

*State of Iowa*

# **Iowa**

# **Administrative**

# **Code**

# **Supplement**

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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.

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## UPDATING INSTRUCTIONS July 28, 1999, Biweekly Supplement

[Previous Supplement dated 7/14/99]

### IOWA ADMINISTRATIVE CODE

	<b>Remove Old Pages*</b>	<b>Insert New Pages</b>
<b>Utilities Division[199]</b>	Ch 6, p. 1, 2 Ch 19, p. 13, 14 Ch 19, p. 19, 20 Ch 20, p. 13, 14 Ch 20, p. 21, 22 Ch 22, p. 13, 14	Ch 6, p. 1, 2 Ch 19, p. 13, 14 Ch 19, p. 19, 20 Ch 20, p. 13, 14 Ch 20, p. 21, 22 Ch 22, p. 13, 14
<b>Public Broadcasting Division[288]</b>	Analysis, p. 1—Ch 2, p. 1	Analysis, p. 1—Ch 2, p. 1 Ch 11, p. 1—Ch 13, p. 13
<b>LIVESTOCK HEALTH ADVISORY COUNCIL[521]</b>	Analysis, p. 1—Ch 1, p. 2	Analysis, p. 1—Ch 1, p. 2
<b>NATURAL RESOURCES DEPARTMENT[561]</b>	Analysis, p. 1, 2 Ch 3, p. 1—Ch 6, p. 1	Analysis, p. 1, 2 Ch 3, p. 1—Ch 6, p. 2

\*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.

	<b>Remove Old Pages*</b>	<b>Insert New Pages</b>
<b>Professional Licensure Division[645]</b>	Analysis, p.11—Analysis, p.16 Ch 200, p. 1—Ch 200, p. 6 Ch 200, p. 13—Ch 201, p. 2 Ch 201, p. 5—Ch 201, p. 8 Ch 201, p. 13 Ch 202, p. 5, 6 Ch 202, p. 11, 12 Ch 220, p. 9—Ch 220, p. 13 Ch 221, p. 5—Ch 229, p. 1	Analysis, p.11—Analysis, p.14 Ch 200, p. 1—Ch 200, p. 6 Ch 200, p. 13—Ch 201, p. 2 Ch 201, p. 5—Ch 201, p. 8 Ch 201, p. 13 Ch 202, p. 5, 6 Ch 202, p. 11, 12 Ch 220, p. 9—Ch 220, p. 11 Ch 221, p. 5
<b>PUBLIC SAFETY DEPARTMENT[661]</b>	Analysis, p. 7, 8 Ch 8, p. 7—Ch 8, p. 15 Ch 11, p. 1—Ch 11, p. 6 Ch 20, p. 1—Ch 21, p. 2	Analysis, p. 7, 8 Ch 8, p. 7—Ch 8, p. 16 Ch 11, p. 1—Ch 11, p. 6 Ch 20, p. 1, 2
<b>REVENUE AND FINANCE DEPARTMENT[701]</b>	Ch 18, p. 3, 4 Ch 18, p. 73, 74	Ch 18, p. 3, 4 Ch 18, p. 73, 74
<b>WORKFORCE DEVELOPMENT DEPARTMENT[871]</b>	Ch 24, p. 39, 40 Ch 24, p. 65—Ch 24, p. 67 Ch 26, p. 1—Ch 26, p. 10	Ch 24, p. 39, 40 Ch 24, p. 65, 66 Ch 26, p. 1—Ch 26, p. 12
<b>Index Volume</b>	“N” Tab, p. 1—12 “O” Tab, p. 1—3	“N” Tab, p. 1—12 “O” Tab, p. 1—3

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**CHAPTER 6\***  
**COMPLAINT PROCEDURES**  
 [Previously ch 1, renumbered 10/20/75 Supp.]  
 [Prior to 10/8/86, Commerce Commission[250]]

**199—6.1(476) Inquiry.** Any person may seek assistance from the Iowa utilities board by appearing in person or placing a telephone call to the Consumer Services Section, Iowa Utilities Board, Des Moines, Iowa, (515)281-3839 or toll-free (877)565-4450. Consumer services may advise the person of the application of the rules, inform the person of utility complaint procedures and advise of written complaint procedures before the board. However, the complaint procedures set forth below are available only after a written complaint is filed.

**199—6.2(476) Complaint.** Any person or body politic may file a written complaint requesting a determination of the reasonableness of rates, charges, schedules, service, regulations or anything done or not done by a public utility subject to service or rate regulation by the board. Assistance may be requested in the following manner.

**6.2(1) Information to be filed:** Any person may, by mailing a complaint letter, request the board to determine whether the utility's charges, practices, facilities or service are in compliance with applicable statutes and rules established by the board, or by the utility in its tariff, and lawfully issued board orders. The board may initiate a complaint on its own motion. The complaint letter must be signed and dated by the complainant or by the complainant's representative and addressed to Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The letter should include:

*a.* The name of the utility, any utility personnel known or believed to be familiar with the facts stated in the letter and the location of the office of the utility where the complaint was originally made and processed.

*b.* The name of the complainant. If the complaint is being filed on behalf of a person other than the complainant, an affidavit from the person injured by the practice about which the complaint is made should be included stating that the complaint has been received and is believed to be true and accurate to the best of the knowledge of the injured person. A complaint filed by an organization on behalf of its members shall include an affidavit signed by an officer of the organization.

*c.* The address of the premises where the service or billing problems occurred and, if known, the telephone number and the account number. If the complainant resides at a different address, the complaint should also state where a response to the complaint is to be mailed. The complainant may also provide a telephone number where the complainant can be reached during the day.

*d.* The nature of the complaint, and efforts made to resolve the matter. Documents—e.g., bills or correspondence—should be included if they will add to the board's understanding of the utility practice about which the complaint is made. If known, references to statutes or rules believed to govern the outcome of the complaint should be included.

*e.* A proposal for resolving the complaint. The proposal should refer to any known statutes or rules authorizing the remedy request.

**6.2(2) Request for additional information.** If the staff determines that additional information is needed in order to resolve the complaint, the complainant will be notified that specified additional information should be filed. Action on the complaint will be held in abeyance until receipt of the requested information.

**199—6.3(476) Processing the complaint.** When the board receives a complaint that includes necessary information outlined in rule 6.2(476), the following complaint procedures will be followed:

**6.3(1)** The complaint letter and any supplemental information filed by the complainant will be forwarded to the public utility.

**6.3(2)** A copy of the complaint and any supplemental information will be forwarded by the staff to the consumer advocate.

**6.3(3)** The utility shall, within 20 days of the date on which the complaint is mailed to the utility by the board, file a response to the complaint with the board and shall mail a copy of its response to the complainant and the consumer advocate. The utility shall specifically address each allegation made by the complainant and recite any supporting facts, statutes, rules, or tariff provisions supporting its response. The utility shall enclose copies of all related letters, records, or other documents not supplied by the complainant, and all records concerning the complainant that are not confidential or privileged. In those cases the response shall advise of the records' existence.

**199—6.4(476) Proposed resolution.**

**6.4(1)** When the utility response is received, the staff may request from any party any additional information deemed necessary to resolve the complaint. When satisfied that all necessary information has been gathered, the staff will respond by letter to the complainant with a copy to the utility and consumer advocate acknowledging resolution of the complaint or proposing an appropriate resolution of the complaint.

**6.4(2)** If the staff determines that the action required by the proposed resolution has not been carried out, or new facts arise, the record may be reopened by issuing notice to the parties of further investigation.

**199—6.5(476) Initiating formal complaint proceedings.**

**6.5(1)** If the consumer advocate, complainant, or the public utility is dissatisfied with the proposed resolution, a request for formal complaint proceedings may be made. Parties will be informed of their right to request formal proceedings. A request for civil penalties, in accordance with Iowa Administrative Code 199—Chapter 8, may also be filed at this time. Failure to file a request for civil penalties at this time does not preclude a party from requesting civil penalties at a later date during formal proceedings. If no request for formal proceedings is made within 14 days after issuance of the proposed resolution or the specified date of utility action, the proposed resolution will be deemed binding on all parties. The board may initiate formal proceedings and seek civil penalties at any time on its own motion.

**6.5(2)** The request for formal complaint proceedings shall be filed within 14 days after issuance of the proposed resolution or the specified date of utility action, whichever is later. The request shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The request shall be in writing and must be delivered by United States Postal Service or personal service. The request shall include the file number (C-XX-XXX) marked on the proposed resolution. It shall explain why the proposed resolution should be modified or rejected and propose an alternate resolution, including any temporary relief desired. Copies of the request shall be mailed to the consumer advocate and the parties.

**6.5(3)** Upon receipt of a request for formal complaint proceedings, the board shall consider whether formal complaint proceedings should be initiated and issue an order. If the board denies formal complaint proceedings, a party may file a petition for judicial review either in the Polk County district court or in the district court for the county in which the party resides or has its principal place of business pursuant to Iowa Code section 17A.19. If formal complaint proceedings are initiated, an order will be issued docketing the case as a formal complaint and granting or denying, in whole or in part, any temporary relief requested.

**199—6.6(476) Applicable procedures.** When the complaint is docketed as a formal proceeding, the procedures set forth in Chapter 7 of these rules will apply.

*d. Extensions not required.* Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

*e. Extensions permitted.* This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

**19.3(11) Cooperation and advance notice.** In order that full benefit may be derived from these rules and in order to facilitate their proper application, all utilities shall observe the following cooperative practices:

*a.* Each utility shall give to other public utilities in the same general territory advance notice of any construction or change in construction or in operating conditions of its facilities concerned or likely to be concerned, in situations of proximity, provided, however, that the requirements of this rule shall not apply in case of routine extensions or minor changes in the local underground distribution facilities.

*b.* Each utility shall assist in promoting conformity with these rules. An arrangement should be set up between all utilities whose facilities may occupy the same general territory, providing for the interchange of pertinent data and information including that relative to proposed and existing construction and changes in operating conditions concerned or likely to be concerned in situations of proximity.

This rule is intended to implement 42 U.S.C.A. §8372, 10 CFR, 516.30, and Iowa Code section 476.8.

#### **199—19.4(476) Customer relations.**

**19.4(1) Customer information.** Each utility shall:

*a.* Maintain up-to-date maps, plans or records of its entire transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving customers in its service area.

*b.* Assist the customer or prospective customer in selecting the most economical rate schedule available for the proposed type of service.

*c.* Notify customers affected by a change in rates or schedule classification in the manner provided in the rules of practice and procedure before the board. (199—7.4(476)IAC)

*d.* Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for public inspection.

*e.* Upon request, inform its customers as to the method of reading meters.

*f.* State, on the bill form, that tariff and rate schedule information is available upon request at the utility's local business office.

*g.* Upon request, transmit a statement of either the customer's actual consumption, or degree day adjusted consumption, at the company's option, of natural gas for each billing period during the prior 12 months.

*h.* Furnish such additional information as the customer may reasonably request.

*i.* Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

**19.4(2) Customer deposits.**

a. Each utility may require from any customer or prospective customer a deposit intended to guarantee partial payment of bills for service. Each utility shall allow a person other than the customer to pay the customer's deposit. In lieu of a cash deposit, the utility may accept the written guarantee of a surety or other responsible party as surety for an account. Upon termination of a guarantee contract, or whenever the utility deems the contract insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required for good cause upon reasonable written notice.

b. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. The new or additional deposit shall be payable at any of the utility's business offices or local authorized agents. An appropriate receipt shall be provided. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

c. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff.

d. The total deposit for any residential or commercial customer for a place which has previously received service shall not be greater than the highest billing of service for one month for the place in the previous 12-month period. The deposit for any residential or commercial customer for a place which has not previously received service or for an industrial customer, shall be the customer's projected one-month usage for the place to be served as determined by the utility, or as may be reasonably required by the utility in cases involving service for short periods or special occasions.

**19.4(3) Interest on customer deposits.** Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. On or after April 21, 1994, rate-regulated utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

**19.4(4) Customer deposit records.** Each utility shall keep records to show:

- a. The name and address of each depositor.
- b. The amount and date of the deposit.
- c. Each transaction concerning the deposit.



**19.4(15) Refusal or disconnection of service.** Notice of a pending disconnection shall be rendered and gas service refused or disconnected as set forth in the tariff.

The notice of pending disconnection required by these rules shall be a written notice setting forth the reason for the notice, and final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when deposited in the U.S. mail with postage pre-paid. If delivery is by other than U.S. mail, the notice shall be considered rendered when delivered to the last-known address of the person responsible for payment for the service. The date for refusal or disconnection of service shall be not less than 12 days after the notice is rendered. The date for refusal or disconnection of service for customers on shorter billing intervals under subrule 19.3(7) shall not be less than 24 hours after the notice is posted at the service premises.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 19.4(15) "a," "b," "c," and "d," no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

- a. Without notice in the event of a condition determined by the utility to be hazardous.
- b. Without notice in the event of customer use of equipment in a manner which adversely affects the utility's equipment or the utility's service to others.
- c. Without notice in the event of tampering with the equipment furnished and owned by the utility. For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.
- d. Without notice in the event of unauthorized use.
- e. For violation of or noncompliance with the utility's rules on file with the utilities division.
- f. For failure of the customer or prospective customer to furnish the service equipment, permits, certificates or rights of way which are specified to be furnished, in the utility's rules filed with the utilities division, as conditions of obtaining service, or for the withdrawal of that same equipment or for the termination of those same permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the utilities board.
- g. For failure of the customer to permit the utility reasonable access to its equipment.
- h. For nonpayment of bill or deposit, except as restricted by 19.4(16) and 19.4(17), provided that the utility has:
  - (1) Made a reasonable attempt to effect collection;
  - (2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account, together with a written summary of the rights and remedies available to avoid disconnection. Customers billed more frequently than monthly pursuant to subrule 19.3(7) shall be given posted written notice that they have 24 hours to make settlement of the account, together with a written summary of the rights and remedies available to avoid disconnection. All written notices shall include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide their name to the caller, and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) The summary of the rights and remedies must be approved by the board. Any utility providing gas service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval.

#### CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

The following is a summary of your rights and remedies under the rules of the Utilities Division of the Iowa Department of Commerce to avoid disconnection of utility service.

*Disconnection can be avoided* by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.

*Disconnection for nonpayment may occur* only after we have sent a written notice of disconnection by regular mail postmarked at least 12 days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.

*Disconnection may not take place* unless we are prepared to reconnect your service that same day if payment or other arrangements are made. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.

*Delinquent bill.* If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least 12 months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Board (within 10 days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.

*Health.* Disconnection for nonpayment will be delayed 30 days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the 30-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial 30 days, you may receive an additional 30-day delay.

*Disputed bill.* If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to 45 days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the board (address and telephone number listed previously), disconnection may be further postponed, should the board request the extension.

