the proceeding;
9. The date of the rule's adoption;
10. The date of the rule's filing, indexing, and publication;
11. The date on which the rule will become effective; and
12. Where the rule-making record may be inspected.

721—7.4(17A) Notice of proposed rule making.

7.4(1) *Contents.* At least 35 days before the adoption of a rule, the agency 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 agency 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 agency for the resolution of each of those issues.

7.4(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 7.12(2) of this chapter.

7.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency 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 agency 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 agency 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.

721—7.5(17A) Public participation.

7.5(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 Chief Deputy Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

7.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency 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 agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

7.5(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 secretary, a member of the secretary's staff, or another person designated by the secretary who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the secretary does not preside, the presiding officer shall prepare a memorandum for consideration by the secretary summarizing the contents of the presentations made at the oral proceeding unless the secretary determines that such a memorandum is unnecessary because the secretary 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 required to notify the agency 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 agency 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 agency.

(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 may 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.

7.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

7.5(5) *Accessibility.* The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the secretary of state's office at (515)281-5865 in advance to arrange access or other needed services.

721—7.6(17A) Regulatory analysis.

7.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

7.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to the Chief Deputy Secretary of State, Second Floor, Hoover State Office Building, 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 agency 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 agency 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.

7.6(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 agency 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 agency 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.

7.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency 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;

b. The administrative rules review committee.

7.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency 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;

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.

7.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

7.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

7.6(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).

7.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

7.6(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.

7.6(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).

721—7.7(17A,25B) Fiscal impact statement.

7.7(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.

7.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

721—7.8(17A) Time and manner of rule adoption.

7.8(1) *Time of adoption.* The agency 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 agency 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.

7.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency 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.

7.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

721—7.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

7.9(1) The agency 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.

7.9(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 agency 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.

7.9(3) The agency 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 agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

7.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

721—7.10(17A) Exemptions from public rule-making procedures.

7.10(1) *Omission of notice and comment.* To the extent the agency 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 agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

7.10(2) *Public proceedings on rules adopted without notice and comment.* The agency 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 7.10(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 agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 7.10(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 agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 7.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

721—7.11(17A) Concise statement of reasons.

7.11(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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Chief Deputy Secretary of State, Second Floor, Hoover State Office Building, 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.

7.11(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 agency's reasons for overruling the arguments made against the rule.

7.11(3) *Time of issuance.* After a proper request, the agency 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.

721—7.12(17A) Contents, style, and form of rule.

7.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency 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 agency 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 agency in its discretion decides to include such reasons; and

g. The effective date of the rule.

7.12(2) *Incorporation by reference.* The agency 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 agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency 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 agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, 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 agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency 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.

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

7.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

721—7.13(17A) Agency rule-making record.

7.13(1) *Requirement.* The agency 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.

7.13(2) *Contents.* The agency 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 agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency'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 agency, 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 agency and considered by the secretary, 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 agency 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 agency 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, 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 agency 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.

7.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

7.13(4) *Maintenance of record.* The agency 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 7.13(2)*"g," "h," "i,"* or *"j."*

721—7.14(17A) Filing of rules. The agency 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 agency shall use the standard form prescribed by the administrative rules coordinator.

721—7.15(17A) Effectiveness of rules prior to publication.

7.15(1) *Grounds.* The agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

7.15(2) *Special notice.* When the agency 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 agency 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 agency 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 agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 7.15(2).

721—7.16(17A) General statements of policy.

7.16(1) *Compilation, indexing, public inspection.* The agency 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," "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(10)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

7.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 7.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

721—7.17(17A) Review by agency of rules.

7.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency 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.

7.17(2) In conducting the formal review, the agency 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 agency'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 agency or granted by the agency. 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 agency'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.

These rules are intended to implement Iowa Code sections 17A.3, 17A.4, and 17A.5 and 1998 Iowa Acts, chapter 1202.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 8
PETITIONS FOR RULE MAKING

721—8.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the secretary of state at the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

SECRETARY OF STATE

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed, together with a quotation of the relevant language.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by rule 721—8.4(17A).

8.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative (if one is involved), and a statement indicating the person to whom communications concerning the petition should be directed.

8.1(2) The agency may deny a petition because it does not substantially conform to the required form.

721—8.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

721—8.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Chief Deputy Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319.

721—8.4(17A) Agency consideration.

8.4(1) Within 30 days after the filing of a petition, the agency 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 agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

8.4(2) Within 90 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

8.4(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 agency's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 9
DECLARATORY ORDERS

721—9.1(17A) Petition for declaratory order. Any person may file a petition with the secretary of state for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the secretary at the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either office. The secretary of state's office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

SECRETARY OF STATE

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 9.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

721—9.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the secretary of state's office shall give notice of the petition to all persons not served by the petitioner pursuant to 9.6(17A) to whom notice is required by any provision of law. The office may also give notice to any other persons.

721—9.3(17A) Intervention.

9.3(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.

9.3(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 secretary or the secretary's designee.

9.3(3) A petition for intervention shall be filed at the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either 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. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

SECRETARY OF STATE

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

721—9.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The secretary of state's office may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

721—9.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Chief Deputy Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319.

721—9.6(17A) Service and filing of petitions and other papers.

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

9.6(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 Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Second Floor, Hoover State Office Building, 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 secretary.

9.6(3) *Method of service, time of filing, and proof of mailing.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the secretary of state's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing. Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

721—9.7(17A) Consideration. Upon request by petitioner, the secretary of state's office must schedule a brief and informal meeting between the original petitioner, all intervenors, and the secretary or a member of the secretary's staff to discuss the questions raised. The secretary of state's office may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the secretary by any person.

721—9.8(17A) Action on petition.

9.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the secretary or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

9.8(2) The date of issuance of an order or of a refusal to issue an order means the date of mailing of the order or date of delivery if service is by other means unless another date is specified in the order.

721—9.9(17A) Refusal to issue order.

9.9(1) The secretary shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the secretary to issue an order.

3. The secretary does not have jurisdiction over the questions presented in the petition.

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

5. 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.

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

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

8. 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 agency decision already made.

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the secretary to determine whether a statute is unconstitutional on its face.

9.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

9.9(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 the refusal to issue an order.

721—9.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

721—9.11(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.

721—9.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the secretary of state's office, the petitioner, and any intervenors who consent to be bound 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 secretary. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTERS 10 to 19
Reserved

721—21.11(44) Nonparty political organizations—nominations by petition. Rescinded IAB 9/10/97, effective 10/15/97.

721—21.12 to **21.19** Reserved.

721—21.20(62) Election contest costs. In determining the amount of the bond for election contests, the commissioner shall consider the following aspects of the cost of the election contest proceedings:

1. Fees as provided in Iowa Code section 62.22.
2. Fees for judges as provided in Iowa Code section 62.23.
3. The cost of making an official record of the proceedings.

721—21.21(62) Limitations. The amount of the bond shall not include costs not directly related to the contest court proceedings. Specifically, the amount of the bond shall not be intended to replace any potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

Rules 721—21.20(62) and 721—21.21(62) are intended to implement Iowa Code sections 62.6, 62.22, 62.23, and 62.24.

721—21.22 to **21.24** Reserved.