Where the length of the overhead service extension exceeds 50 feet on private property, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the point of attachment, within 30 days after completion. The contribution in aid of construction for that portion of the service extension shall be computed as follows:

(Estimated Cost of Construction) ×

$$\left[ \frac{(\text{Total Length in Excess of 50 Feet})}{(\text{Total Length of Service Extension})} \right]$$

Where the cost of the underground service extension exceeds the estimated cost of constructing an equivalent overhead service extension of up to 50 feet, the applicant shall be required to provide a contribution in aid of construction within 30 days after completion equal to the difference between the estimated cost of constructing the underground service extension and the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

*c. Refunds.* The utility shall refund to the depositor for a period of ten years, from the date of the original advance, a pro-rata share for each service attachment to the extension. The pro-rata refund shall be computed in the following manner:

(1) If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

*d. Extensions not required.* Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

*e. Extensions permitted.* This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

This rule is intended to implement Iowa Code section 476.8.

#### 199—20.4(476) Customer relations.

**20.4(1) Customer information.** Each utility shall:

*a.* Maintain up-to-date maps, plans, or records of its entire transmission and distribution systems, together with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving prospective customers in its service area.

b. Assist the customer or prospective customer in selecting the most economical rate schedule available for the customer's proposed type of service.

c. Notify customers affected by a change in rates or schedule classification in the manner provided in the rules of practice and procedure before the board. [199—7.4(476)IAC]

d. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for inspection.

e. Upon request, inform its customers as to the method of reading meters.

f. State, on the bill form, that tariff and rate schedule information is available upon request at the utility's local business office.

g. Upon request, transmit a statement of either the customer's actual consumption, or degree day adjusted consumption, at the company's option, of electricity for each billing during the prior 12 months.

h. Furnish such additional information as the customer may reasonably request.

**20.4(2) Customer contact employee qualifications.** Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice for non-rate-regulated rural electric cooperatives shall include the following statement: "If your complaint is related to the (utility name) service rather than its rates, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

**20.4(3) Customer deposits.**

a. Each utility may require from any customer or prospective customer a deposit intended to guarantee partial payment of bills for service. Each utility shall allow a person other than the customer to pay the customer's deposit. In lieu of a cash deposit, the utility may accept the written guarantee of a surety or other responsible party as surety for an account. Upon termination of a guarantee contract, or whenever the utility deems the contract insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required for good cause upon reasonable written notice.

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account, together with a written summary of the rights and remedies available to avoid disconnection. Customers billed more frequently than monthly pursuant to subrule 20.3(6) shall be given posted written notice that they have 24 hours to make settlement of the account, together with a written summary of the rights and remedies available to avoid disconnection. All written notices shall include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide their name to the caller, and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) The summary of the rights and remedies must be approved by the board. Any utility providing electric service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval.

#### CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

The following is a summary of your rights and remedies under the rules of the Utilities Division of the Iowa Department of Commerce to avoid disconnection of utility service.

*Disconnection can be avoided* by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.

*Disconnection for nonpayment may occur* only after we have sent a written notice of disconnection by regular mail postmarked at least 12 days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.

*Disconnection may not take place* unless we are prepared to reconnect your service that same day if payment or other arrangements are made. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.

*Delinquent bill.* If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least twelve months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Board (within ten days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.

*Health.* Disconnection for nonpayment will be delayed thirty days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the thirty-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial thirty days, you may receive an additional thirty-day delay.

*Disputed bill.* If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to forty-five days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the Board (address and telephone number listed previously), disconnection may be further postponed, should the Board request the extension.

*Winter energy assistance (November 1 through April 1).* You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, you will be given twelve days from the date on which the disconnection notice was mailed to apply to the local community action agency. You must apply for assistance prior to the disconnection date. If the community action agency certifies you as being eligible for either low-income energy assistance or weatherization assistance within thirty days from the date of your application, then your service cannot be disconnected between November 1 and April 1.

It is unlikely, however, that energy assistance funds will pay all of your utility bills. It is to your advantage to make a payment arrangement now to avoid disconnection of your service after April 1.

If you have been certified as eligible for assistance, and you receive a disconnection notice from your gas or electric company, it is up to you to ensure that the utility is notified of your eligibility. Your certification will cover the current November 1 through April 1 period only. For further information on how to apply for assistance and qualifications, contact our business office, the Division of Community Action Agencies of the Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319 (1-800-532-1584), or your community action agency [list of community action agency addresses and telephone numbers for the utility's service territory].

(4) If the utility has adopted a service limitation policy pursuant to subrule 20.4(23), the following paragraph shall be appended to the end of the standard form for the summary of rights and remedies, as set forth in subparagraph 20.4(15) "h"(3):

*Service limitation:* We have adopted a policy of service limitation before disconnection. You may be qualified for service limitation rather than disconnection. To see if you qualify, contact our business office.

(5) When disconnecting service to a residence, made a diligent attempt to contact, by telephone or in person, the customer responsible for payment for service to the residence to inform the customer of the pending disconnection and the rights and remedies; if an attempt at personal or telephone contact of a customer occupying a unit which a utility knows or should know is a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, the customer's present location. The landlord shall also be informed of the date when service may be disconnected.

During the period November 1 to April 1, if the attempt at customer contact fails, the premises must be posted with a notice informing the customer of the pending disconnection and rights or remedies available to avoid disconnection at least one day prior to disconnection; if the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons therefor.

(6) Given the customer a reasonable opportunity to dispute the reason for the disconnection and, if to the extent applicable, complied with each of the following:

**22.3(12) *Ordering and transferring of service.*** Telephone utilities shall permit the ordering and transferring of transmission service to be accomplished by telephone. A utility shall not volunteer prices or otherwise attempt to promote terminal equipment which is offered by an affiliated company when transmission service is ordered. A utility may not require customers to order transmission service through a company affiliated with that utility.

**22.3(13) *Basic local service.*** Telephone utilities shall make available, at such time as the board may implement rules concerning end-user toll network access charges, basic local service to all residential customers in exchanges technically capable of blocking access to the toll network on a reasonably economical basis. Telephone utilities shall not assess any access charge to the long-distance network for the provision of basic local service.

**22.3(14) *Adjacent exchange service.*** All local exchange utilities shall file tariffs which include provisions which allow customers to establish adjacent exchange service.

a. The tariffs shall require the customer to pay the full cost of establishing and maintaining the adjacent exchange service.

b. In addition, the tariffs may include all or part of the following service provisions:

(1) The subscriber shall subscribe to local exchange service in the primary exchange in addition to the adjacent exchange service.

(2) All toll messages shall be placed through the primary exchange, unless there is a service outage in that exchange.

(3) The primary exchange company shall bill for the adjacent exchange service and make appropriate settlement to the secondary exchange company, unless the primary exchange and the adjacent exchange agree to a different billing arrangement.

(4) Adjacent exchange service shall be restricted to only the residential class of service, unless a waiver is permitted by the board for a particular customer for good cause shown.

(5) Failure of the subscriber to comply with the tariff provisions related to adjacent exchange service shall make the subscriber subject to discontinuance of service after appropriate notice.

c. These adjacent exchange service rules shall not affect the terms under which a customer receives adjacent exchange service, if that customer was receiving adjacent exchange service prior to the effective date of these rules.

#### **199—22.4(476) Customer relations.**

**22.4(1) *Customer information.***

a. Each utility shall:

(1) Maintain up-to-date maps, plans, or records of its entire exchange systems, together with such other information as may be needed to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving prospective customers in its service territory. Maps shall show the physical location of central offices, all telephone lines showing size of cable, and other facilities in the utility's service territories. The maps shall include, at a minimum, service locations, any zones or corporate limits which affect tariffed rates, roads, and county boundaries, and shall show county names. These maps shall be available for board examination at a location within Iowa during regular office hours and will be provided to the board upon request. These are not the same maps as the boundary maps described in subrule 22.20(3).

(2) Whenever a residential customer or prospective residential customer requests transmission service, the local exchange utility shall ask the residential customer or prospective residential customer if the customer desires to be informed of the lowest priced service alternatives available and upon an affirmative response shall inform that customer of the lowest priced single and multiparty service alternative available at the relevant location.

(3) Prior to processing a request for new inside station wiring or new or additional terminal equipment, inform the requesting party of all of the following information: the customer's right to provide and own terminal equipment and new inside station wiring, the availability of information on new inside station wiring and the rate for transmission service and all other rates or charges that will be incurred after processing the request, both initially and on a continuing basis. The telephone utility shall also inform the party that the rate for transmission service is the same whether or not terminal equipment is provided by the customer.

(4) Notify customers affected by a change in rates or schedule classification.

(5) Post notices in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for inspection and that customers have the right to own their own terminal equipment and that this will not affect the rate for transmission service.

(6) Furnish such additional information as the customer may reasonably request.

b. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

All local exchange telephone utilities, and other telephone utilities that do their own billing, shall notify their customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice for nonrate-regulated telephone utilities shall also include the following statement: "If (utility name) does not resolve your complaint, the service may be subject to state regulation. You may contact the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A telephone utility which provides local exchange service and issues an annual directory shall publish the information set forth above in its directory in addition to a mailing.

**22.4(2) Customer deposits.** Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff. The deposit required shall be confirmed in writing to the customer not later than the time of the next billing. The confirmation shall, in separate columns, itemize deposits for toll and regulated services and identify deposits for other services. The confirmation shall state that no deposit other than for regulated services is required to obtain basic local service. The confirmation must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)"b"(4). Toll service does not include information service not regulated by the board.

a. Such deposit shall not be more in amount than the maximum charge for two months local exchange service plus two months regulated toll service estimated from either past toll usage or customer estimated anticipated usage or exchange average toll usage for the same class and grade of service, or as may reasonably be required by the utility in cases involving service for short periods of time or special occasions. The deposit amounts must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)"b"(4).



## PUBLIC BROADCASTING DIVISION[288]

Created within the Department of Cultural Affairs by 1986 Iowa Acts, chapter 1245, section 1318. (Iowa Code §303.76)  
 [Prior to 8/10/88, see Public Broadcasting Department[645] and Educational Radio and Television Facility Board[340]]  
 [Prior to 9/14/94, see Public Broadcasting Division [225]]

### CHAPTER 1 ORGANIZATION

- 1.1(256) Establishment of the division of public broadcasting and the Iowa public broadcasting board
- 1.2(256) Operational organization

### CHAPTER 2 FACILITIES MANAGEMENT

- 2.1(256) Location
- 2.2 Reserved

### CHAPTER 3 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES (Uniform Rules)

- 3.1(22) Definitions
- 3.3(22) Requests for access to records
- 3.9(22) Disclosures without the consent of the subject
- 3.10(22) Routine use
- 3.11(22) Consensual disclosure of confidential records
- 3.12(22) Release to subject
- 3.13(22) Availability of records
- 3.14(22) Personally identifiable information
- 3.15(22) Other groups of records
- 3.16(22) Data processing systems
- 3.17(22) Applicability

### CHAPTERS 4 to 9 Reserved

### CHAPTER 10 IOWA COMMUNICATIONS NETWORK EDUCATIONAL SITE SELECTION

- 10.1(18) Site selection criteria

### CHAPTER 11 AGENCY PROCEDURE FOR RULE MAKING

- 11.1(17A) Applicability
- 11.2(17A) Advice on possible rules before notice of proposed rule adoption
- 11.3(17A) Public rule-making docket
- 11.4(17A) Notice of proposed rule making
- 11.5(17A) Public participation
- 11.6(17A) Regulatory analysis
- 11.7(17A,25B) Fiscal impact statement
- 11.8(17A) Time and manner of rule adoption
- 11.9(17A) Variance between adopted rule and published notice of proposed rule adoption
- 11.10(17A) Exemptions from public rule-making procedures
- 11.11(17A) Concise statement of reasons
- 11.12(17A) Contents, style, and form of rule
- 11.13(17A) Agency rule-making record
- 11.14(17A) Filing of rules
- 11.15(17A) Effectiveness of rules prior to publication
- 11.16(17A) General statements of policy
- 11.17(17A) Review by agency of rules

### CHAPTER 12 DECLARATORY ORDERS

- 12.1(17A) Petition for declaratory order
- 12.2(17A) Notice of petition
- 12.3(17A) Intervention
- 12.4(17A) Briefs
- 12.5(17A) Inquiries
- 12.6(17A) Service and filing of petitions and other papers
- 12.7(17A) Consideration
- 12.8(17A) Action on petition
- 12.9(17A) Refusal to issue order
- 12.10(17A) Contents of declaratory order—effective date
- 12.11(17A) Copies of orders
- 12.12(17A) Effect of a declaratory order

**CHAPTER 13  
CONTESTED CASES**

- 13.1(17A) Scope and applicability
- 13.2(17A) Definitions
- 13.3(17A) Time requirements
- 13.4(17A) Requests for contested case proceeding
- 13.5(17A) Notice of hearing
- 13.6(17A) Presiding officer
- 13.7(17A) Waiver of procedures
- 13.8(17A) Telephone proceedings
- 13.9(17A) Disqualification
- 13.10(17A) Consolidation—severance
- 13.11(17A) Pleadings
- 13.12(17A) Service and filing of pleadings and other papers
- 13.13(17A) Discovery
- 13.14(17A) Subpoenas
- 13.15(17A) Motions
- 13.16(17A) Prehearing conference
- 13.17(17A) Continuances
- 13.18(17A) Withdrawals
- 13.19(17A) Intervention
- 13.20(17A) Hearing procedures
- 13.21(17A) Evidence
- 13.22(17A) Default
- 13.23(17A) Ex parte communication
- 13.24(17A) Recording costs
- 13.25(17A) Interlocutory appeals
- 13.26(17A) Final decision
- 13.27(17A) Appeals and review
- 13.28(17A) Applications for rehearing
- 13.29(17A) Stays of agency actions
- 13.30(17A) No factual dispute contested cases
- 13.31(17A) Emergency adjudicative proceedings

## CHAPTER 1 ORGANIZATION

[Prior to 8/10/88, see Educational Radio and Television Facility Board[340] and Public Broadcasting Department[645]]  
[Prior to 9/14/94, see Public Broadcasting Division[225]]

**288—1.1(256) Establishment of the division of public broadcasting and the Iowa public broadcasting board.** The public broadcasting division of the department of education and the public broadcasting board (hereinafter referred to as the board) were created by Iowa Code Supplement sections 256.80 to 256.90.

**1.1(1) Mission.** The mission of the board shall be to plan, establish, and operate educational radio, television, and telecommunications facilities to provide public broadcasting and educational narrowcast services to enrich the lives of the people of Iowa and enhance educational opportunity throughout the state. The broadcast operation shall adhere to the Principles of Editorial Integrity.

**1.1(2) Board membership.** The board shall be composed of nine members according to Iowa Code Supplement section 256.82. All appointments, except appointments to fill a vacancy, shall be for a term of three years. Terms shall commence on July 1 of the year of appointment.

A vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

**1.1(3) Board meetings.** The board shall hold regular meetings at least four times each year and shall hold special meetings when called by the president or by the vice president in the president's absence. Special meetings shall be called by the president upon written request of any four members of the board. The time and place for regular meetings shall be determined by the board as an agenda item. The time and place for special meetings shall be determined by the president, or vice president in the president's absence.

**1.1(4) Advisory committees.** The board shall appoint advisory committees as deemed appropriate, each of which has no more than a simple majority of members of the same sex, among which shall be an advisory committee on narrowcast operation and an advisory committee on journalistic and editorial integrity. Duties of the advisory committees shall be specified in rules of internal management adopted by the board.

**1.1(5) Rules of order.** Reserved.

**288—1.2(256) Operational organization.** For operational efficiency, the board has organized the division into five bureaus each of which is administered by a chief.

**1.2(1) Administration bureau.** The chief of administration has the following responsibilities:

- a. Planning and execution of the division budget and accounting functions;
- b. Coordination of administrative planning for the division;
- c. Supervision of division purchases, storage, and issuance of all equipment;
- d. Administration of recruitment selection and development of employees;
- e. Investigation of grievances and disciplinary situations;
- f. Serving as agent for retirement funds, group insurance and other employee benefits;
- g. Assisting the administrator with division policies and procedures.

**1.2(2) Educational telecommunications bureau.** The chief of educational telecommunications has the following responsibilities:

- a. Administers the development and coordination of all instructional telecommunications activities including those related to the educational applications of the Iowa communications network;
- b. Establishes the structure and operations of the narrowcast advisory committee and subcommittees;
- c. Ensures the appropriate interface with the other bureaus;
- d. Organizes, develops, directs, and implements plans and programs in the areas of instructional television, in-school utilization of television programs, business and industry programming, adult and higher education courses.

**1.2(3) *Engineering bureau.*** The chief of engineering has the following responsibilities:

*a.* Directs the design, procurement, installation, and maintenance of all radio and television equipment;

*b.* Plans, develops, and regulates all engineering facilities for the division.

**1.2(4) *Programming and production bureau.*** The chief of programming and production has the responsibility to administer all facets of the production and programming aspects of the division.

**1.2(5) *Community relations and development bureau.*** The chief of community relations and development administers the following activities:

*a.* Fund-raising;

*b.* Development and promotion; and

*c.* Public information.

Bureau chiefs shall complete other projects and activities as assigned by the administrator.

These rules are intended to implement Iowa Code Supplement sections 256.80 to 256.90.

[Filed October 9, 1972]

[Filed 7/17/75]

[Filed 7/23/76, Notice 5/17/76—published 8/9/76, effective 9/13/76]

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NOTE: First three lines of history transferred from Ed. Radio and TV[340]

CHAPTER 2  
FACILITIES MANAGEMENT  
[Prior to 9/14/94, see Public Broadcasting Division[225]]

**288—2.1(256) Location.** The division of public broadcasting's Iowa public television center is located at 6450 Corporate Drive, Johnston, Iowa 50131, (515)242-3100.

**2.1(1) Hours and days of operation.** Public hours and days of operation are 8 a.m. to 4:30 p.m., Monday through Friday. To obtain information pertaining to Iowa public television or its facility write to: Bureau Chief of Administration, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131.

**2.1(2) Food and drink.** Consumption of food and beverages is prohibited except in specific areas designated by the administrator of the division of public broadcasting.

**2.1(3) Facilities management.**

**a. Facilities availability.** The auditorium and one conference room are available for rent through the division. Details concerning room size, rental rates for day and evening functions, and scheduling may be obtained by contacting Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131, (515)242-3100.

State agencies and governmental subdivisions of the state of Iowa may have rental fees waived for meetings of an official nature during regular business hours.

**b. Facilities contract.** A contract for use of any part of the building must be executed prior to the event. This contract must identify, at a minimum, the group using the facility, purpose of the use, person or group legally responsible, estimated rental fee to be assessed, exact date and time of the event. All contracts shall be initiated with the production manager and approved by the administrator. To obtain information regarding the rental fee, contact the production manager at (515)242-3100.

**c. Use of alcoholic beverages.** Wine and beer, as defined in Iowa Code sections 123.3(7) and 123.3(10), respectively, may be served at functions in the building. Alcoholic liquor, however, is not permitted in the facility. Any and all liability resulting from the serving of wine or beer rests with the group using the facility.

**d. Liability.** All individuals and groups using the facility for any purpose shall agree in writing to abide by the "hold harmless" clause specified in the facility contract and, if applicable, the application to serve wine or beer.

**e. Tours.** Tours of Iowa public television are available. Prior scheduling is necessary for all tours. Tours scheduled for nonbusiness hours require a fee to cover additional staff and facilities costs incurred by the division. All inquiries and arrangements for tours should be directed to Public Information, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131, (515)242-3100.

**288—2.2 Reserved.**

These rules are intended to implement Iowa Code Supplement sections 256.80 to 256.90.

[Filed 7/21/88, Notice 4/6/88—published 8/10/88, effective 9/14/88]

[Filed 8/23/94, Notice 5/11/94—published 9/14/94, effective 10/19/94]

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## CHAPTER 11 AGENCY PROCEDURE FOR RULE MAKING

**288—11.1(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.

**288—11.2(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.

**288—11.3(17A) Public rule-making docket.**

**11.3(1) Docket maintained.** The agency shall maintain a current public rule-making docket.

**11.3(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 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 agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

**11.3(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.

**288—11.4(17A) Notice of proposed rule making.**

**11.4(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.

**11.4(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 11.12(2) of this chapter.

**11.4(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.

**288—11.5(17A) Public participation.**

**11.5(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, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131, or the person designated in the Notice of Intended Action.

**11.5(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.



**11.5(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) 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 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.

**11.5(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.

**11.5(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 Executive Director, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131, or (515)242-3100 in advance to arrange access or other needed services.

**288—11.6(17A) Regulatory analysis.**

**11.6(1) Definition of small business.** A “small business” is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

**11.6(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 Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131. 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.

**11.6(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.

**11.6(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.

**11.6(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.

**11.6(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).

**11.5(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) 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 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.

**11.5(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.

**11.5(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 Executive Director, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131, or (515)242-3100 in advance to arrange access or other needed services.

**288—11.6(17A) Regulatory analysis.**

**11.6(1) Definition of small business.** A “small business” is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

**11.6(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 Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131. 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.

**11.6(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.

**11.6(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.

**11.6(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.

**11.6(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).

**11.6(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).

**11.6(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).

**11.6(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).

**11.6(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.

**11.6(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).

**288—11.7(17A,25B) Fiscal impact statement.**

**11.7(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.

**11.7(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.

**288—11.8(17A) Time and manner of rule adoption.**

**11.8(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.

**11.8(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.

**11.8(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.

**288—11.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**11.9(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.

**11.9(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.

**11.9(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.

**11.9(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.

#### **288—11.10(17A) Exemptions from public rule-making procedures.**

**11.10(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.

**11.10(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 11.10(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 11.10(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 11.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

#### **288—11.11(17A) Concise statement of reasons.**

**11.11(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 Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131. 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.

**11.11(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.

**11.11(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.

**288—11.12(17A) Contents, style, and form of rule.**

**11.12(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.

**11.12(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.

**11.12(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.

**11.12(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.

**288—11.13(17A) Agency rule-making record.**

**11.13(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.

**11.13(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 executive 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 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.

**11.13(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.

**11.13(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 11.13(2) "g," "h," "i," or "j."

**288—11.14(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.

**288—11.15(17A) *Effectiveness of rules prior to publication.***

**11.15(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.

**11.15(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 11.15(2).

**288—11.16(17A) General statements of policy.**

**11.16(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.

**11.16(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 11.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**288—11.17(17A) Review by agency of rules.**

**11.17(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.

**11.17(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 chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 7/9/99, Notice 6/2/99—published 7/28/99, effective 9/1/99]

CHAPTER 12  
DECLARATORY ORDERS

**288—12.1(17A) Petition for declaratory order.** Any person may file a petition with Iowa public television for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of Iowa Public Television at 6450 Corporate Drive, Johnston, Iowa 50131. A petition is deemed filed when it is received by that office. Iowa public television 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:

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IOWA PUBLIC TELEVISION

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



PETITION FOR  
DECLARATORY ORDER

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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 12.7(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.

**288—12.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, Iowa public television shall give notice of the petition to all persons not served by the petitioner pursuant to 12.6(17A) to whom notice is required by any provision of law. Iowa public television may also give notice to any other persons.

**288—12.3(17A) Intervention.**

**12.3(1)** Any person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under 12.2(17A) and before 30-day time for agency action under 12.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

12.3(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 Iowa public television.

12.3(3) A petition for intervention shall be filed at 6450 Corporate Drive, Johnston, Iowa 50131. Such a petition is deemed filed when it is received by that office. Iowa public television 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 PUBLIC TELEVISION

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.

288—12.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. Iowa public television may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

288—12.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131.

288—12.6(17A) Service and filing of petitions and other papers.

12.6(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.

**12.6(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 Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with Iowa public television.

**12.6(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 uniform rule on contested cases 288—13.12(17A).

**288—12.7(17A) Consideration.** Upon request by petitioner, Iowa public television must schedule a brief and informal meeting between the original petitioner, all intervenors, and Iowa public television, a member of Iowa public television, or a member of the staff of Iowa public television, to discuss the questions raised. Iowa public television may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to Iowa public television by any person.

**288—12.8(17A) Action on petition.**

**12.8(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).

**12.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in contested case uniform rule 288—13.2(17A).

**288—12.9(17A) Refusal to issue order.**

**12.9(1)** Iowa public television 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 Iowa public television to issue an order.
3. Iowa public television 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 Iowa public television to determine whether a statute is unconstitutional on its face.

**12.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**12.9(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.

**288—12.10(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.

**288—12.11(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.

**288—12.12(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 Iowa public television, 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 Iowa public television. 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 13  
CONTESTED CASES

**288—13.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by Iowa public television.

**288—13.2(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 executive director.

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

**288—13.3(17A) Time requirements.**

13.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

13.3(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.

**288—13.4(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.

**288—13.5(17A) Notice of hearing.**

13.5(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.

13.5(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 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;
- 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 13.6(17A), that the presiding officer be an administrative law judge.

**288—13.6(17A) Presiding officer.**

**13.6(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.

**13.6(2)** The agency or its designee 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. 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.

**13.6(3)** The agency or its designee shall issue a written ruling specifying the grounds for its decision within 20 days or such other time period the agency designates after a request for an administrative law judge is filed. The parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**13.6(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.

**13.6(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.

**288—13.7(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 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.



**288—13.8(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.

**288—13.9(17A) Disqualification.**

**13.9(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.

**13.9(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 13.9(3) and 13.23(9).

**13.9(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.

**13.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 13.9(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 13.25(17A) and seek a stay under rule 13.29(17A).

**288—13.10(17A) Consolidation—severance.**

**13.10(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.

**13.10(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**288—13.11(17A) Pleadings.**

**13.11(1) Pleadings** may be required by rule, by the notice of hearing, or by order of the presiding officer.

**13.11(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.

**13.11(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.

**13.11(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.

**288—13.12(17A) Service and filing of pleadings and other papers.**

**13.12(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 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.

**13.12(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.

**13.12(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 Iowa public television.

**13.12(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to Iowa public television, 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.

**13.12(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 (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)

#### **288—13.13(17A) Discovery.**

**13.13(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.

**13.13(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 13.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**13.13(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

#### **288—13.14(17A) Subpoenas.**

##### **13.14(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.

**13.14(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.

#### **288—13.15(17A) Motions.**

**13.15(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.

**13.15(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 agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**13.15(3)** The presiding officer may schedule oral argument on any motion.

**13.15(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 agency or an order of the presiding officer.

**13.15(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 13.28(17A) and appeal pursuant to 13.27(17A).

**288—13.16(17A) Prehearing conference.**

**13.16(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.

**13.16(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.

**13.16(3)** In addition to the requirements of subrule 13.16(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.

**13.16(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.

**288—13.17(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**13.17(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 agency may waive notice of such requests for a particular case or an entire class of cases.

**13.17(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.

**288—13.18(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.

**288—13.19(17A) Intervention.**

**13.19(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.

**13.19(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.

**13.19(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.

**13.19(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.

**288—13.20(17A) Hearing procedures.**

**13.20(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.

**13.20(2)** All objections shall be timely made and stated on the record.

**13.20(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.

**13.20(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.

**13.20(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**13.20(6)** Witnesses may be sequestered during the hearing.

**13.20(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.

**288—13.21(17A) Evidence.**

**13.21(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.

**13.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**13.21(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.

**13.21(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.

**13.21(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.

**13.21(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.

**288—13.22(17A) Default.**

**13.22(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.

**13.22(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.

**13.22(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 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 13.27(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.

**13.22(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.

**13.22(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 or other time specified by the agency 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.

**13.22(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.

**13.22(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 13.25(17A).

**13.22(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.

**13.22(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.

**13.22(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 13.29(17A).

**288—13.23(17A) Ex parte communication.**

**13.23(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 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 13.9(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.

**13.23(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.

**13.23(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**13.23(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 13.12(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.

**13.23(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.

**13.23(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 13.23(1).

**13.23(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 13.17(17A).

**13.23(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 or disclosed. 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.

**13.23(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.



**13.23(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 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.

**288—13.24(17A) Recording costs.** Upon request, Iowa public television 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.

**288—13.25(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. 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 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.

**288—13.26(17A) Final decision.**

**13.26(1)** When Iowa public television presides over the reception of evidence at the hearing, its decision is a final decision.

**13.26(2)** When Iowa public television 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, Iowa public television within the time provided in rule 13.27(17A).

**288—13.27(17A) Appeals and review.**

**13.27(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.

**13.27(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.

**13.27(3) Notice of appeal.** An appeal of a proposed decision is initiated by filing a timely notice of appeal with Iowa public television. 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.

**13.27(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 board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**13.27(5) Scheduling.** Iowa public television shall issue a schedule for consideration of the appeal.

**13.27(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 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.

**288—13.28(17A) Applications for rehearing.**

**13.28(1) By whom filed.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**13.28(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 13.27(4), the applicant requests an opportunity to submit additional evidence.

**13.28(3) Time of filing.** The application shall be filed with Iowa public television within 20 days after issuance of the final decision.

**13.28(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, Iowa public television shall serve copies on all parties.

**13.28(5) Disposition.** Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

**288—13.29(17A) Stays of agency actions.**

**13.29(1) When available.**

*a.* Any party to a contested case proceeding may petition Iowa public television 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 board may rule on the stay or authorize the presiding officer to do so.

*b.* Any party to a contested case proceeding may petition Iowa public television 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.

**13.29(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).

**13.29(3) Vacation.** A stay may be vacated by the issuing authority upon application of Iowa public television or any other party.

**288—13.30(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.

**288—13.31(17A) Emergency adjudicative proceedings.**

**13.31(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 agency is necessary to avoid the immediate danger.

**13.31(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 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 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. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**13.31(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.

**13.31(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.

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.

[Filed 7/9/99, Notice 6/2/99—published 7/28/99, effective 9/1/99]



**LIVESTOCK HEALTH ADVISORY COUNCIL[521]**

[Rules transferred from agency number[565] to [521]  
to conform with the reorganization numbering scheme in general, IAC Supp 4/22/87]

**CHAPTER 1  
RECOMMENDATIONS**

1.1(267) Recommendation for fiscal year  
1999-2000



[The page contains extremely faint and illegible text, likely bleed-through from the reverse side of the document. The text is scattered across the page and cannot be transcribed accurately.]

CHAPTER 1  
RECOMMENDATIONS

**521—1.1(267) Recommendation for fiscal year 1999-2000.** The livestock health advisory council recommends that this appropriation for fiscal year 1999-2000 be applied in the following manner.

ILHAC Projects Approved for 1999-2000

1. The role of immediate hypersensitivity in Haemophilus somnus-induced bovine respiratory disease	\$20,000
2. Investigation into the prevalence of H3N2 swine influenza virus infections in U.S. swine	\$20,000
3. Specific effect of PrP scrapie on types of brain cells	\$15,000
4. Gene discovery in veterinary mycoplasmal pathogens	\$20,000
5. Antigenic characterization of PRRS virus isolates associated with acute PRRS and vaccination failure	\$20,000
6. Prevention and control of turkey rhinotracheitis (TRT): development of an inactivated vaccine	\$18,000
7. Efficacy of a vaccine in control of Johne's disease in cattle	\$17,940
8. Potential effects of epizootic hemorrhagic disease on Iowa cattle	\$12,500
9. Treatment and prevention of cryptosporidiosis of calves: screening of potential anti-cryptosporidial compounds in mice and calves	\$20,000
10. Development of immunoprophylaxis for the prevention and control of bovine papillomatous digital dermatitis (hairy heel wart)	\$19,500
11. Are granulocyte adapted Salmonella vaccines host species specific?	\$15,920
12. Impact of sulfate, dissolved solids, iron, and other drinking water quality parameters to on-farm performance and health of dairy cattle in Iowa: implications for dairy industry	\$10,000
13. Assessing the role of porcine circovirus I postweaning multisystemic wasting syndrome (PMWS) using a case-control study	\$18,000
14. Bacteriological and serological survey of commercial chicken laying hens flocks for Ornithobacterium rhinotracheale	\$7,000
15. Mycoplasma hyopneumoniae: comparison of immunological responses to vaccination and/or challenge in pigs with or without maternal antibodies	\$18,000
16. Transformation of Mycoplasma bovis as an aid in identification of virulence factors	\$15,000
<u>Contingency Funds</u>	<u>\$10,713</u>
<u>Total</u>	<u>\$277,573</u>

This chapter is intended to implement Iowa Code subsection 267.5(3).

- [Filed emergency 7/5/77—published 7/26/77, effective 7/11/77 to 1/16/78]
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**LIVESTOCK HEALTH ADVISORY COUNCIL[521]**

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RECOMMENDATIONS**

1.1(267) Recommendation for fiscal year  
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## NATURAL RESOURCES DEPARTMENT[561]

Created by 1986 Iowa Acts, chapter 1245, section 1802

Rules of divisions under this Department "umbrella" include Energy and Geological Resources[565], Environmental Protection Commission[567], Natural Resource Commission[571], and Preserves, State Advisory Board[575]

### CHAPTER 1

#### DESCRIPTION OF ORGANIZATION

- 1.1(17A,455A) Authority
- 1.2(17A,455A) Mission and programs
- 1.3(17A,455A) Organization
- 1.4(17A,455A) Location of offices
- 1.5(455A) Business hours

### CHAPTER 2

#### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

- 2.1(17A,22) Purpose and scope
- 2.2(17A,22) Definitions
- 2.3(17A,22) Requests for access to records
- 2.4(17A,22) Access to confidential records
- 2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination
- 2.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records
- 2.7(17A,22) Consent to disclosure by the subject of a confidential record
- 2.8(17A,22) Notice to suppliers of information
- 2.9(17A,22) Disclosures without the consent of the subject
- 2.10(17A,22) Routine use
- 2.11(17A,22) Consensual disclosure of confidential records
- 2.12(17A,22) Release to subject
- 2.13(17A,22) Availability of records
- 2.14(17A,22) Personally identifiable information
- 2.15(17A,22) Other groups of records

### CHAPTER 3

#### SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

- 3.1(17A,455A) Scope
- 3.2(17A,455A) Submission of information
- 3.3(17A,455A) Submission of complaints—investigations

### CHAPTER 4

#### AGENCY PROCEDURE FOR RULE MAKING

- (Uniform Rules)
- 4.3(17A) Public rule-making docket
- 4.4(17A) Notice of proposed rule making
- 4.5(17A) Public participation
- 4.6(17A) Regulatory analysis
- 4.10(17A) Exemptions from public rule-making procedures
- 4.11(17A) Concise statement of reasons
- 4.13(17A) Agency rule-making record

### CHAPTER 5

#### PETITIONS FOR RULE MAKING

- (Uniform Rules)
- 5.1(17A) Petition for rule making
- 5.3(17A) Inquiries

### CHAPTER 6

#### DECLARATORY ORDERS

- (Uniform Rules)
- 6.1(17A) Petition for declaratory order
- 6.2(17A) Notice of petition
- 6.3(17A) Intervention
- 6.4(17A) Briefs
- 6.5(17A) Inquiries
- 6.6(17A) Service and filing of petitions and other papers
- 6.7(17A) Consideration
- 6.8(17A) Action on petition
- 6.9(17A) Refusal to issue order
- 6.12(17A) Effect of a declaratory order

**CHAPTER 7  
RULES OF PRACTICE  
IN CONTESTED CASES**

- 7.1(17A,455A) Definitions
- 7.2(17A,455A) Scope and applicability
- 7.3(17A,455A) Waiver of procedures
- 7.4(17A,455A) Informal procedure prior to hearing
- 7.5(17A,455A) Commencement of cases
- 7.6(17A,455A) Notice of hearing
- 7.7(17A,455A) Time for response
- 7.8(17A,455A) Pleadings
- 7.9(455A) Defaults and orders thereon
- 7.10(17A,455A) Prehearing procedures
- 7.11(17A,455A) Time
- 7.12(17A,455A) Presiding officer
- 7.13(17A,455A) Separation of functions and ex parte communications
- 7.14(17A,455A) Hearing procedures
- 7.15(17A,455A) Posthearing procedures and orders
- 7.16(17A,455A) License suspension or revocation and other licensee disciplinary proceedings
- 7.17(17A,455A) Special procedure for emergency orders

**CHAPTER 8  
CONTRACTS FOR PUBLIC  
IMPROVEMENTS AND  
PROFESSIONAL SERVICES**

- 8.1(17A,455B,456A,461A,473) Contract policy
- 8.2(17A,455B,456A,461A,473) Contracts for public improvements
- 8.3(17A,455B,456A,461A,473) Contracts for professional services
- 8.4(17A,455B,456A,461A,473) Approval and award of contracts
- 8.5(17A,456A,461A) Contract for sale of timber
- 8.6(455B) Emergency response
- 8.7(573) Interest on retained funds

**CHAPTER 9  
GROUNDWATER HAZARD  
DOCUMENTATION**

- 9.1(558) Authority, purpose and application
- 9.2(558) Form

**CHAPTERS 10 to 13  
Reserved**

**CHAPTER 14  
CONCESSIONS**

- 14.1(456A) Adoption by reference

**CHAPTER 15  
GROUNDWATER PROTECTION  
PROGRAM EVALUATION**

- 15.1(455B) Authority and purpose
- 15.2(455B) Reports and scheduling
- 15.3(455B) Evaluation committee
- 15.4(455B) Evaluation criteria
- 15.5(455B) Programs to be evaluated

CHAPTER 3  
SUBMISSION OF INFORMATION AND  
COMPLAINTS—INVESTIGATIONS

**561—3.1(17A,455A) Scope.** This chapter provides general guidance concerning the submission of information, supplies special telephone numbers for reporting certain types of information, and sets forth specific procedures for the submission and investigation of complaints.

**561—3.2(17A,455A) Submission of information.**

**3.2(1) *Submission of information generally.*** Submissions should be made directly to the division of the department for whose use the materials are intended. Any person who submits materials should enclose a cover letter which states clearly and concisely the use for which they are intended. Although the department will attempt to return unsolicited information if requested, it cannot guarantee return.

**3.2(2) *Exceptions.*** When information is submitted pursuant to another provision of these rules, e.g., a complaint, a request for confidentiality, a petition for rule making, a petition for declaratory ruling, contested cases, or when the submission is required by departmental statute or rule, the material should be submitted in accordance with any applicable instructions contained in such statute or rule.

**3.2(3) *Hunting, fishing, and trapping violations.*** Suspected violations of hunting, fishing, and trapping laws may be reported at any time by dialing toll-free 1-800-532-2020. Callers remain anonymous.

**3.2(4) *Emergency incident reports.*** The 24-hour emergency telephone number for the reporting of hazardous conditions, radiation incidents, and air pollution emergency episodes is (515)281-8694. During nonbusiness hours this number is answered by staff of the department of public safety, who will obtain the caller's name, telephone number, and information relating to the incident. This information will be forwarded to staff of the department who will contact the caller.

**561—3.3(17A,455A) Submission of complaints—investigations.**

**3.3(1) *General complaints.*** Complaints other than those against department employees must be submitted, and will be investigated, as follows:

*a. Submission requirements.* Complaints concerning alleged violations of departmental statutes or rules should be submitted in writing to the appropriate field office, district office, or the central office (see rule 1.4(17A,455A)) and the nature of the complaint must be summarized in a concise manner. If the complaint is in the form of a petition, the signature, printed name and address of each petitioner should be included in addition to a concise summary of the complaint; and one representative also must be specified for the purpose of receiving any communication from the department on behalf of all petitioners.

*b. Investigation procedure.*

(1) **Mandatory investigations.** The department shall investigate the following types of complaints: alleged unauthorized depleting uses of water pursuant to Iowa Code section 455B.274; alleged violations of air or water pollution statutes, rules or permits when requested by any state agency, political subdivision, local board of health, or 25 residents of the state pursuant to Iowa Code subsections 455B.134(8) and 455B.174(1). The appropriate office shall conduct an investigation and notify the complainant of the results of the investigation.

(2) **Discretionary investigations.** Complaints not described in 3.3(1) "b"(1) may be investigated by the department if it appears that an investigation is needed to ensure compliance with applicable departmental statutes or rules. In the case of written complaints, the appropriate office shall notify the complainant of the results of the investigation or of its decision not to conduct an investigation, unless the complaint is anonymous.

*c. Confidentiality.* In some cases, names of complainants may be kept confidential by the department pursuant to Iowa Code subsection 22.7(18) (see subrule 2.4(1)).

**3.3(2) Complaints concerning departmental employees.**

*a. Submission requirements.* A party having a complaint regarding the performance of an agency employee is encouraged to discuss the matter with the employee's supervisor. The party also may request the director to investigate the matter by submitting a complaint in writing to the Director, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. The complaint must be made within three months of the incident except for good cause. The complaint must contain the name of the employee; a description of the incident; the names and addresses of possible witnesses; and the signature, address, and telephone number of the party submitting the complaint.

*b. Investigation procedure.* For the purpose of this paragraph, "director" means the director or the director's designee. Upon receipt of the written complaint, the director shall acknowledge the complaint in writing. If the complaint raises issues which could result in disciplinary action, the director will investigate the complaint. The investigation may include an informal, confidential hearing by the director for the purpose of ascertaining more clearly all relevant aspects of the complaint. No subpoenas or sworn testimony will be taken. The employee, the complainant, and other parties and department staff as invited by the director, may participate in the hearing. Counsel for the employee and the complainant may participate in the hearing. Informal cross-examination of all parties will be allowed. The hearing shall be tape-recorded.

At the conclusion of the investigation, the director will prepare a written response to the complainant; except that the response shall not violate the employee's rights to confidentiality under Iowa Code section 22.7, applicable collective bargaining agreements, or any other applicable statutes or administrative rules.

The written response of the director shall be the final agency action regarding any written complaints received under this subrule. Nothing in this procedure shall be construed to prevent a withdrawal of the complaint based on an informal settlement between the department and the complainant.

These rules are intended to implement Iowa Code chapters 17A and 455A.

[Filed 1/9/87, Notice 11/5/86—published 1/28/87, effective 3/4/87]



CHAPTER 4  
AGENCY PROCEDURE FOR RULE MAKING

The department of natural resources 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:

**561—4.3(17A) Public rule-making docket.** In lieu of the words “(commission, board, council, director)”, insert “director”.

**561—4.4(17A) Notice of proposed rule making.**

**4.4(3) Copies of notices.** In lieu of the words “(specify time period)”, insert “one state fiscal year (July 1 to June 30)”. Also, add the following new sentence: “Subscriptions must be renewed annually by June 15.”

**561—4.5(17A) Public participation.**

**4.5(1) Written comments.** In lieu of the words “(identify office and address)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

**4.5(5) Accessibility.** In lieu of the words “(identify office and telephone number)”, insert “the director’s office, department of natural resources, (515)281-5385”.

**561—4.6(17A) Regulatory analysis.**

**4.6(2) Mailing list.** In lieu of the words “(designate office)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

**561—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 only narrowly tailored rules at this time are those specified in rule 567— 62.2(455B).”

**561—4.11(17A) Concise statement of reasons.**

**4.11(1) General.** In lieu of the words “(specify the office and address)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

**561—4.13(17A) Agency rule-making record.**

**4.13(2) Contents.**

**a.** In lieu of the words “Copies of”, insert “Reference to”.

These rules are intended to implement Iowa Code section 17A.3 as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]

[Filed 7/9/99, Notice 4/21/99—published 7/28/99, effective 9/1/99]



CHAPTER 5  
PETITIONS FOR RULE MAKING

Insert 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:

**561—5.1(17A) Petition for rule making.** In lieu of the words “(designate office)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; telephone (515)281-8941”. Also, in lieu of the words “(AGENCY NAME)”, insert “DEPARTMENT OF NATURAL RESOURCES”.

**561—5.3(17A) Inquiries.** In lieu of the words “(designate official by full title and address)”, insert “Bureau Chief, Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Des Moines, Iowa 50319-0034; telephone (515)281-8941”.