721—21.25(50) Administrative recounts. When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount.

The recount shall be conducted by members of the special precinct board following the provisions of Iowa Code sections 50.48 and 50.49. The recount board may use a computer program board which was not used in the election to compare with the suspected defective one.

This rule is intended to implement 1997 Iowa Acts, House File 636, section 59.

721—21.26 to **21.199** Reserved.

DIVISION II
BALLOT PREPARATION

721—21.200(49) Constitutional amendments and public measures.

21.200(1) The order of placement on the ballot for constitutional amendments and statewide public measures to be voted upon at a single election shall be determined by the state commissioner, and a number shall be assigned to each constitutional amendment or statewide public measure by the state commissioner.

a. The number assigned by the state commissioner to each constitutional amendment or statewide public measure to appear on the ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following amendment to the Constitution (or public measure) be adopted?" or the words "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?".

b. The number assigned by the state commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one constitutional amendment or statewide public measure is to appear on a ballot to be voted upon at a single election, an identifying number shall be assigned by the state commissioner and shall be printed on the ballot in the prescribed manner.

21.200(2) The order of placement on the ballot for each local public measure to be voted upon at a single election shall be determined by the commissioner, and a letter shall be assigned to each local public measure by the commissioner.

a. The letter assigned by the commissioner to each local public measure to appear on a ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following public measure be adopted?".

b. The letter assigned by the commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one public measure is to appear on a ballot to be voted upon at a single election, an identifying letter shall be assigned by the commissioner and shall be printed on the ballot in the prescribed manner.

21.200(3) The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

**a.* The state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.

b. The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than 20 days after the date of publication in the Iowa Administrative Bulletin.

c. The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

This rule is intended to implement Iowa Code sections 47.1 and 49.44.

721—21.201 to 21.299 Reserved.

*Language nullified by 1999 Iowa Acts, HJR 15, editorially removed IAC Supplement 5/19/99 pursuant to Iowa Code section 17A.6(3).

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

CHAPTER 3
DECLARATORY ORDERS

751—3.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa telecommunications and technology commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission at ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587. A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

751—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The Iowa telecommunications and technology commission may also give notice to any other persons.

751—3.3(17A) Intervention.

3.3(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.

3.3(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 Iowa telecommunications and technology commission.

3.3(3) A petition for intervention shall be filed at ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. 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.
5. 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.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

751—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The Iowa telecommunications and technology commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

751—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587.

751—3.6(17A) Service and filing of petitions and other papers.

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

3.6(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 Iowa Telecommunications and Technology Commission, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587. Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa telecommunications and technology commission.

3.6(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 751—4.12(17A).

751—3.7(17A) Consideration. Upon request by petitioner, the Iowa telecommunications and technology commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

751—3.8(17A) Action on petition.

3.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 751—4.2(17A).

751—3.9(17A) Refusal to issue order.

3.9(1) The Iowa telecommunications and technology commission shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the commission to issue an order.
3. The commission does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other commission or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

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

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

9. 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the commission to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final commission action on the petition.

3.9(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 the refusal to issue an order.

751—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

751—3.11(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.

751—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors (who consent to be bound) 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 commission. The issuance of a declaratory order constitutes final commission action on the petition.

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

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CHAPTER 4
CONTESTED CASES

751—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the Iowa telecommunications and technology commission. Contested cases generally include, but are not limited to, appeals of administrative orders issued by the executive director and the withdrawal of an authorized user's right to use the service offered by the commission.

751—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"Commission" means the Iowa telecommunications and technology commission, as designated in Iowa Code chapter 8D, as having appellate jurisdiction over a particular matter.

"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 1998 Iowa Acts, chapter 1202, section 14.

"Executive director" means the director or an authorized representative of the commission.

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

"Party" means each person or commission named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge or, under certain circumstances, members of the commission or the entire commission.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the entire commission did not preside.

751—4.3(17A) Time requirements.

4.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

4.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

751—4.4(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 commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission 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.

751—4.5(17A) Notice of hearing.

4.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the commission, members of the commission, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 4.6(17A), that the presiding officer be an administrative law judge.

751—4.6(17A) Presiding officer.

4.6(1) In each contested case in which Iowa Code chapter 17A requires an evidentiary hearing, the chair of the commission will determine whether the hearing shall be held before the commission, one or more members of the commission, or an administrative law judge. 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 commission head or members of the commission.

4.6(2) The executive director may deny the request only upon a finding that one or more of the following apply:

a. Neither the commission nor any officer of the commission 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. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

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

e. Funds are unavailable to pay the costs of an administrative law judge and an intercommission appeal.

f. The request was not timely filed.

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

4.6(3) The executive director shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 4.6(4), the parties shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will not be available.

4.6(4) An administrative law judge assigned to act as presiding officer in telecommunications matters shall have the following technical expertise: must be familiar with telecommunications transactions.

4.6(5) 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 commission. A party must seek any available intracommission appeal in order to exhaust adequate administrative remedies.

4.6(6) Unless otherwise provided by law, commission heads and members of multimembered commission heads, when reviewing a proposed decision upon intracommission appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

751—4.7(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 commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

751—4.8(17A) Telephone or network proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference or on the Iowa Communications Network in which all parties have an opportunity to participate. Other telephone or network proceedings, including the hearing for the contested case proceeding, may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or network hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or network hearing may be assessed equally to each party.

751—4.9(17A) Disqualification.

4.9(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.

4.9(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 commission 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 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 4.9(3) and 4.23(9).

4.9(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.

4.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.25(17A) and seek a stay under rule 4.29(17A).

751—4.10(17A) Consolidation—severance.

4.10(1) *Consolidation.* The presiding officer may 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.

4.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

751—4.11(17A) Pleadings.

4.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

4.11(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.

4.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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.

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.

4.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

751—4.12(17A) Service and filing of pleadings and other papers.

4.12(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 commission, 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.

4.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Executive Director of the Commission, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission name.

4.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Telecommunications and Technology Commission, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

751—4.13(17A) Discovery.

4.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

751—4.14(17A) Subpoenas.

4.14(1) *Issuance.*

a. A commission subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

751—4.15(17A) Motions.

4.15(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.

4.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.15(3) The presiding officer may schedule oral argument on any motion.

4.15(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 commission or an order of the presiding officer.

4.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 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 45 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 20 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 4.28(17A) and appeal pursuant to rule 4.27(17A).

751—4.16(17A) Prehearing conference.

4.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the executive director to all parties. For good cause the presiding officer may permit variances from this rule.

4.16(2) Each party shall bring to the prehearing conference:

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

b. A final list of exhibits 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.

c. 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.

4.16(3) In addition to the requirements of subrule 4.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

751—4.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.17(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 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 commission may waive notice of such requests for a particular case or an entire class of cases.

4.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

751—4.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

751—4.19(17A) Intervention.

4.19(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.

4.19(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. 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 ordinarily be denied.

4.19(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to 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.

4.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person 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.

751—4.20(17A) Hearing procedures.

4.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.20(2) All objections shall be timely made and stated on the record.

4.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.20(6) Witnesses may be sequestered during the hearing.

4.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

751—4.21(17A) Evidence.

4.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.21(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 that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.21(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 should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.21(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.

751—4.22(17A) Default.