These rules are intended to implement Iowa Code section 17A.3 as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]

[Filed 7/9/99, Notice 4/21/99—published 7/28/99, effective 9/1/99]



The following information was obtained from the records of the  
 Department of the Interior, Bureau of Land Management, on  
 the subject of the above-captioned matter.

The Bureau of Land Management has advised that the  
 land described in the above-captioned matter is  
 owned by the United States of America.

The Bureau of Land Management has advised that the  
 land described in the above-captioned matter is  
 located in the State of California.

The Bureau of Land Management has advised that the  
 land described in the above-captioned matter is  
 situated in the County of Los Angeles.

The Bureau of Land Management has advised that the  
 land described in the above-captioned matter is  
 situated in the City of Los Angeles.

The Bureau of Land Management has advised that the  
 land described in the above-captioned matter is  
 situated in the City of Los Angeles.

The Bureau of Land Management has advised that the  
 land described in the above-captioned matter is  
 situated in the City of Los Angeles.

CHAPTER 6  
DECLARATORY ORDERS

The department of natural resources 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:

**561—6.1(17A) Petition for declaratory order.** In lieu of the words “(designate agency)”, insert “department of natural resources”. In lieu of the words “(designate office)”, insert “director’s office, department of natural resources”. In lieu of the words “(AGENCY NAME)”, the heading of the petition should read:

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

**561—6.2(17A) Notice of petition.** In lieu of “ \_\_\_ days (15 or less)”, insert “15 days”. In lieu of the words “(designate agency)”, insert “department of natural resources”.

**561—6.3(17A) Intervention.**

**6.3(1)** In lieu of “ \_\_\_ days”, insert “20 days”.

**6.3(2)** In lieu of the words “(designate agency)”, insert “department of natural resources”.

**6.3(3)** In lieu of the words “(designate office)”, insert “director’s office, department of natural resources”. In lieu of the words “(designate agency)”, insert “department”. In lieu of the words “(AGENCY NAME)”, the heading of the petition should read:

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

**561—6.4(17A) Briefs.** In lieu of the words “(designate agency)”, insert “department”.

**561—6.5(17A) Inquiries.** In lieu of the words “(designate official by full title and address)”, insert “Bureau Chief, Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

**561—6.6(17A) Service and filing of petitions and other papers.**

**6.6(2) Filing—when required.** In lieu of the words “(specify office and address)”, insert “Director’s Office, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034”. In lieu of the words “(agency name)”, insert “department of natural resources”.

**561—6.7(17A) Consideration.** In lieu of the words “(designate agency)”, insert “department of natural resources”. Add the following new paragraphs:

An order, including a refusal to issue an order, issued by the director is final unless the issue is within the rule-making authority of one of the department’s commissions in which case the order or refusal is final unless appealed to the commission within ten days of receipt by the petitioner or reviewed by the commission on its own motion. On appeal or review, the commission may:

1. Approve the director’s ruling, in which case the order becomes the final declaratory order of the department, or
2. Reverse or modify the declaratory order, in which case the modified order becomes the final declaratory order of the department, or

- 3. Request additional information from the petitioner, or
- 4. Decline to issue an order, as specified in rule 6.5(17A).

The commission's order or refusal to issue an order shall be made within a reasonable time and shall be sent by certified mail to the petitioner upon issuance.

**561—6.8(17A) Action on petition.** In lieu of the words “(designate agency head)”, insert “director”.

**561—6.9(17A) Refusal to issue order.** In lieu of the words “(designate agency)”, insert “department of natural resources”.

**561—6.12(17A) Effect of a declaratory order.** In lieu of the words “(designate agency)”, insert “department of natural resources”.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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[Filed 7/9/99, Notice 4/21/99—published 7/28/99, effective 9/1/99]

- 201.4(147,148B) Examination requirements
- 201.5(147) Application for permanent licensure
- 201.6(148B) Limited permit
- 201.7(147) License renewal
- 201.8(147) Reinstatement of lapsed license
- 201.9(272C) Exemptions for inactive practitioners
- 201.10(272C) Disability or illness
- 201.11(147) Reinstatement of exempted, inactive practitioners
- 201.12(147) License fees
- 201.13(272C) Supervision
- 201.14(272C) Continuing education requirements
- 201.15(272C) Standards for approval
- 201.16(272C) Reporting continuing education credits
- 201.17(272C) Hearings
- 201.18 to 201.23 Reserved
- 201.24(272C) Grounds for discipline

CHAPTER 202

PHYSICAL THERAPIST ASSISTANTS

- 202.1(147) Definitions
- 202.2(147) General
- 202.3(147) Licensure by examination
- 202.4(147) Licensure by interstate endorsement
- 202.5 Reserved
- 202.6(147) License renewal
- 202.7(147) Exemptions for inactive practitioners
- 202.8(147) Reinstatement of exempted, inactive practitioners
- 202.9(147) Reinstatement of lapsed license
- 202.10(147) License fees
- 202.11(272C) Continuing education requirements
- 202.12(272C) Standards for approval
- 202.13(272C) Reporting continuing education credits
- 202.14(272C) Hearings

- 202.15(272C) Disability or illness
- 202.16 to 202.22 Reserved
- 202.23(272C) Grounds for discipline
- 202.24(272C) Supervision requirements

CHAPTERS 203 to 219  
Reserved

PODIATRY

CHAPTER 220  
PODIATRY EXAMINERS

- 220.1(147,149) Examination and licensure requirements
- 220.2 Reserved
- 220.3(147) Fees
- 220.4(147,149) Temporary license
- 220.5(514F) Utilization and cost control review
- 220.6(139C) Preventing HIV and HBV transmission
- 220.7(272C) License renewal
- 220.8(272C) Reinstatement of lapsed license
- 220.9 to 220.99 Reserved
- PODIATRIST CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES
- 220.100(272C) Definitions
- 220.101(272C) Continuing education requirements
- 220.102(272C) Standards for approval
- 220.103(272C) Approval of sponsors, programs and activities
- 220.104(272C) Hearings
- 220.105 Reserved
- 220.106(272C) Attendance record report
- 220.107(272C) Disability or illness
- 220.108(272C) Exemptions for inactive practitioners
- 220.109(272C) Reinstatement of inactive practitioners
- 220.110 to 220.199 Reserved
- 220.200(272C) Definitions
- 220.201 to 220.211 Reserved
- 220.212(272C) Discipline

**CHAPTER 221**

**MINIMUM TRAINING STANDARDS FOR  
PODIATRY ASSISTANTS ENGAGING IN  
PODIATRIC RADIOGRAPHY**

- 221.1(136C,147,149) Definitions
- 221.2(136C,147,149) General
- 221.3(136C,147,149) Training requirements
- 221.4(136C,147,149) Approval of programs
- 221.5(136C,147,149) Exemptions
- 221.6(136C,147,149) Examination and proficiency evaluation
- 221.7(136C,147,149) Application for student status
- 221.8(136C,147,149) Application for board certification
- 221.9(136C,147,149) Renewal requirements
- 221.10(136C) Certificate in podiatric radiography—fees
- 221.11(136C,147,149) Responsibilities of certificate holder
- 221.12(136C,147,149) Enforcement

**CHAPTERS 222 to 239**

Reserved

**PSYCHOLOGY**

**CHAPTER 240**

**BOARD OF PSYCHOLOGY EXAMINERS**

- 240.1(154B) General definitions
- 240.2(154B) Availability of information
- 240.3(154B) Organization and proceedings
- 240.4(154B) Application
- 240.5(154B) Educational qualifications for licensing
- 240.6(154B) Professional employment experience
- 240.7(154B) Waiver of examinations
- 240.8(154B) Examinations
- 240.9(154B) License renewal
- 240.10(154B) Licensure fees

**SPECIALTY CERTIFICATION**

- 240.11(154B) Definitions
- 240.12(154B) Requirements for certification
- 240.13 to 240.99 Reserved

**PSYCHOLOGY CONTINUING EDUCATION**

- 240.100(272C) Definitions
- 240.101(272C) Continuing education requirements
- 240.102(272C) Standards for approval
- 240.103(272C) Approval of sponsors, programs, and activities
- 240.104 Reserved
- 240.105(272C) Report of licensee
- 240.106(272C) Attendance record report
- 240.107(272C) Disability or illness
- 240.108(272C) Exemptions for inactive practitioners
- 240.109(272C) Reinstatement of inactive practitioners
- 240.110 to 240.199 Reserved

**DISCIPLINARY PROCEDURES  
FOR PSYCHOLOGISTS**

- 240.200 to 240.211 Reserved
- 240.212(272C) Grounds for discipline

**CHAPTERS 241 to 259**  
Reserved

**RESPIRATORY CARE**

**CHAPTER 260**

**RESPIRATORY CARE PRACTITIONERS**

- 260.1(152B) Definitions
- 260.2(152B) Availability of information
- 260.3(147,152B) Organization and proceedings
- 260.4(152B) Requirements for temporary licensure
- 260.5(152B) Requirements for permanent licensure
- 260.6(152B) Application
- 260.7(152B) License renewal
- 260.8(152B) Inactive license
- 260.9(152B) Reinstatement of an inactive license
- 260.10(152B) Reinstatement of lapsed licenses
- 260.11(152B) Fees
- 260.12(152B) Students/graduates
- 260.13(152B) Continuing education requirements for licensees



- 260.14(152B) Approval of continuing education programs and activities
- 260.15(152B) Procedures for approval of continuing education programs
- 260.16(152B) Hearings regarding continuing education
- 260.17(152B) Disability or illness
- 260.18 to 260.27 Reserved
- 260.28(152A,272C) Grounds for discipline
- 260.29(152B,272C) Code of ethics

CHAPTERS 261 to 279  
Reserved

*SOCIAL WORKERS*

CHAPTER 280

BOARD OF SOCIAL WORK EXAMINERS

- 280.1(154C) Definitions
- 280.2(154C) Organization and proceedings
- 280.3(154C) Requirements for licensure
- 280.4(154C) Application
- 280.5(154C) Examinations
- 280.6(154C) License renewal
- 280.7(154C) Fees
- 280.8(154C) Supervision
- 280.9 to 280.99 Reserved

SOCIAL WORK CONTINUING EDUCATION

- 280.100(154C) Continuing education requirements
- 280.101(154C) Standards for approval of providers and approval of continuing education activities
- 280.102(154C) Procedures for approval of providers and continuing education activities
- 280.103(154C) Review of providers and program
- 280.104(154C) Hearings
- 280.105(154C) Reporting of continuing education
- 280.106(154C) Request for waiver or extension
- 280.107 to 280.199 Reserved

DISCIPLINARY PROCEDURES  
FOR SOCIAL WORKERS

- 280.200 to 280.211 Reserved
- 280.212(272C) Grounds for discipline
- 280.213(154C) Rules of conduct

CHAPTERS 281 to 299  
Reserved

*SPEECH PATHOLOGY AND AUDIOLOGY*

CHAPTER 300

BOARD OF SPEECH PATHOLOGY AND  
AUDIOLOGY EXAMINERS

- 300.1(147) Definitions
- 300.2(147) General
- 300.3(147) Examination requirements
- 300.4(147) Licensure requirements
- 300.5(147) Licensure by interstate endorsement
- 300.6(147) License renewal
- 300.7(147) Licensure fees
- 300.8(272C) Exemptions for inactive practitioners
- 300.9(272C) Reinstatement of inactive practitioners
- 300.10(272C) Reinstatement of lapsed license
- 300.11(147) Organization of board of speech pathology and audiology examiners

CHAPTER 301

SPEECH PATHOLOGY AND AUDIOLOGY  
CONTINUING EDUCATION AND  
DISCIPLINARY PROCEDURES

- 301.1(272C) Definitions
- 301.2(272C) Continuing education requirements
- 301.3(272C) Standards for accreditation of sponsors and approval of continuing education activities
- 301.4(272C) Procedures for accreditation of sponsors and review of continuing education activities
- 301.5(272C) Reporting continuing education credits
- 301.6(272C) Disability or illness
- 301.7(272C) Hearings
- 301.8 to 301.99 Reserved
- 301.100(272C) Definitions
- 301.101 to 301.111 Reserved
- 301.112(272C) Grounds for discipline

CHAPTER 302  
SPEECH PATHOLOGY  
AND AUDIOLOGY ASSISTANTS

- 302.1(147) Use of assistants
- 302.2(147) Definition
- 302.3(147) Minimum requirements
- 302.4(147) Utilization
- 302.5(147) Maximum number of assistants
- 302.6(147) Supervisor responsibilities
- 302.7(147) Noncompliance

CHAPTERS 303 to 324  
Reserved

CHAPTER 325  
PHYSICIAN ASSISTANTS

- 325.1(148C) General
- 325.2(148C) Definitions
- 325.3(148C) Registration
- 325.4(148C) Licensure
- 325.5(148C) Licensing and registration renewal
- 325.6(148C) Free medical clinic
- 325.7(148C) Duties
- 325.8(147) Prescription requirements
- 325.9(147) Supplying—requirements for containers, labeling, and records
- 325.10(148C) Board of physician assistant examiners
- 325.11(148C,272C) Grounds for discipline
- 325.12 to 325.14 Reserved
- 325.15(148C) Physician assistant trainee
- 325.16(148C) Application for program approval
- 325.17(148C) Essential requirements of an approved program
- 325.18(148C) Prohibition
- 325.19(148C) Continuing education

CHAPTERS 326 to 349  
Reserved

CHAPTER 350  
ATHLETIC TRAINING

- 350.1(152D) Definitions
- 350.2(147) Availability of information
- 350.3(147) Organization and proceedings of the board
- 350.4 and 350.5 Reserved
- 350.6(147,152D) Licensure requirements
- 350.7(152D) Application for licensure
- 350.8(152D) Documentation of physician supervision
- 350.9(152D) Athletic training service plans
- 350.10(147,152D) License renewal
- 350.11(147,152D) Fees
- 350.12(272C) License denial
- 350.13(272C) Continuing education
- 350.14(272C) Standards for approval of providers of continuing education activities
- 350.15(272C) Procedures for approval of providers of continuing education activities
- 350.16(272C) Reporting of licensee
- 350.17(272C) Disability or illness
- 350.18(272C) Hearings—continuing education
- 350.19(272C) Inactive licensure
- 350.20(272C) Reinstatement of inactive license
- 350.21(272C) Reinstatement of lapsed license
- 350.22 to 350.25 Reserved
- 350.26(272C) Grounds for discipline
- 350.27 to 350.30 Reserved
- 350.31(272C) Disciplinary hearings—fees and costs

**PHYSICAL AND OCCUPATIONAL THERAPY**  
**CHAPTER 200**

**PHYSICAL THERAPY EXAMINERS**

[Prior to 11/16/88, see Health Department[470], Ch 137]

**645—200.1(147) Definitions.**

*“Board”* means the board of physical and occupational therapy examiners.

*“Department”* means the department of public health.

*“Hour of continuing education”* means 50 minutes of attendance per clock hour.

*“Licensee”* means any person licensed to practice physical therapy in the state of Iowa.

*“Licensure by interstate endorsement”* means the issuance of an Iowa license to practice physical therapy to an applicant who is currently licensed in another state. Application will be considered on an individual basis for licensure in Iowa, if the applicant meets the qualifications required of a licensed physical therapist in Iowa.

**645—200.2(147) General.**

200.2(1) Licenses issued by the board shall be for licensure by examination or licensure by interstate endorsement. Each license shall be 8½ by 11 inches in size. Each license issued shall bear the signature of the chairperson of the board of physical and occupational therapy examiners.

200.2(2) The board requires the satisfactory completion of the National Physical Therapy Examination (NPTE) or other nationally recognized equivalent examination as defined by the board.

200.2(3) For examinations taken prior to July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score exceeding 1.5 standard deviations below the national average. For examinations completed after July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score equal to or greater than the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

200.2(4) An examinee failing the examination shall be required to repeat the entire examination. No individual may repeat the National Physical Therapy Examination (NPTE) or other nationally recognized equivalent examination more than three times every five years. Payment of the examination fee is required for all repeats of the examination.

200.2(5) A notarized copy of the official document of name change, if applicable, is required with initial application.

200.2(6) Persons desiring information concerning the time and place of meetings of the board of physical and occupational therapy examiners or other information should write to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

200.2(7) Rescinded IAB 8/27/97, effective 10/1/97.

200.2(8) Incomplete applications that have been on file in the board office for two years shall be considered invalid and be destroyed. The application fee is nonrefundable.

**645—200.3(147) Licensure by examination.**

200.3(1) Applications for licensure to practice physical therapy in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The application form will be furnished by the board. The application shall include the following:

a. Full name, current address, age, date of birth, place of birth, and other information as requested on the application form.

*b.* Foreign-trained physical therapists shall provide:

(1) An English translation and an equivalency evaluation of their educational credentials by one of the following: Foreign Credentialing Commission on Physical Therapy, Inc., P.O. Box 25827, Alexandria, VA 22313-9998, telephone (703)684-8406; International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 66940, Los Angeles, CA 90066, telephone (310)390-6276; International Consultants of Delaware, Inc., 109 Barksdale, Professional Center, Newark, DE 19711, telephone (302)737-8715; International Credentialing Associates, Inc., One Progress Plaza, Suite 810, St. Petersburg, FL 33701, telephone (813)821-8852. The professional curriculum must be equivalent to the Commission of Accreditation in Physical Therapy Education standards and shall consist of a minimum of 60 hours of general education and 60 hours of professional education. An applicant shall bear the expense of the curriculum evaluation.

(2) A notarized copy of the certificate or diploma awarded to the applicant from a physical therapy program in the country in which the applicant was educated.

(3) Provide certified proof of proficiency in the English language by achieving a score of at least 560 on the Test of English as a Foreign Language (TOEFL) paper examination and a score of at least 200 on the computer examination administered by the Educational Testing Services, Inc., P.O. Box 6157, Princeton, NJ 08541-6157. An applicant shall bear the expense of the TOEFL examination.

(4) An official statement from each country or territory board of examiners or other regulatory authority regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicants shall request such statements from all entities in which they are currently or formerly licensed.

*c.* If the professional examination is taken in another state, a certified copy of the scores from the appropriate examination.

*d.* Required fee in the form of a check or money order made payable to the Board of Physical and Occupational Therapy Examiners.

*e.* Official transcript, with school seal, of physical therapy professional curriculum.

*f.* A notarized copy of the certificate or diploma awarded the applicant from a school of physical therapy accredited by an accrediting agency recognized by the American Physical Therapy Association Commission on Accreditation and Education. If graduated from a degree program which did not issue a diploma stating the applicant's degree was in physical therapy, a statement verifying that the degree was in physical therapy is required from the school.

**200.3(2)** Rescinded IAB 10/23/96, effective 10/4/96.

**200.3(3)** An applicant who will be working in the scope of physical therapy prior to licensure shall include on the application form the name of the licensed physical therapist who will be providing supervision of the applicant until the applicant is licensed. The applicant will notify the board, within seven days, of any change in supervision.

*a. Applicant physical therapist.* A person who has made application for licensure and is awaiting board action may practice only under the supervision of a licensed physical therapist for a period not to exceed six months in the case of licensure by examination and three months for licensure by endorsement. During this time the applicant may evaluate, plan treatment programs, and provide periodic re-evaluation only under "on-site" supervision of a licensed physical therapist who shall bear full responsibility for care provided under the physical therapist's supervision and cosign all physical therapy records. A person who has failed the examination in any state, territory, or country shall not practice as an applicant physical therapist.

*b. Applicant physical therapist assistant.* A person who has made application for licensure and is awaiting board action may practice under the supervision of a licensed physical therapist for a period not to exceed six months in the case of licensure by examination and three months for licensure by endorsement. During this time the applicant may perform physical therapy procedures as delegated by the supervising physical therapist only under "on-site" supervision. Documentation made in physical therapy records by an applicant physical therapist assistant shall be cosigned by the supervising physical therapist. A person who has failed the examination in any state, territory, or country shall not practice as an applicant physical therapist assistant.

**200.3(4)** Scores of examinations taken more than five years prior to date of application by examination will be considered invalid.

**645—200.4(147) Licensure by interstate endorsement.**

**200.4(1)** An individual from another state seeking a license to practice physical therapy in Iowa will be considered on an individual basis under the principle of interstate endorsement.

**200.4(2)** Applications for licensure to practice physical therapy in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**200.4(3)** An applicant for licensure by interstate endorsement shall have successfully completed a course of study for the physical therapist accredited by the commission on accreditation in education of the American Physical Therapy Association, or another appropriate accrediting body, and have passed the National Physical Therapy Examination (NPTE) or other nationally recognized equivalent examination as defined by the board of physical and occupational therapy examiners and:

*a.* Have practiced physical therapy for a minimum of 2,080 hours during the immediately preceding three-year time period as a licensed physical therapist; or

*b.* Have served as a full-time faculty member teaching physical therapy in an accredited school of physical therapy for at least one of the immediately preceding three years; or

*c.* Have graduated from an approved school of physical therapy within a period of one year from the date of graduation to the time application is completed for licensure; or

*d.* Have completed 80 hours of board-approved continuing education during the immediately preceding three-year time period.

**200.4(4)** Applicants shall arrange to provide:

*a.* An official statement from each country, territory, and state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statements from all entities in which they are currently or formerly licensed.

*b.* A certified copy of the scores from the appropriate professional examination to be sent.

*c.* Foreign-trained physical therapists shall provide:

(1) An English translation and an equivalency evaluation of their educational credentials by one of the following: Foreign Credentialing Commission on Physical Therapy, Inc., P.O. Box 25827, Alexandria, VA 22313-9998, telephone (703)684-8406; International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 66940, Los Angeles, CA 90066, telephone (310)390-6276; International Consultants of Delaware, Inc., 109 Barksdale, Professional Center, Newark, DE 19711, telephone (302)737-8715; International Credentialing Associates, Inc., One Progress Plaza, Suite 810, St. Petersburg, FL 33701, telephone (813)821-8852. The professional curriculum must be equivalent to the Commission of Accreditation in Physical Therapy Education standards and shall consist of a minimum of 60 hours of general education and 60 hours of professional education. An applicant shall bear the expense of the curriculum evaluation.

(2) A notarized copy of the certificate or diploma awarded to the applicant from a physical therapy program in the country in which the applicant was educated.

(3) Provide certified proof of proficiency in the English language by achieving a score of at least 560 on the Test of English as a Foreign Language (TOEFL) paper examination and a score of at least 200 on the computer examination administered by the Educational Testing Services, Inc., P.O. Box 6157, Princeton, NJ 08541-6157. An applicant shall bear the expense of the TOEFL examination.

**200.4(5)** An applicant for licensure under subrule 200.4(3), paragraphs "a" and "b," must include with this application a sworn statement of previous physical therapy practice from an employer or professional associate, detailing places and dates of employment and verifying that the applicant has practiced physical therapy at least 2,080 hours or taught as a full-time faculty member for at least one of the immediately preceding years during the last three-year time period.

**200.4(6)** An applicant shall submit the required fee in the form of a check or money order made payable to the Board of Physical and Occupational Therapy Examiners.

**200.4(7)** Rescinded IAB 10/23/96, effective 10/4/96.

**200.4(8)** An applicant, who will be working in the scope of physical therapy prior to licensure, shall include on the application form the name of the licensed physical therapist who will be providing supervision of the applicant until the applicant is licensed. In the event that there is a change of the licensed physical therapist providing supervision, the applicant shall submit the name of the therapist to the board in writing within seven days after the change in supervision takes place.

**200.4(9)** Applicants not meeting all requirements in this rule are required to meet all the requirements as set out in 200.3(147), including taking or retaking the appropriate physical therapy professional examination.

#### **645—200.5(147) License renewal.**

**200.5(1)** Beginning July 1, 1999, a license to practice as a physical therapist shall expire every two years on the fifteenth day of the 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 physical therapist 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.

**200.5(2)** 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 200.9(147). Individuals 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 is originally issued. Individuals will be required to report 40 hours of continuing education for the first renewal and every renewal thereafter.

**200.5(3)** Late renewal. 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 200.9(147). Individuals 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.

**200.5(4)** Physical therapists 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 physical therapy.

**645—200.6(147) Exemptions for inactive practitioners.** A licensee who is not engaged in the active practice of physical therapy in the state of Iowa residing within or without the state of Iowa may be granted 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 physical therapy in Iowa without first complying with all regulations governing reinstatement after exemption (200.7(147)). The application for a certificate of exemption shall be submitted upon the form provided by the board.

Individuals who fail to request reinstatement after a three-year period from the date the certificate of exemption was granted shall be considered to have a lapsed license.

**645—200.7(147) Reinstatement of exempted, inactive practitioners.** Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certification of exemption shall, prior to engaging in the practice of physical therapy in the state of Iowa, satisfy the following requirements for reinstatement:

**200.7(1)** Submit written application for reinstatement to the board upon forms provided by the board, pay the current renewal fee and reinstatement fee; and

**200.7(2)** Furnish in the application evidence of one of the following:

*a.* Completion of a total number of hours of accredited continuing education computed by multiplying 40 for each renewal period the license has been inactive; or

*b.* Successful completion of the appropriate physical therapy professional examination (200.2(2)) within one year immediately prior to the submission of such application for reinstatement.

**200.7(3)** Provide an official statement from each country, territory and state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statement from all entities in which the applicant is currently or was formerly licensed.

**645—200.8(147) Reinstatement of lapsed license.** Individuals who have allowed their licenses to lapse, prior to practicing as a physical therapist in the state of Iowa, shall satisfy the following requirements for reinstatement:

**200.8(1)** Submit written application for reinstatement to the board on forms provided by the board, pay current application fee, the reinstatement fee and applicable penalty fees; and

**200.8(2)** Furnish in the application evidence of one of the following:

*a.* Completion of a total number of hours of accredited continuing education computed by multiplying 40 for each renewal period the license has been inactive; or

*b.* Successful completion of the appropriate physical therapy professional examination required in subrule 200.2(2) within one year immediately prior to the submission of the application for reinstatement.

**200.8(3)** Provide an official statement from each country, territory and state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statement from all entities in which the applicant is currently or was formerly licensed.

**645—200.9(147) License fees.** All fees are nonrefundable.

**200.9(1)** The application fee for a license to practice physical therapy issued upon the basis of examination or endorsement is \$100 in check or money order made payable to the Board of Physical and Occupational Therapy Examiners. There is an additional fee for the examination. The fee for the examination is listed on the application form and should be included in the check with the application fee.

**200.9(2)** The renewal fee of a license to practice physical therapy for a biennial period is \$55. Biennial renewal fee for a license to practice physical therapy for the 1999 renewal cycle only is as follows:

<u>Birth Month</u>	<u>Prorated Fee</u>
July 1999	\$55
August 1999	\$57
September 1999	\$60
October 1999	\$62
November 1999	\$64
December 1999	\$66
January 2000	\$69
February 2000	\$71
March 2000	\$73
April 2000	\$76
May 2000	\$78
June 2000	\$80

**200.9(3)** Penalty fee for failure to complete and return the physical therapy renewal application before the renewal expiration date is \$55.

**200.9(4)** Penalty fee for failure to complete the required continuing education during the renewal period is \$50. Failure to complete and return the continuing education report by the end of the renewal period is \$50.

**200.9(5)** Reinstatement fee following inactive exemption and lapsed license is \$100.

**200.9(6)** Fee for certified statement that a licensee is licensed in Iowa is \$10.

**200.9(7)** Fee for failure to report, in writing, change of address after 30 days is \$10.

**200.9(8)** Fee for failure to report, in writing, change of name within 30 days is \$10.

**200.9(9)** Fee for a duplicate or replacement license is \$10.

**200.9(10)** Fee for a returned check is \$15.

#### **645—200.10(272C) Continuing education requirements.**

**200.10(1)** It is the responsibility of each licensee to arrange for financing of costs of continuing education.

**200.10(2)** Each person licensed to practice physical therapy in this state shall complete during each continuing education compliance period a minimum of 40 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal for each subsequent license renewal period.



**645—200.24(272C) Supervision requirements.**

**200.24(1)** Licensed physical therapist assistants may assist in providing physical therapy services under immediate telecommunicative supervision as long as the physical therapy services are rendered in accordance with the minimal frequency standards set forth in subrule 200.24(4).

**200.24(2)** Licensed physical therapist assistants may assist in providing physical therapy services as long as supervision and the physical therapy services are rendered in accordance with the minimal frequency standards set forth in subrule 200.24(4).

**200.24(3)** When providing physical therapy services under the supervision of a physical therapist, the physical therapist assistant shall:

- a. Provide physical therapy services only under the supervision of the physical therapist.
- b. Consult the supervising physical therapist if procedures are believed not to be in the best interest of the patient or if the assistant does not possess the skills necessary to provide the procedures.
- c. Provide treatment only after evaluation and development of a treatment plan by the physical therapist.
- d. Gather data relating to the patient’s disability, but not interpret the data as it pertains to the plan of care.
- e. Refer inquiries that require interpretation of patient information to the physical therapist.
- f. Communicate any change, or lack of change, which occurs in the patient’s condition which may need the assessment of the physical therapist.