4.22(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.

4.22(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.

4.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action 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 4.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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.

4.22(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.

4.22(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.

4.22(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 236.

4.22(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 4.25(17A).

4.22(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.

4.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

4.22(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 4.29(17A).

751—4.23(17A) Ex parte communication.

4.23(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 commission 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 4.9(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.

4.23(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.

4.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.23(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 4.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.23(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.

4.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for 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 4.23(1).

4.23(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 4.17(17A).

4.23(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.

4.23(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.

4.23(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 commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

751—4.24(17A) Recording costs. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

751—4.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

751—4.26(17A) Posthearing procedures and orders.

4.26(1) *Filing by parties of briefs and proposed findings.* The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

4.26(2) *Final decision or order.*

a. When a quorum of the entire commission presides over the reception of evidence at the hearing, its decision is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

b. In a contested case in which the hearing is held before an administrative law judge or a panel of commission members constituting less than a quorum of the board, the presiding officer or panel shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within 30 days.

4.26(3) *Decisions and orders.*

a. *By whom prepared.* The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. *Content of decision or order.* The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed finding of fact in accordance with subrule 4.26(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. *Delivery.* A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

751—4.27(17A) Appeals and review.

4.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

4.27(2) *Review.* The commission member of the commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a commission member or the commission initiates review of a proposed decision, the executive director shall mail a notice of review to all parties. The notice of appeal or the notice of review 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;

e. The grounds for relief.

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

4.27(5) *Scheduling.* The commission shall issue a schedule for consideration of the appeal.

4.27(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 20 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 commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

751—4.28(17A) Applications for rehearing.

4.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.28(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 commission decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.27(4), the applicant requests an opportunity to submit additional evidence.

4.28(3) *Time of filing.* The application shall be filed with the commission within 20 days after issuance of the final decision.

4.28(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 commission shall serve copies on all parties.

4.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

751—4.29(17A) Stays of commission actions.

4.29(1) *When available.*

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

b. Any party to a contested case proceeding may petition the commission 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.

4.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

4.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—4.30(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.

751—4.31(17A) Emergency adjudicative proceedings.

4.31(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 commission may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before issuing an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

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

4.31(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 commission'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 commission;

(3) Certified mail to the last address on file with the commission;

(4) First-class mail to the last address on file with the commission; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

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

4.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the commission 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 commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

751—4.32(17A,8D) Informal procedure prior to hearing. Any person who desires to pursue informal settlement of any contested case may request a meeting with appropriate staff. The request should be made in writing to the executive director, setting forth a concise statement of the circumstances giving rise to the controversy, the text or citation to any applicable law, commission rule, or decision, and a statement of the settlement proposed. A request for informal settlement should be received by the executive director not less than 15 days before the board meeting at which it is to be considered. The executive director shall schedule consideration of the request at the next regular board meeting occurring more than 15 days after the request for an informal settlement is made. Not more than 10 days after the commission meeting at which the request is scheduled for consideration, the executive director will notify the petitioner in writing of the commission's disposition of the request. If the commission determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 4.31(17A). If informal settlement is unsuccessful, formal contested case proceedings may be instituted in accordance with rule 4.5(17A).

These rules are intended to implement Iowa Code chapter 8D and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 18
PROCEDURE FOR RULE MAKING

751—18.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the commission are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

751—18.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the commission 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 commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

751—18.3(17A) Public rule-making docket.

18.3(1) *Docket maintained.* The commission shall maintain a current public rule-making docket.

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

18.3(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 commission determinations with respect thereto;

h. Any known timetable for commission 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.

751—18.4(17A) Notice of proposed rule making.

18.4(1) *Contents.* At least 35 days before the adoption of a rule the commission 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 commission 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 commission for the resolution of each of those issues.

18.4(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 18.12(2) of this chapter.

18.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the commission 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 commission 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 commission 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 six months.

751—18.5(17A) Public participation.

18.5(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 Executive Director, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, or the person designated in the Notice of Intended Action.

18.5(2) *Oral proceedings.* The commission may, at any time, schedule an oral proceeding on a proposed rule. The commission 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 commission by the administrative rules review committee, a governmental subdivision, a commission, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by a commission 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.

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

(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.

18.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the commission may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

18.5(5) *Accessibility.* The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Executive Director, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, telephone (515)323-4692, in advance to arrange access or other needed services.

751—18.6(17A) Regulatory analysis.

18.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

18.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the commission's small business impact list by making a written application addressed to the Executive Director, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587. 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 commission 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 commission may periodically send a letter to each registered small business or organization, 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.

18.6(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 commission 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 commission 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.

18.6(4) *Qualified requesters for regulatory analysis—economic impact.* The commission 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;

b. The administrative rules review committee.

18.6(5) *Qualified requesters for regulatory analysis—business impact.* The commission 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;

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.

18.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the commission shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

18.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

18.6(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).

18.6(9) *Publication of a concise summary.* The commission shall make available to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

18.6(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.

18.6(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).

751—18.7(17A,25B) Fiscal impact statement.

18.7(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.

18.7(2) If the commission determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the commission shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

751—18.8(17A) Time and manner of rule adoption.

18.8(1) *Time of adoption.* The commission 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 commission 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.

18.8(2) *Consideration of public comment.* Before the adoption of a rule, the commission 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.

18.8(3) *Reliance on commission expertise.* Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

751—18.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

18.9(1) The commission 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.

18.9(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 commission 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.

18.9(3) The commission 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 commission 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.

18.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

751—18.10(17A) Exemptions from public rule-making procedures.

18.10(1) *Omission of notice and comment.* To the extent the commission 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 commission 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 commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

18.10(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: no categories exempt.

18.10(3) *Public proceedings on rules adopted without them.* The commission 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 18.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the commission shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 18.10(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 commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 18.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

751—18.11(17A) Concise statement of reasons.

18.11(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 commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Executive Director of the Commission, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587. 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.

18.11(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 commission's reasons for overruling the arguments made against the rule.

18.11(3) *Time of issuance.* After a proper request, the commission 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.

751—18.12(17A) Contents, style, and form of rule.

18.12(1) *Contents.* Each rule adopted by the commission shall contain the text of the rule and, in addition:

a. The date the commission 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 if the commission 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 commission in its discretion decides to include such reasons; and

g. The effective date of the rule.

18.12(2) *Incorporation by reference.* The commission 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 commission finds that the incorporation of its text in the commission proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the commission 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 commission may incorporate such matter by reference in a proposed or adopted rule only if the commission makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this commission, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The commission shall retain permanently a copy of any materials incorporated by reference in a rule of the commission.

If the commission 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.

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

18.12(4) *Style and form.* In preparing its rules, the commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

751—18.13(17A) Commission rule-making record.

18.13(1) *Requirement.* The commission 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.

18.13(2) *Contents.* The commission 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 commission submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the commission'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 commission, 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 commission and considered by the Iowa telecommunications and technology commission, 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 commission 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 commission 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 amendments of, 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 commission 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.

18.13(3) *Effect of record.* Except as otherwise required by a provision of law, the commission rule-making record required by this rule need not constitute the exclusive basis for commission action on that rule.