**200.24(4)** The physical therapist must provide patient evaluation and participate in treatment based upon the health care admission or residency status of the patient being treated. The minimal frequency shall be:

<u>Patient’s Health Care Residency or Admission Status</u>	<u>Frequency of Physical Therapist Treatment (Whichever Comes First)</u>
Hospital, acute care	Every 4th visit or 2nd calendar day
Hospital, non-CARF	Every 4th visit or 2nd calendar day
Hospital, CARF accredited beds	Every 5th visit or 5th calendar day
Skilled nursing	Every 5th visit or 5th calendar day
Home health	Every 5th visit or 10th calendar day
Nursing facility	Every 10th visit or 10th calendar day
Iowa educational agency	Every 5th visit or 30th calendar day
Other facility/admissions status	Every 5th visit or 10th calendar day

**200.24(5)** A physical therapist may be responsible for supervising not more than two physical therapist assistants who are providing physical therapy per calendar day. This includes physical therapist assistants being supervised by telecommunicative supervision. However, a physical therapist assistant may be supervised by any number of physical therapists. The physical therapist is responsible for maintaining timely records which indicate the names of the physical therapist assistants for whom the physical therapist has supervisory responsibility. The physical therapist shall ensure that a physical therapist assistant under the physical therapist’s supervision has a current license to practice physical therapy and that an applicant under the physical therapist’s supervision has a current application on file.

**200.24(6)** The signature of a physical therapist assistant or physical therapist on a physical therapy treatment record indicates that the physical therapy services were provided in accordance with the rules and regulations for practicing as a physical therapist or physical therapist assistant.

**200.24(7)** The physical therapist assumes responsibility for all delegated tasks and shall not delegate a service which exceeds the expertise of the assistive personnel.

Following are activities which must be performed by the physical therapist and cannot be delegated to any assistive personnel including a physical therapist assistant:

1. Interpretation of referrals.
2. Initial physical therapy evaluation and reevaluations.
3. Identification, determination or modification of patient problems, goals, and care plans.
4. Final discharge evaluation and establishment of the discharge plan.
5. Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times.
6. Delegation and instruction of the services to be rendered by the physical therapist assistant or other assistive personnel, including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures.
7. Timely review of documentation, reexamination of the patient and revision of the plan when indicated.

**200.24(8)** Other assistive personnel: provision of patient care independently. Physical therapists are responsible for patient care provided by assistive personnel under their supervision. Physical therapy aides and other assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

*a.* The supervising physical therapist has physical participation in the patient's treatment or evaluation, or both, each treatment day.

*b.* The assistive personnel may provide independent patient care only while under the on-site supervision of the supervising physical therapist. On-site supervision means that the supervising physical therapist shall:

(1) Be continuously on site and present in the department or facility where the assistive personnel are performing services; and

(2) Be immediately available to assist the person being supervised in the services being performed; and

(3) Provide continued direction of appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

*c.* Documentation made in physical therapy records by unlicensed assistive personnel shall be cosigned by the supervising physical therapist.

*d.* The physical therapist provides periodic reevaluation of assistive personnel's performance in relation to the patient.

**200.24(9)** Other assistive personnel. Physical therapy aides and other assistive personnel may assist a physical therapist assistant in providing patient care in the absence of a physical therapist only if the physical therapist assistant maintains in-sight supervision of the physical therapy aide or other assistive personnel and the physical therapist assistant is primarily and significantly involved in that patient's care.

**645—200.25(272C)** Peer review committees. Rescinded IAB 6/30/99, effective 8/4/99.

**645—200.26(21)** Conduct of persons attending meetings. Rescinded IAB 6/30/99, effective 8/4/99.

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 148A, 148B, and 272C.

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CHAPTER 201  
OCCUPATIONAL THERAPY EXAMINERS

[Prior to 11/16/88, see Health Department[470] Ch 138]

**645—201.1(148B) Definitions.**

“ALJ” means administrative law judge.

“AOTCB” means the American Occupational Therapy Certification Board.

“Approved program or activity” means a continuing education program meeting standards set forth in these rules which qualifies for approval by the board pursuant to these rules.

“Board” means the board of physical and occupational therapy examiners.

“Department” means the Iowa department of public health.

“Examination” means the AOTCB examination for occupational therapists and for occupational therapy assistants.

“Hour of continuing education” means 50 minutes of attendance per clock hour.

“Licensee” means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

**645—201.2(147,148B) General.**

**201.2(1)** An applicant for a permanent license shall meet the requirements of Iowa Code section 148B.5.

**201.2(2)** An application for a license shall be upon an official form supplied by the department. The form shall be completed and signed by the applicant and filed with the department with the required fee in the form of a check or money order payable to the Board of Physical and Occupational Therapy Examiners.

**201.2(3)** The first license fee provides for the initial licensure of persons and is valid through the expiration date of the biennial licensing period during which the license was issued. The renewal licenses are issued for biennial periods.

**201.2(4)** Licenses issued by the board shall be 8 by 11 inches in size. Each license issued shall bear the signature of the chairperson of the board of physical and occupational therapy examiners.

**201.2(5)** Persons desiring information concerning the time and place of meetings of the board, or other information, shall write to Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**201.2(6)** An individual board member, following verification that an applicant has completed all components of the licensing process, may temporarily approve an applicant's license to practice until such time as the full board shall consider the application.

**201.2(7)** Incomplete applications that have been on file in the board office for two years shall be considered invalid and be destroyed. The application fee is nonrefundable.

**645—201.3(147,148B,272C) Education requirements.**

**201.3(1)** The applicant for licensure as an occupational therapist shall have completed the requirements for a baccalaureate or master's degree in occupational therapy in an occupational therapy program accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association. The applicant shall also have successfully completed a minimum of six months' supervised field work experience.

**201.3(2)** The applicant for licensure as an occupational therapy assistant shall be a graduate of an educational program approved by the American Occupational Therapy Association. The applicant shall have successfully completed a minimum of two months' supervised field work experience.

**645—201.4(147,148B) Examination requirements.**

**201.4(1)** The applicant for licensure as an occupational therapist shall have received a passing score on the certification examination for occupational therapists of the AOTCB as determined by that board. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

**201.4(2)** The applicant for a license as an occupational therapy assistant shall have received a passing score on the certification examination for occupational therapy assistants of the AOTCB as determined by that board. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

**645—201.5(147) Application for permanent licensure.**

**201.5(1)** Applications for licensure to practice as an occupational therapist or occupational therapy assistant in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, on an application form furnished by the board. The application shall include the following:

- a. Full name, current address, age, date of birth, place of birth and other information as requested on the application form.
- b. Official transcript, with school seal of occupational therapy or occupational therapy assistant professional curriculum.
- c. A notarized copy of the certificate or diploma indicating degree awarded to the applicant, if the degree is not indicated on the official transcript.
- d. A notarized copy of the certification examination results or official letter from AOTCB confirming a passing score.
- e. A notarized copy of official document of name change, if applicable.

**201.5(2)** An applicant who has passed the examination within 12 months of the date of the application shall submit an application as outlined in 201.5(1).

- a. An applicant who has passed the examination one to five years prior to the date of the application shall also provide evidence to the board to document either:
  - (1) Proof of practice of 2080 hours in the last five years, or
  - (2) Completion of 15 hours, for occupational therapists, or 7.5 hours, for occupational therapy assistants, of clinically applicable continuing education for each year since passing the examination.
- b. An applicant who has passed the examination six to ten years prior to the date of the application shall also provide evidence to the board to document either:
  - (1) Proof of practice of 2080 hours in the last five years, or
  - (2) Completion of 75 hours, for occupational therapists, or 37.5 hours, for occupational therapy assistants, of clinically applicable continuing education within the last five years, and three months of full-time practice under the supervision of a licensed occupational therapist. This supervised practice must be completed within six months after the date of the application and the supervising occupational therapist must verify in writing completion of three months of full-time supervised practice. While completing the supervised practice, the applicant will be considered unlicensed and shall be supervised as unlicensed personnel. (See 201.13(7), 201.13(8) and 201.13(9).)

**645—201.9(272C) Exemptions for inactive practitioners.** A licensee who is not engaged in the active practice of occupational therapy in the state of Iowa, residing within or without the state of Iowa, may be granted 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 occupational therapy in Iowa without first complying with all regulations governing reinstatement after exemption. (See 201.11(147).) The application for a certificate of exemption shall be submitted upon a form provided by the board.

Individuals who fail to request reinstatement within a five-year period from the date the certificate of exemption was granted shall be considered to have a lapsed license.

**645—201.10(272C) Disability or illness.** The board may, in individual cases involving disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill them 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 an appropriately licensed health care professional and the waiver is acceptable to the board. Waivers of the minimum continuing education requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension 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.

**645—201.11(147) Reinstatement of exempted, inactive practitioners.** Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of occupational therapy in the state of Iowa, apply for reinstatement by submitting the following to the board:

**201.11(1)** Completed written application for reinstatement on board-approved form with reinstatement fee and current renewal fee; and

**201.11(2)** Documentation of one of the following:

*a.* Proof of completion of a total number of hours of accredited continuing education computed by multiplying 30 for occupational therapists or 15 for occupational therapy assistants for each renewal period the license has been inactive; or

*b.* Successful completion of the appropriate occupational therapist or occupational therapy assistant certification examination within one year immediately prior to the submission of such application for reinstatement.

*c.* Proof of 2080 hours of occupational therapy practice in a legal jurisdiction other than Iowa in the past five years.

**201.11(3)** The board may require successful completion of an oral interview prior to reinstatement.

**201.11(4)** If licensed in another state, the applicant shall provide an official statement from the state licensing board of each state in which the applicant has been licensed regarding the status of the applicant's license, including issue date, expiration date, and information regarding any pending or prior disciplinary action.

**645—201.12(147) License fees.** All fees are nonrefundable.

**201.12(1)** The application fee for an occupational therapist license is \$100. The application fee for an occupational therapy assistant license is \$90.

**201.12(2)** The application fee for a limited permit as provided by Iowa Code section 148B.4 is \$25.

**201.12(3)** The renewal fee for a license to practice as an occupational therapist for a biennial period is \$55. The renewal fee for a license to practice as an occupational therapy assistant for a biennial period is \$45. Biennial renewal fee for a license to practice as an occupational therapist or an occupational therapy assistant for the 1999 renewal cycle only is as follows:

<u>Birth Month</u>	<u>Occupational Therapist Prorated Fee</u>	<u>Occupational Therapy Assistant Prorated Fee</u>
July 1999	\$55	\$45
August 1999	\$57	\$47
September 1999	\$60	\$49
October 1999	\$62	\$51
November 1999	\$64	\$53
December 1999	\$66	\$54
January 2000	\$69	\$56
February 2000	\$71	\$58
March 2000	\$73	\$60
April 2000	\$76	\$62
May 2000	\$78	\$64
June 2000	\$80	\$66

**201.12(4)** Penalty fee for failure to complete and return the renewal application before the renewal expiration date is \$45 for occupational therapy assistants and \$55 for occupational therapists.

**201.12(5)** Penalty fee for failure to complete the required continuing education during the renewal period is \$50. Failure to complete and return the continuing education report by the end of the renewal period is \$50.

**201.12(6)** Reinstatement fee following inactive exemption or lapsed license is \$100.

**201.12(7)** Fee for a certified statement that a licensee is licensed in Iowa is \$10.

**201.12(8)** Fee for failure to report, in writing, change of address within 30 days is \$10.

**201.12(9)** Fee for failure to report, in writing, change of name within 30 days is \$10.

**201.12(10)** Fee for a returned check is \$15.

**201.12(11)** Fee for a duplicate or replacement license is \$10.

#### **645—201.13(272C) Supervision.**

**201.13(1)** The occupational therapy assistant and limited permit holder practice occupational therapy under the supervision of an occupational therapist licensed in the state of Iowa.

*a.* Supervision of the licensed occupational therapy assistant shall include a minimum of four hours per month of on-site and in-sight supervision by the occupational therapist.

*b.* Supervision of the limited permit holder shall include one-to-one supervision for a minimum of two hours per week by the occupational therapist.



**201.13(2)** Supervision of the licensed occupational therapy assistant and occupational therapy assistant limited permit holder shall include:

a. The evaluation of each patient by the supervising occupational therapist prior to treatment by the licensed occupational therapy assistant or limited permit holder. This time spent in evaluating the patient by the therapist shall not be considered time spent supervising.

b. A treatment plan written by the supervising occupational therapist outlining which elements have been delegated to the licensed occupational therapy assistant or limited permit holder.

c. Monitoring of patient progress by the supervising occupational therapist.

d. Evaluation of treatment plan and determination of treatment termination by supervising occupational therapist.

**201.13(3)** The occupational therapist holding a limited permit may perform the duties of the occupational therapist under the supervision of an Iowa-licensed occupational therapist, except for providing supervision to an occupational therapy assistant.

**201.13(4)** The licensed occupational therapy assistant and limited permit holder must designate on a board-approved form the supervising occupational therapist and the facilities within which the occupational therapy assistant or limited permit holder works. Any change in supervision or facility should be reported to the board within seven days after the change takes place.

**201.13(5)** A supervision plan and documentation of supervision shall be kept by each occupational therapy assistant or limited permit holder and be available for review upon request of the board.

**201.13(6)** The applicant for permanent license who is already certified and working in the scope of occupational therapy prior to licensure shall receive the same supervision as set out in 201.13(1) "b" and 201.13(2) for occupational therapy assistants and 201.13(1) "b" and 201.13(3) for occupational therapists.

a. The applicant shall include on the application form the name of the Iowa-licensed occupational therapist who will be providing supervision until the applicant is licensed.

b. The application shall be completed within 90 days.

c. The applicant shall notify the board within seven days of any changes in supervision.

**201.13(7)** The occupational therapist shall ensure that the occupational therapy assistant, limited permit holder, or applicant is assigned only those duties and responsibilities for which the assistant, limited permit holder or applicant has been specifically trained and is qualified to perform.

**201.13(8)** When supervising unlicensed personnel not covered under 201.13(1), 201.13(2), 201.13(3) and 201.13(6), the following conditions shall be met:

a. Evaluation of patient by the occupational therapist.

b. Treatment plan determined by the occupational therapist with delegation of specific treatment responsibilities in writing.

c. The occupational therapist shall monitor patient progress, change treatment plan as indicated and determine termination of treatment.

**201.13(9)** Care rendered by unlicensed personnel shall not be held out as, and shall not be charged as, occupational therapy unless direct in-sight supervision is provided by an occupational therapist.

**201.13(10)** The occupational therapist shall ensure that the occupational therapy assistant or limited permit holder under the occupational therapist's supervision has a current license or limited permit to practice occupational therapy and that an applicant under the occupational therapist's supervision has a current application on file.

**645—201.14(272C) Continuing education requirements.**

**201.14(1)** The continuing education compliance period shall be each biennium beginning the fifteenth day of the birth month and ending two years later on the fifteenth day of the birth month. The occupational therapist shall complete 30 hours of continuing education each compliance period. The occupational therapy assistant shall complete 15 hours of continuing education each compliance period. For the 1999 renewal cycle only, 38 hours of continuing education will be due for the occupational therapist and 19 hours of continuing education will be due for the occupational therapy assistant by July 1, 1999.