18.13(4) *Maintenance of record.* The commission shall maintain the rule-making record indefinitely 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 18.13(2)*"g," "h," "i,"* or *"j."*

751—18.14(17A) Filing of rules. The commission 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 commission shall use the standard form prescribed by the administrative rules coordinator.

751—18.15(17A) Effectiveness of rules prior to publication.

18.15(1) *Grounds.* The commission 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 commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

18.15(2) *Special notice.* When the commission 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 commission 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 commission 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 commission of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 18.15(2).

751—18.16(17A) General statements of policy.

18.16(1) *Compilation, indexing, public inspection.* The commission 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," "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.

18.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the commission to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 18.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

751—18.17(17A) Review by commission of rules.

18.17(1) Any interested person, association, commission, or political subdivision may submit a written request to the administrative rules coordinator requesting the commission to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the commission shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The commission 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.

18.17(2) In conducting the formal review, the commission 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 commission'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 commission or granted by the commission. 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 commission'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.

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

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VETERINARY MEDICINE BOARD [811]

Rules renumbered and transferred from agency number[842] to [811] to conform with the reorganization numbering scheme in general.

CHAPTER 3
DECLARATORY ORDERS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.5]

The veterinary medicine board hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

811—3.1(17A,169,272C) Petition for declaratory order. In lieu of the words "(designate agency)" the first time the words are used, insert "board of veterinary medicine (hereinafter referred to as "the board")". In lieu of the words "(designate agency)" the subsequent times the words are used, insert "board". In lieu of the words "(designate office)", insert "State Veterinarian's Office, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319." In lieu of the words "(AGENCY NAME)", insert "BOARD OF VETERINARY MEDICINE".

811—3.2(17A,169,272C) Notice of petition. In lieu of the words and numbers "_____ days (15 or less)", insert "15 days". In lieu of the words "(designate agency)", insert "board".

811—3.3(17A,169,272C) Intervention.

3.3(1) In lieu of the words "__ days", insert "20 days".

3.3(2) In lieu of the words "(designate agency)", insert "the board".

3.3(3) In lieu of the words "(designate office)", insert "the state veterinarian's office at the department of agriculture and land stewardship in the Wallace State Office Building". In lieu of the words "(designate agency)", insert "board". In lieu of the words "(AGENCY NAME)", insert "BOARD OF VETERINARY MEDICINE".

Delete paragraph 6 and insert in lieu thereof the following:

"6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding."

811—3.4(17A,169,272C) Briefs. In lieu of the words "(designate agency)", insert "board".

811—3.5(17A,169,272C) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

811—3.6(17A,169,272C) Service and filing of petitions and other papers.

3.6(2) In lieu of the words "(specify office and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319". In lieu of the words "(agency name)", insert "board".

3.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 10.23(17A,169,272C)".

811—3.7(17A,169,272C) Consideration. In lieu of the words "(designate agency)", insert "board".

811—3.8(17A,169,272C) Action on petition.

3.8(1) In lieu of the words "(designate agency head)", insert "the chairperson of the board".

3.8(2) In lieu of the words "(contested case uniform rule X.2(17A))", insert "rule 10.14(17A,169,272C)".

811—3.9(17A,169,272C) Refusal to issue order.

3.9(1) In lieu of the words "(designate agency)", insert "board".

811—3.12(17A,169,272C) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "board". Delete the words "(who consent to be bound)".

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

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.4]

The veterinary medicine board hereby adopts the agency procedure for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

811—4.1(17A,169,272C) Applicability. In lieu of the word "agency", insert "the board of veterinary medicine (hereinafter referred to as "the board")".

811—4.3(17A,169,272C) Public rule-making docket.

4.3(2) In lieu of the words "(commission, board, council, director)", insert "board".

811—4.4(17A,169,272C) Notice of proposed rule making.

4.4(3) In lieu of the words "(specify time period)", insert "one year".

811—4.5(17A,169,272C) Public participation.

4.5(1) In lieu of the words "(identify office and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

4.5(5) In lieu of the words "(designate office and telephone number)", insert "the state veterinarian office at (515)281-5305".

811—4.6(17A,169,272C) Regulatory analysis.

4.6(2) In lieu of the words "(designate office)", insert "state veterinarian's office".

811—4.10(17A,169,272C) Exemptions from public rule-making procedures.

4.10(2) is not adopted.

811—4.11(17A,169,272C) Concise statement of reasons.

4.11(1) In lieu of the words "(specify the office and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

811—4.13(17A,169,272C) Agency rule-making record.

4.13(2) In lieu of the words "(agency head)", insert "chairperson of the board".

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

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CHAPTER 10
DISCIPLINE

[Prior to 2/8/89, see Veterinary Medicine, Board of[842] Ch 6]

811—10.1(17A,169,272C) Board authority. The board of veterinary medicine (hereinafter referred to as "the board") may discipline a veterinarian for any grounds stated in Iowa Code chapters 169 and 272C or rules promulgated thereunder.

811—10.2(17A,169,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

10.2(1) In accordance with Iowa Code section 272C.3(1)"*c*," the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

10.2(2) The executive secretary or authorized designee shall investigate complaints in order to determine the probability that a violation of law or rule has occurred.

811—10.3(17A,169,272C) Investigatory subpoena powers. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

10.3(1) A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive secretary or a designee.

10.3(2) In the event obedience to a subpoena is refused, the requesting party may petition the district court for enforcement.

811—10.4(17A,169,272C) Board action. The board shall review investigative conclusions and take one of the following actions:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

811—10.5(17A,169,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

10.5(1) The committee shall determine if the conduct of the licensee conforms to minimum standards of acceptable and prevailing practice of veterinary medicine and submit a report of its findings to the board.

10.5(2) The board shall review the committee's findings and proceed with action available under rule 10.4(17A,169,272C).

10.5(3) The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6.

811—10.6(17A,169,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 10.7(17A, 169, 272C), including civil penalties in an amount not to exceed $1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

10.6(1) Fraud in procuring a license, which includes but is not limited to an intentional perversion of the truth in making application for a license to practice veterinary medicine in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the Iowa department of agriculture and land stewardship any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a license in this state.

10.6(2) Professional incompetency, which includes but is not limited to violations of the standards of practice as set out in 811—Chapter 12. Professional incompetency may also be established by:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the veterinarian's practice;

b. A substantial deviation by the veterinarian from the standards of learning or skill ordinarily possessed and applied by other veterinarians acting in the same or similar circumstances;

c. A failure by a veterinarian to exercise in a substantial respect that degree of care which is ordinarily exercised by the average veterinarian acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standards of acceptable and prevailing practice of veterinarians.

10.6(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a veterinarian in the practice of veterinary medicine and includes any representation contrary to legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare or may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12, and may include acts or offenses in violation of the code of ethics of the American Veterinary Medical Association (AVMA).

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a veterinarian to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent veterinarian acting in the same or similar circumstances, including a violation of the standards of practice as set out in 811—Chapter 12, or when a veterinarian is unable to practice veterinary medicine with reasonable skill and safety to a client's animals as a result of a mental or physical impairment or chemical abuse.

d. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark may substitute in lieu of a signature a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in their presence.

e. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

10.6(4) Habitual intoxication or addiction to the use of drugs, which includes but is not limited to the inability of a veterinarian to practice veterinary medicine with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other types of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a veterinarian's ability to practice the profession with reasonable skill and safety. The board may require participation in a treatment program as a condition of license probation or suspension, and shall consider the licensee's willingness to participate in a treatment program when determining the appropriate degree of disciplinary sanction.

10.6(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession includes, but is not limited to, the conviction of a veterinarian who has committed a public offense in the practice of their profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of veterinary medicine or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon a veterinarian in this state.

10.6(6) Fraud in representations as to skill or ability, which includes but is not limited to a veterinarian's having made misleading, deceptive or untrue representations as to the veterinarian's competency to perform professional services for which the veterinarian is not qualified to perform by training or experience.

10.6(7) Use of untruthful or improbable statements in advertisements, which includes but is not limited to an action by a veterinarian in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but not be limited to:

1. Inflated or unjustified expectations of favorable results;
2. Self-laudatory claims that imply that the veterinarian engaged in a field or specialty of practice for which the veterinarian is not qualified. A veterinarian is not qualified to claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA;
3. Representations that are likely to cause the average person to misunderstand; or
4. Extravagant claims or claims of extraordinary skills not recognized by the veterinary profession.

10.6(8) Willful or repeated violations of the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board.

10.6(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of veterinary medicine.

10.6(10) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

10.6(11) Failure of licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of veterinary medicine entered into in another state, district, territory or country, or failure to report any adverse judgment in a malpractice action to which the licensee is a party, and every settlement of a claim against the licensee alleging malpractice, within 30 days of said voluntary agreement, adverse judgment, or settlement.

10.6(12) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice veterinary medicine.

10.6(13) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of veterinary medicine in which proceeding actual injury to a patient need not be established, which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12; or the committing by a veterinarian of an act contrary to honesty, justice or good morals, whether the same is committed in the course of practice or otherwise, and whether committed within or without this state, where such act substantially relates to the practice of veterinary medicine.

10.6(14) Inability to practice veterinary medicine with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

10.6(15) Violating a lawful order of the board previously entered by the board in a disciplinary hearing.

10.6(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

10.6(17) Indiscriminately or promiscuously prescribing, administering or dispensing any drug; or prescribing, administering or dispensing any drug for other than a lawful purpose.

10.6(18) Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.

10.6(19) Failure to comply with a subpoena issued by the board.

10.6(20) Willful or gross negligence.

10.6(21) Obtaining any fee by fraud or misrepresentation.

10.6(22) Negligence in failing to exercise due care in the delegation of veterinary services to or supervision of registered veterinary technicians, veterinary assistants, employees or other individuals, whether or not injury results.

10.6(23) Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 169.13 or these rules.

10.6(24) The board shall suspend or revoke a license to practice veterinary medicine upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to the procedures contained therein, the following shall apply.

a. The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 261.126 shall be 60 days following service of the notice upon the applicant.

c. The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the executive secretary shall notify the licensee of the board's intention to revoke the license.

d. Licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

e. All board fees required for renewal or reinstatement must be paid by the applicant and all continuing education requirements must be met before a license will be renewed or reinstated after the board has denied the renewal or reinstatement of a license pursuant to Iowa Code chapter 261.

f. In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the renewal, or reinstatement of a license, the board shall count the number of days before the court action was disposed of by the court.

g. The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the applicant when the license is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

10.6(25) Having the person's license to practice veterinary medicine revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country, or having the person's U.S.D.A. accreditation revoked, suspended or other disciplinary action taken against the accreditation. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

811—10.7(17A,169,272C) Sanctions. The board has authority to impose the following disciplinary sanctions:

1. Revoke a license.
2. Suspend a license until further order of the board or for a specified period.
3. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
4. Impose a period of probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental examination.
8. Impose civil penalties not to exceed $1000.
9. Issue citation and warning.
10. Impose such other sanctions allowed by law as may be appropriate.

811—10.8(17A,169,272C) Panel of specialists. The board may appoint a panel of veterinarians who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

10.8(1) The executive secretary shall set the date, time, and location of the hearing and make proper notification to all parties.

10.8(2) The panel of specialists shall:

a. Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.

b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.

c. Receive opening statements from the parties.

d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.

e. Question the witnesses.

f. Receive closing statements from the parties.

g. Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

811—10.9(17A,169,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The executive secretary or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

811—10.10(17A,169,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

811—10.11(17A,169,272C) Application for reinstatement. Any person whose license to practice veterinary medicine has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

10.11(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be made until one year has elapsed from the date of the order.

10.11(2) The application shall allege facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists, and that it is in the public interest to reinstate the license. The burden of proof to establish these facts shall rest with the petitioner.

10.11(3) The hearing in an application for reinstatement is a contested case in the meaning of Iowa Code section 17A.12.

10.11(4) The order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed.

811—10.12 Reserved.

811—10.13(17A,169,272C) Contested case proceedings. The following rules apply to board activities which are initiated upon determination of probable cause and result in the issuance of a notice of hearing.

811—10.14(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the chairperson of the board or designee.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board did not preside.

811—10.15(17A) Time requirements.

10.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

10.15(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

811—10.16(17A) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

10.16(1) The date, time, and location of the hearing shall be set by the chairperson or the executive secretary. The licensee shall be notified at least 30 days prior to the scheduled hearing.

10.16(2) Notification shall be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the licensee cannot be located:

a. An affidavit shall be prepared outlining the measures taken to attempt service, and shall become a part of the file when a notice cannot be delivered by personal service or certified mail, return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive secretary or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

811—10.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6. The chairperson of the board shall designate the presiding officer in accordance with the provisions of 1998 Iowa Acts, chapter 1202, section 15.

10.17(1) For nondisciplinary proceedings, 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.

10.17(2) The executive secretary may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency 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. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

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

f. The request was not timely filed.

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

h. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

10.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

10.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.17(5) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

811—10.18(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 agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

811—10.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

811—10.20(17A) Disqualification.

10.20(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, secretary 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.

10.20(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 agency functions, including fact gathering for purposes other than investigation or 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 1998 Iowa Acts, chapter 1202, section 19(3), and subrules 10.20(3) and 10.32(9).

10.20(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.

10.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.20(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 10.34(17A).

811—10.21(17A) Consolidation—severance.

10.21(1) *Consolidation.* The presiding officer may 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.

10.21(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

811—10.22(17A) Pleadings.

10.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

10.22(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery or 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 provision of statutes and rules involved;

(3) The relief demanded and the facts and laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney.

10.22(3) Answer. An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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.

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.

811—10.23(17A) Service and filing of pleadings and other papers.

10.23(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 agency. 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.

10.23(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

10.23(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

10.23(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

10.23(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.

(Date) (Signature)

811—10.24(17A) Discovery.

10.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

10.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

811—10.25(17A) Subpoenas.

10.25(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

10.25(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

811—10.26(17A) Motions.

10.26(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.

10.26(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

10.26(3) The presiding officer may schedule oral argument on any motion.

10.26(4) Motions pertaining to the hearing 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 agency or an order of the presiding officer.

811—10.27(17A) Prehearing conference.

10.27(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

10.27(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses 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.

c. 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.

10.27(3) In addition to the requirements of subrule 10.27(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

10.27(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

811—10.28(17A) Continuances. The executive secretary shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive secretary only in situations involving extenuating, extraordinary, or emergency circumstances.

811—10.29(17A) Hearing procedures.

10.29(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

10.29(2) All objections shall be timely made and stated on the record.

10.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

10.29(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

10.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

10.29(6) Witnesses may be sequestered during the hearing.

10.29(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

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

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

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

811—10.30(17A) Evidence.

10.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

10.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

10.30(3) Evidence in the proceeding shall be confined to those issues to which the parties received notice prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

10.30(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 should normally be provided to opposing parties.

10.30(5) Any party may object to specific evidence or may request limits on scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.30(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 order of proof and inserted in the record.

811—10.31(17A) Default.

10.31(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.

10.31(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.

10.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 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 10.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that 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 attached to the motion.

10.31(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.

10.31(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.

10.31(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 236.

10.31(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 10.34(17A).

811—10.32(17A) Ex parte communication.

10.32(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 agency 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 10.20(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.

10.32(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.

10.32(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

10.32(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 10.23(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives.

10.32(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.

10.32(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 10.20(1) or other law and they comply with subrule 10.32(1).

10.32(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party 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 10.29(17A).

10.32(8) Disclosure of prohibited communications. A presiding officer who received 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.

10.32(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, 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.

10.32(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 agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board's executive secretary for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

811—10.33(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of such recording, unless otherwise provided by law.

811—10.34(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

10.34(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest feasible time. The decision of the board is a final decision.

10.34(2) A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law shall be supported by cited authority or by a reasoned opinion.

10.34(3) The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12.

10.34(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

811—10.35(17A) Appeals.

10.35(1) *Appeal by party.* Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202.

10.35(2) *Review.* The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

10.35(3) *Notice of appeal.* An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. 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;

e. The grounds for relief.

10.35(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 non-appealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

10.35(5) *Scheduling.* The board of veterinary medicine shall issue a schedule for consideration of the appeal.

10.35(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 20 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 an oral argument shall be filed with the briefs.

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

811—10.36(17A) Applications for rehearing.

10.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

10.36(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 10.36(4), the applicant requests an opportunity to submit additional evidence.

10.36(3) *Time of filing.* The application shall be filed with the board office within 20 days after issuance of the final decision.

10.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

10.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

811—10.37(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.

811—10.38(17A) Emergency adjudicative proceedings.

10.38(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

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

10.38(2) *Issuance.* 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:

a. Personal delivery;

b. Certified mail, return receipt requested, to the last address on file with the agency;

c. Certified mail to the last address on file with the agency;

d. First-class mail to the last address on file with the agency; or

e. Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

10.38(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

10.38(4) *Completion of proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 169 and 272C.

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WORKFORCE DEVELOPMENT DEPARTMENT[871]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345] under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97 see Job Service Division[345], renamed Department of Workforce Development by 1996 Iowa Acts, chapter 1186]

CHAPTER 23
EMPLOYER'S CONTRIBUTION AND CHARGES

CHAPTER 1
ADMINISTRATION

871—1.1(84A) Mission and overall organization.

1.1(1) *Mission.* The department of workforce development will commit its resources to Iowa's prosperity by working to ensure the income security, productivity, safety and health of Iowans.

1.1(2) *Vision.* The department of workforce development will strive to provide safe workplaces, provide a productive and economically secure workforce, provide all Iowans with access to workforce development services and become a model workplace.

1.1(3) *Overall organization.* The chief executive officer of the department is the director of the department of workforce development who shall be appointed by the governor with the approval of two-thirds of the members of the senate and is responsible directly to the governor. The director shall serve as the secretary to the Iowa workforce development board.

1.1(4) *Operation and administration.* For ease of operation and administration of responsibilities assigned to it, the director has organized the department into six divisions which are further divided into bureaus, sections and units. The director has general supervision over the administration and operation of the department. The director shall prepare, administer, and control the budget of the department and its divisions and shall approve employment of all personnel of the department and its divisions. The director can set aside any portion of funds appropriated to the department for allocation to Innovation Zones as long as the set-aside is consistent with state and federal laws.

1.1(5) *Division of customer and administrative services.* The division is under the direction of a division administrator who reports to the director and is responsible for administrative support. A specific description of the division is contained in 871—Chapter 2.

1.1(6) *Division of workers' compensation.* The division is the office of the industrial commissioner with the functions to administer, inform, regulate, and enforce the workers' compensation, occupational disease and occupational hearing loss laws as provided in Iowa Code chapters 85, 85A, 85B, 86 and 87. A specific description of the division is contained in 876—Chapter 1.

1.1(7) *Division of labor services.* The division is the office of the labor commissioner with the function to administer, inform, regulate, and enforce the labor laws as provided in Iowa Code chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, 94, and 95, and Iowa Code sections 30.7 and 327F.37. The division consists of four bureaus: occupational health and safety enforcement, occupational safety and health consultation and education, inspections and reporting, and employee protection. A specific description of the division is contained in 875—Chapter 1.

1.1(8) *Division of research and information services.* The division is under the direction of a division administrator who reports to the director. The divisions' functions include planning, researching, analyzing, directing and coordinating labor market information and automated services for the department. A specific description of the division is contained in 871—Chapter 10.

1.1(9) *Division of unemployment insurance services.* The division is under the direction of a division administrator who reports to the director. The division's function is to administer, inform, regulate and enforce the unemployment insurance laws as provided in Iowa Code chapter 96. A specific description of the division is contained in 871—Chapter 21.

1.1(10) *Division of workforce development center administration.* The division is under the direction of a division administrator who reports to the director. The budget and rules relating to workforce development must be approved by the Iowa workforce development board. The division's function is to administer, inform, regulate and enforce workforce development issues and services such as employment, training and placement as provided in Iowa Code chapters 7B, 84A and 96. A specific description of board duties and division responsibilities is contained in 877—Chapters 2 and 3.

1.1(11) *Office of workforce development policy.* The staff report to the director. The office develops and analyzes policy options, reviews the operations and performance of the workforce development system, coordinates staff support to the Iowa workforce development board and to Iowa's human resource investment council, and prepares strategic plans for workforce development in Iowa. The office coordinates with other state departments, other divisions in the department and partners and stakeholders in other sectors concerning workforce development policy matters.

This rule is intended to implement Iowa Code chapter 84A.

[Filed 2/20/97, Notice 1/15/97—published 3/12/97, effective 4/16/97]
[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 2
CUSTOMER AND ADMINISTRATIVE SERVICES DIVISION

871—2.1(84A) Mission and organization.

2.1(1) *Mission.* The customer and administrative services division serves the department and its customers by satisfying fiscal, employee, office, property and information needs.

2.1(2) *Operation and administration.* The customer and administrative services division is under the direction of a division administrator who assists the director by planning, directing, and coordinating activities such as customer services; financial management; business management; budget and reporting; employee services; public relations; and planning and information. For ease of operation and administration of responsibilities assigned to it, the customer and administrative services division has been organized into six bureaus corresponding to the functional responsibilities of the division administrator.

871—2.2(84A) Customer services bureau.

2.2(1) *Bureau chief.* The customer services bureau is under the direction of a bureau chief who reports to the division administrator.

2.2(2) *Responsibilities.* The customer services bureau is responsible for:

a. Customer satisfaction measurement tools and resources;

b. Customer assistance center operation for both internal and external customers;

c. County labor availability surveys;

d. Special projects relating to service improvement and customer services;

e. Coordination of the statewide employers council activity and support for the employers council board of directors;

f. Development of customer service policy and customer service standards in collaboration with other bureaus within the department; and

g. Management of the electronic bulletin board (data center).

871—2.3(84A) Financial management bureau.

2.3(1) *Bureau chief.* The financial management bureau is under the direction of a bureau chief who reports to the division administrator.

2.3(2) *Responsibilities.* The financial management bureau staff are responsible for auditing all claims for expenditure of administrative and program funds; coding the claims for processing of warrants or fund transfers; and preparing accounting entries as required. The bureau also accounts for all unemployment insurance revenues collected for the trust fund and for benefits paid from the fund.

871—2.4(84A) Business management bureau.

2.4(1) *Bureau chief.* The bureau of business management is under the direction of a bureau chief who reports to the division administrator.

2.4(2) *Purchasing unit.* The purchasing unit is responsible for purchasing supplies, equipment and services and maintaining a statewide inventory of supplies and equipment.

2.4(3) *Mail services unit.* The mail services unit is responsible for receiving and for internal distribution of incoming mail as well as daily processing of outgoing mail.

2.4(4) *Printing and collating unit.* The printing and collating unit is responsible for in-house printing as required and development and maintenance of forms and forms inventory.

2.4(5) *Supply and warehousing unit.* The supply and warehousing unit is responsible for receiving, storing and issuing supplies throughout the state.

2.4(6) *Building maintenance.* The business management bureau handles the building maintenance for both the 1000 East Grand and 150 Des Moines locations.

871—2.5(84A) Special projects, premises, and forms management bureau. Rescinded IAB 5/19/99, effective 6/23/99.

871—2.6(84A) Budget and reporting bureau.

2.6(1) *Bureau chief.* The budget and reporting bureau is under the direction of a bureau chief who reports to the division administrator.

2.6(2) *Responsibilities.* Staff of the budget and reporting bureau are responsible for:

a. Developing and analyzing both the state and local departmental budgets;

b. Collecting and identifying all necessary raw data from the department's divisions for budget preparation;

c. Preparing budgets in required formats;

d. Providing actual cost reports to the department's divisions for analysis;

e. Completing required federal and state reports; and

f. Managing the processing of the department's contracts for services.

871—2.7(84A) Employee services bureau.

2.7(1) *Bureau chief.* The employee services bureau is under the direction of a bureau chief who reports to the division administrator.

2.7(2) *Responsibilities.* The bureau is responsible for:

a. Providing an equal employment opportunity (EEO) program;

b. Maintaining a comprehensive department personnel program in accordance with rules and regulations of the Iowa department of personnel (IDOP), federal standards for a merit system, and department policy and regulations;

c. Maintaining employee records including payroll;

d. Interpreting and informing employees of personnel rules, regulations, procedures, and fringe benefits;

e. Maintaining a day-to-day working relationship with IDOP and cooperating with IDOP in test development for examinations, validation of department position classifications, and development of new job classifications and job specifications;

f. Providing in-service and out-service training and related training programs, developing training materials, giving training and cooperating in development and giving of training to department employees;

g. Providing out-service training including individual courses at local colleges and universities, especially developed short courses for specialists and management; and

h. Loaning audio-visual equipment and keeping it in repair.

i. Coordination of facility management for administrative and field offices.

j. Providing recommendations on and coordinating the development and distribution of internal administrative policies and procedures.

k. Coordination of communication systems for administrative and field offices.

2.7(3) *Equal employment opportunity program.* The equal employment opportunity (EEO) officer is under the supervision of the chief of the bureau of employee services. Individuals may file complaints on EEO matters at the Iowa Workforce Development Administrative Office, 1000 East Grand Avenue, Des Moines, Iowa 50319, attention: EEO Officer. If the department is involved in charges or allegations in the EEO area, the EEO officer is responsible for pursuing reconciliation or resolution. When necessary, the issues will be referred to the appropriate agencies, federal or state, for action. The EEO officer provides written and verbal guidance on EEO matters to the director, division administrators, and bureau chiefs. This guidance includes providing guidelines necessary to keep the department in compliance with federal and state law as well as United States Department of Labor regulations. The EEO officer is the official liaison with civil rights agencies and human service organizations. A department employee filing a grievance may elect, in matters involving EEO, to confer directly with the EEO officer who may make recommendations deemed appropriate. The EEO officer is responsible for developing and giving training along with other bureau employees on civil rights and EEO and is also responsible for monitoring the same.

871—2.8(84A) Planning and information services.

2.8(1) Planning and information services staff is responsible for:

1. Serving as the department's liaison with Congress and the Iowa general assembly;
2. Reviewing legislation affecting the department;
3. Developing, presenting, and securing enactment of the department's legislative package;
4. Providing constituent services to Congress and the Iowa general assembly.

2.8(2) Public relations and marketing bureau. The public relations and marketing bureau is under the direction of a bureau chief who reports to the division administrator. The public relations and marketing bureau is a resource to help other parts of the department communicate to various audiences. The bureau is responsible for:

1. Coordinating the department's internal and external communication efforts. Functions include providing support in audience and message definition, writing and graphic support, coordinating projects with outside printers and other communication vendors, and serving as a primary media contact.
2. Identifying and managing the department's marketing efforts including selecting and working with outside vendors such as advertising agencies and communication professionals to develop and place advertisements in various media to reach important customers and stakeholders.

These rules are intended to implement Iowa Code chapter 84A.

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CHAPTERS 3 to 9
Reserved

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345] under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97, see Job Service Division[345]]

CHAPTER 2
MISSION AND STRUCTURE

877—2.1(84A) Mission. The division of workforce development center administration was established by the director as authorized under Iowa Code section 84A.1(3). The mission of the division is to develop and administer employment, placement, and training services in all 99 counties of Iowa.

877—2.2(84A) Overall organization.

2.2(1) *Organization.* The division of workforce development center administration is under the direction of the division administrator and divided into three bureaus: administrative service bureau, service delivery bureau, and the enterprise development, implementation and evaluation bureau.

2.2(2) *Administrative service bureau.* The administrative service bureau is under the direction of a bureau chief who assists the division administrator in planning, directing and coordinating activities for the division. The chief directs the administrative support functions of the bureau. The bureau is responsible for the administration of the following programs: work opportunity tax credit, alien labor certification, child labor, testing, bonding certification, and the migrant seasonal farm worker program, as well as other duties assigned by the division administrator.

2.2(3) *Service delivery bureau.* The service delivery bureau is under the direction of a bureau chief who assists the division administrator in planning, directing and coordinating activities for the division. The chief directs the monitoring and technical assistance functions of the bureau. The bureau is responsible for the administration of the following programs: Iowa conservation corps, Job Training Partnership Act, state labor management cooperation, mentor advisory board, nontraditional employment, workforce investment, quality jobs, PROMISE JOBS, dislocated workers, and rapid response, as well as other duties assigned by the division administrator.

2.2(4) *Enterprise development, implementation, and evaluation bureau.* The enterprise development, implementation and evaluation bureau is under the direction of a bureau chief who assists the division administrator in planning, directing and coordinating activities for the division. The chief directs the administrative support and technical functions of the bureau. The bureau is responsible for the administration of the consolidation of the employment and training services delivered through a competitive regional service delivery model in consultation with the regional advisory board, as well as other duties assigned by the division administrator.

877—2.3(17A,84A) Criticism of agency rule. The division administrator of the Division of Workforce Development Center Administration, Workforce Development Department, 150 Des Moines Street, Des Moines, Iowa 50309, is designated as the office where interested persons may submit by mail criticism regarding an administrative rule of the workforce development board/services division. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, be signed by the complainant, not be part of any other filing with the department of workforce development, and have a valid or legal basis for support. All requests for criticism received on any rule will be kept in a separate record for a period of five years by the division of workforce development center administration and be a public record open for public inspection. All requests for criticism must be in the following format:

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE DEVELOPMENT CENTER ADMINISTRATION

(NAME OF PERSON SUBMITTING CRITICISM).	CRITICISM OF (SPECIFY RULE THAT IS UNDER CRITICISM).

Reasons for criticism:
Name, address, telephone number and signature of person submitting the criticism.

The administrative rules committee of the workforce development board will periodically review criticisms received for potential rule changes.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and chapter 84A.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, Iowa Code section 84A.1 and Iowa Code chapter 96.

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CHAPTER 3
Reserved

CHAPTER 9
LABOR-MANAGEMENT COOPERATION PROGRAM

[Prior to 7/17/96, see 261—Ch 10]
[Prior to 3/12/97, see 345—Ch 11]

877—9.1(77GA,ch1225) Purpose. The 1998 Iowa legislature appropriated funds to the department of workforce development to improve communications and facilitate dialogue between labor, management, and government on workforce development problems, to establish in-plant labor-management committees, and to provide technical assistance to promote effective labor-management policies in the state. The workforce development board appointed by the governor is responsible for overseeing the establishment of a labor-management effort in the state by promoting the establishment of areawide and in-plant labor-management committees.

877—9.2(77GA,ch1225) Definitions.

"DWD" means the department of workforce development.

"Labor-management committee" means any existing or newly created labor-management committee, which meets the following criteria:

1. The committee has been jointly organized by employers and labor organizations representing employees in that plant, area or industry; and
2. The committee is established for the purpose of improving labor-management relations, job security, organizational effectiveness, enhancing economic development or improving communications with respect to subjects of mutual interest or concern to labor and management; and
3. The committee shall not interfere with the collective bargaining activities in any plant or industry.

877—9.3(77GA,ch1225) Requests for training funds.

9.3(1) *Request for training funds.* Labor-management committees may request training funds from DWD by submitting a request letter and training plan. The training plan shall include a description of each training session to be conducted, who will provide the training, when the training will be provided, and the cost of the training session.

9.3(2) *Request submittal.* Completed requests shall be submitted to the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, Attention: Labor-Management Coordinator.

9.3(3) *Review procedure.* Eligible requests will be reviewed and approved by staff of the DWD. A monthly report of requests received and funded will be provided to the DWD board.

877—9.4(77GA,ch1225) Grant period and amount of grants.

9.4(1) The maximum training grant amount will be established annually by the DWD board based upon funds available for this purpose.

9.4(2) Approved training must be completed during the 12-month program year beginning July 1 and ending June 30. Training funded during one fiscal year does not automatically guarantee funding in future fiscal years.

877—9.5(77GA,ch1225) Technical assistance. Technical assistance for establishing an in-plant or areawide labor-management committee may be requested either by writing the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, Attention: Labor-Management Coordinator or by telephoning the labor-management coordinator at (515)281-9018.

877—9.6(77GA,ch1225) Monitoring. DWD reserves the right to monitor and evaluate the activities of any committee receiving funding under this chapter.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, section 9, paragraph 6.

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CHAPTER 26
PETITIONS

[Prior to 6/10/92, see 345—6.5(96) and 6.8(96)]
[Prior to 5/21/97, see Job Service[345] Ch 9]

877—26.1(17A,96) Petition for rule making. Any person may file a petition for rule making with Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE DEVELOPMENT CENTER ADMINISTRATION

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement to 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.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by subrule 26.1(5).

26.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

26.1(2) The agency may deny a petition because it does not substantially conform to the required form.

26.1(3) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

26.1(4) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.1(5) Agency consideration.

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

b. Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency 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. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

c. Denial of 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 agency's rejection of the petition.

This rule is intended to implement Iowa Code section 17A.7 and chapter 96.

877—26.2(17A,96) Petition for declaratory order. Any person may file a petition with the department of workforce development for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of workforce development at its offices at 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department of workforce development shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE DEVELOPMENT CENTER ADMINISTRATION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by subrule 26.2(6).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

26.2(1) *Notice of petition.* Within 10 days after receipt of a petition for a declaratory order, the department of workforce development shall give notice of the petition to all persons not served by the petitioner pursuant to subrule 26.2(5) to whom notice is required by any provision of law. The department of workforce development may also give notice to any other persons.

26.2(2) *Interventions.* Persons who qualify under 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. 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 department of workforce development. A petition for intervention shall be filed at 1000 East Grand Avenue, Des Moines, Iowa 50319. Such petition is deemed filed when it is received by that office. The department of workforce development will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE DEVELOPMENT CENTER ADMINISTRATION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in the original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualification for intervention.

2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

4. 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.

5. 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, any governmental entity.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

26.2(3) *Briefs.* The petitioner or intervenor may file a brief in support of the position urged. The department of workforce development may request a brief from the petitioner, any intervenor or any other person concerning the questions raised.

26.2(4) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.2(5) *Service and filing of petitions and other papers.*

a. 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 their filing. The party filing a document is responsible for service on all parties and other affected or interested parties.

b. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director, Department of Workforce Development, 1000 East Grand Avenue, 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 department of workforce development.

c. Service upon a party represented by an attorney shall be made upon the attorney and a copy will be sent to the petitioner. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

d. After the notice of hearing, all pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department of workforce development.

e. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department of workforce development, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

f. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Workforce Development, 1000 East Grand Avenue, 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).
>
> (Date) (Signature)

26.2(6) *Consideration.* Upon request by petitioner, the department of workforce development must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department, to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

26.2(7) *Action on petition.* Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5). The date of issuance of an order or of a refusal to issue an order is the date of mailing of the decision or date of delivery if service by another means unless another date is specified in the order. The administrative rules committee of the workforce development board will be advised of the disposition of all petitions.

26.2(8) *Refusal to issue order.* The department of workforce development shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all of the questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

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

c. The department of workforce development 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 agency 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 agency 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, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the department of workforce development to determine whether a statute is unconstitutional on its face.

A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

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 the refusal to issue an order.

26.2(9) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, 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.

26.2(10) *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.

26.2(11) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of workforce development and the petitioner, and any intervenors who consent to be bound 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 department of workforce development. The issuance of a declaratory order constitutes final agency action on the petition. The administrative rules committee of the workforce development board will be advised of the disposition of all declaratory orders.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 96.

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CHAPTER 27
Reserved

**See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01*

**See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01*

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**See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01*

EDUCATION (cont'd)
Special education
Programs/plans

**See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01*

ELECTIONS (cont'd)