Continuing education hours will return to 30 hours for the occupational therapist and 15 hours for the occupational therapy assistant each biennium at the end of this prorated compliance period.

**201.14(2)** Compliance with the continuing education requirement is a prerequisite for license renewal in each subsequent two-year period.

**201.14(3)** Rescinded IAB 7/29/98, effective 9/2/98.

**201.14(4)** Rescinded IAB 7/29/98, effective 9/2/98.

**201.14(5)** No carryover credits will be allowed from one biennium to another.

**201.14(6)** It is the responsibility of each licensee to finance the cost of continuing education.

**645—201.15(272C) Standards for approval.** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets board standards.

**201.15(1)** A continuing education activity which meets all of the following criteria is appropriate for continuing education credit:

- a. It constitutes an organized program of learning which contributes directly to the professional competency of the licensee; and
- b. It pertains to the clinical practice of occupational therapy; and
- c. It is conducted by individuals who have special education, training and experience qualifying them as experts concerning the subject matter of the program; and
- d. The contents, purpose, objectives and outline given in a time frame are printed in a brochure, manual or paper to demonstrate the intent of the program; and
- e. It provides proof of attendance to include the following:
  - (1) Date, place, course title, presenter(s).
  - (2) Number of program contact hours.
  - (3) Official signature of program sponsor.

**201.15(2)** Continuing education credit may also be granted for the following:

a. A maximum of 15 hours for the occupational therapist and 7.5 hours for the occupational therapy assistant will be granted for presenting professional programs which meet the criteria as set out in 201.15(1). Two hours' credit will be granted for each hour of presentation. A presenter may claim this credit only one time for any single presentation topic.

b. College or university courses relating to the clinical practice of occupational therapy are granted continuing education credit based on the number of credit hours earned.

One semester credit = 10 hours of continuing education credit.

One trimester credit = 8 hours of continuing education credit.

One quarter credit = 7 hours of continuing education credit.

A course description and an official school transcript indicating successful completion of the course must be provided by the licensee to receive credit for an academic course if continuing education is audited.

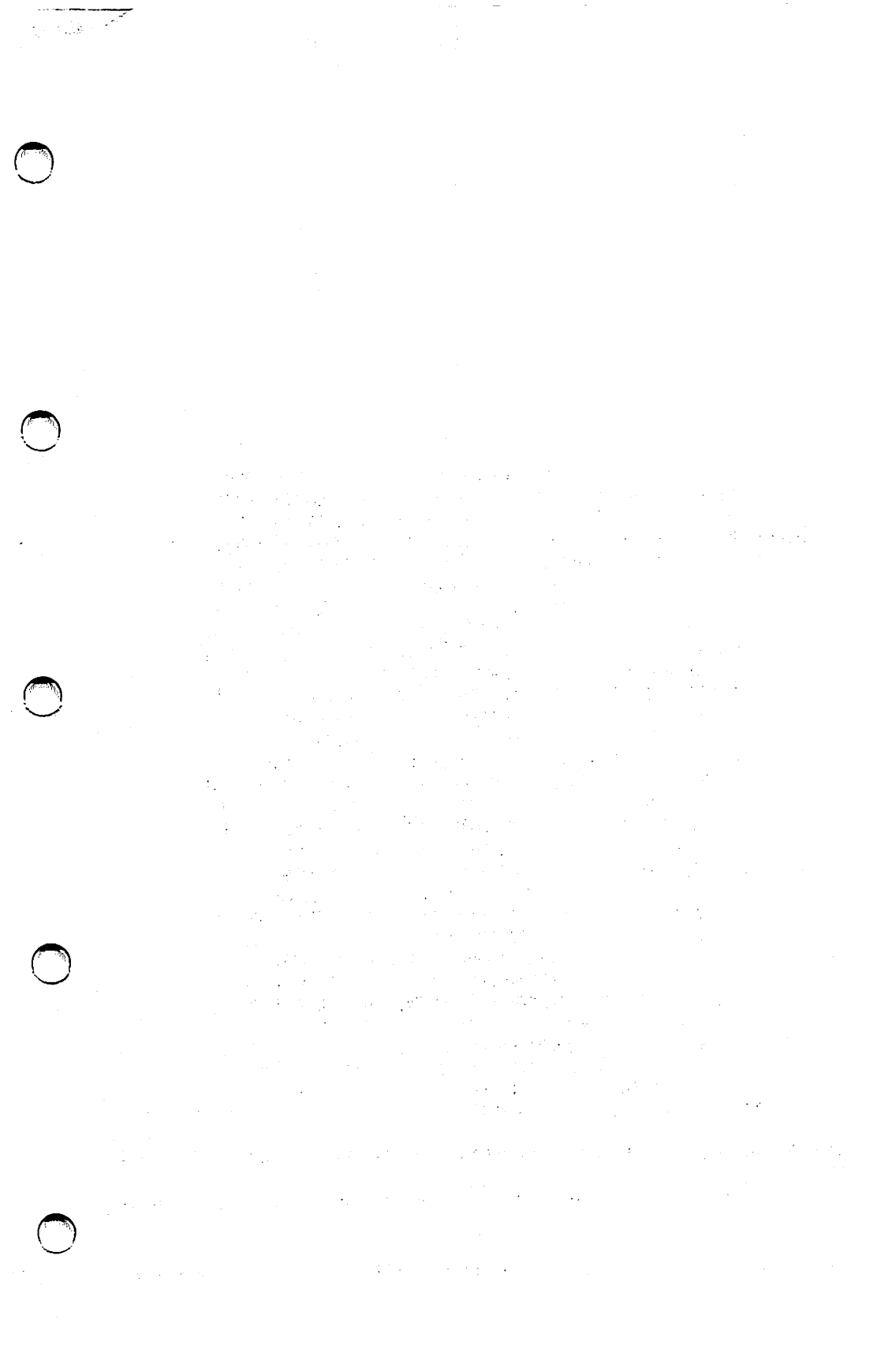
c. Participation in research or other activities which results in published articles or chapters in a recognized professional publication. Authors will receive up to five hours of continuing education credit per published page. A copy of the article or chapter must be provided by the licensee if continuing education is audited.

**645—201.25(272C) Peer review committees.** Rescinded IAB 6/30/99, effective 8/4/99.

**645—201.26(21,272C) Conduct of persons attending meetings.** Rescinded IAB 6/30/99, effective 8/4/99.

These rules are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

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**202.8(2)** Furnish in the application evidence of one of the following:

- a. Completion of a total number of hours of accredited continuing education computed by multiplying 20 for each renewal period the license has been inactive; or
- b. Successful completion of the appropriate physical therapist assistant professional examination required in subrule 202.2(2) within one year immediately prior to the submission of the application for reinstatement.

**202.8(3)** Provide the board with an official statement from each state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statements from all states in which the applicant is currently or was formerly licensed.

**645—202.9(147) Reinstatement of lapsed license.** Individuals who have allowed their licenses to lapse, prior to practicing as physical therapist assistants in the state of Iowa, shall satisfy the following requirements for reinstatement:

**202.9(1)** Submit written application for reinstatement to the board on forms provided by the board, pay the current application fee, the reinstatement fee and applicable penalty fees; and

**202.9(2)** Furnish in the application evidence of one of the following:

- a. Completion of a total number of hours of accredited continuing education computed by multiplying 20 for each renewal period the license has been inactive; or
- b. Successful completion of the appropriate physical therapy professional examination required in subrule 202.2(2) within one year immediately prior to the submission of the application for reinstatement.

**202.9(3)** Provide the board with an official statement from each state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statements from all states in which the applicant is currently or was formerly licensed.

**645—202.10(147) License fees.** All fees are nonrefundable.

**202.10(1)** The application fee for a license to practice as a physical therapist assistant issued upon the basis of examination or endorsement is \$90 in check or money order made payable to the Board of Physical and Occupational Therapy Examiners. There is an additional fee for the examination. The fee for the examination is listed on the application form and should be included in the check with the application fee.

**202.10(2)** The renewal fee of a license to practice as a physical therapist assistant for a biennial period is \$45. Biennial renewal fee for a license to practice as a physical therapist assistant for the 1999 renewal cycle only is as follows:

<u>Birth Month</u>	<u>Prorated Fee</u>
July 1999	\$45
August 1999	\$47
September 1999	\$49
October 1999	\$51
November 1999	\$53
December 1999	\$54
January 2000	\$56
February 2000	\$58
March 2000	\$60
April 2000	\$62
May 2000	\$64
June 2000	\$66

**202.10(3)** Penalty fee for failure to complete and return the physical therapist assistant renewal application before the renewal expiration date is \$45.

**202.10(4)** Penalty fee for failure to complete the required continuing education during the renewal period is \$50. Failure to complete and return the continuing education report by the end of the renewal period is \$50.

**202.10(5)** Reinstatement fee following inactive exemption and lapsed license is \$100.

**202.10(6)** Fee for certified statement that a licensee is licensed in Iowa is \$10.

**202.10(7)** Fee for failure to report, in writing, change of address after 30 days is \$10.

**202.10(8)** Fee for failure to report, in writing, change of name within 30 days is \$10.

**202.10(9)** Fee for a duplicate or replacement license is \$10.

**202.10(10)** Fee for a returned check is \$15.

#### **645—202.11(272C) Continuing education requirements.**

**202.11(1)** It is the responsibility of each licensee to arrange for financing of costs of continuing education.

**202.11(2)** Each person licensed to practice as a physical therapist assistant in this state shall complete during each continuing education compliance period a minimum of 20 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal for each subsequent license renewal period.

**202.11(3)** The continuing education compliance period shall be each biennium beginning the fifteenth day of the birth month and ending two years later on the fifteenth day of the birth month. For the 1999 renewal cycle only, 25 hours of continuing education will be due by July 1, 1999. Continuing education hours will return to 20 hours each biennium at the end of this prorated compliance period.

**202.11(4)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets the requirement herein.

**202.11(5)** Carryover credit of continuing education hours into the next continuing education period will not be permitted.

**202.11(6)** Rescinded IAB 4/22/98, effective 5/27/98.

c. A failure by a physical therapist assistant to exercise that degree of care which is ordinarily exercised by the average physical therapist assistant 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 physical therapy in the state of Iowa.

**202.23(18)** Inability to practice physical therapy with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

**202.23(19)** 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.

**202.23(20)** Failure to respond, when requested, to communications of the board within 30 days of the mailing of such communication by registered or certified mail.

**202.23(21)** Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

a. Reporting incorrect treatment dates for the purpose of obtaining payment;

b. Reporting charges for services not rendered;

c. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

d. Aiding a patient in fraudulently obtaining payment from a third-party payer.

**202.23(22)** Practicing without a current license or practicing when a license is lapsed.

**645—202.24(272C)** **Supervision requirements.** The board adopts herein by reference rule 645—200.24(272C).

**645—202.25(272C)** **Peer review committees.** Rescinded IAB 6/30/99, effective 8/4/99.

**645—202.26(272C)** **Conduct of persons attending meetings.** Rescinded IAB 6/30/99, effective 8/4/99.

These rules are intended to implement Iowa Code chapters 147 and 272C.

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**CHAPTER 203**

Reserved

**CHAPTER 204**

**IMPAIRED PRACTITIONER REVIEW COMMITTEE**

Rescinded IAB 6/30/99, effective 8/4/99

**CHAPTER 205**

**CHILD SUPPORT NONCOMPLIANCE**

Rescinded IAB 6/30/99, effective 8/4/99

**CHAPTER 206**

**PETITIONS FOR RULE MAKING**

Rescinded IAB 6/30/99, effective 8/4/99

**CHAPTER 207**

**DECLARATORY RULINGS**

Rescinded IAB 6/30/99, effective 8/4/99

**CHAPTER 208**

**AGENCY PROCEDURE FOR RULE MAKING**

Rescinded IAB 6/30/99, effective 8/4/99

**CHAPTER 209**

**PUBLIC RECORDS AND FAIR INFORMATION PRACTICES**

Rescinded IAB 6/30/99, effective 8/4/99

**CHAPTERS 210 to 219**

Reserved



- b. Completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years a certificate of exemption shall have been in effect for such applicant; or
- c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement.

These rules are intended to implement Iowa Code section 272C.2.

645—220.110 to 220.199 Reserved.

**645—220.200(272C) Definitions.** For the purpose of these rules, the following definitions shall apply:

“Board” means the board of podiatry examiners.

“Licensee” means any person licensed to practice podiatry in the state of Iowa.

**645—220.201(272C) Complaint.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.202(272C) Report of malpractice claims or actions.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.203(272C) Investigation of complaints or malpractice claims.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.204(17A,272C) Alternative procedure and settlement.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.205(272C) License and temporary license denial.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.206(272C) Notice of hearing.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.207(272C) Hearings open to the public.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.208(272C) Hearings.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.209(272C) Appeal.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.210(272C) Transcript.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.211(272C) Publication of decisions.** Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.212(272C) Discipline.** For all acts and offenses listed in this rule, the board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2) “a” to “f” including the imposition of a civil penalty which shall not exceed \$1000. The board may discipline a licensee for any of the following reasons:

**220.212(1)** All grounds listed in Iowa Code section 147.55 which are:

- a. Fraud in procuring a license.
- b. Professional incompetency.

c. 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.

d. Habitual intoxication or addiction to the use of drugs.

e. Conviction of a felony related to the profession 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 a plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

**220.212(2)** Violation of the rules promulgated by the board.

**220.212(3)** Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

**220.212(4)** Practicing the profession while the license is suspended.

**220.212(5)** Suspension or revocation of license by another state.

**220.212(6)** Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**220.212(7)** Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the licensee's license for any purpose.

c. Practice outside the scope of a license.

d. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances for other than lawful therapeutic purposes.

e. Verbally or physically abusing patients.

**220.212(8)** Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying patients' records.

**220.212(9)** Failure to report a change of name or address within 30 days after it occurs.

**220.212(10)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**220.212(11)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**220.212(12)** Failure to comply with a subpoena issued by the board.

**220.212(13)** Failure to report to the board as provided in rule 645—220.201(272C) any violation by another licensee of the reasons for disciplinary action as listed in this rule.

**220.212(14)** Failure to comply with 645—220.6(139C) for preventing HIV and HBV transmission.

**645—220.213(272C)** Peer review committees. Rescinded IAB 7/28/99, effective 9/1/99.

**645—220.214 to 220.299** Reserved.

## PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

**645—220.300(21) Conduct of persons attending meetings.** Rescinded IAB 7/28/99, effective 9/1/99.

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**221.12(2)** Any licensed podiatrist who permits a person to engage in podiatric radiography contrary to this chapter of Iowa Code chapter 136C shall be subject to discipline by the board pursuant to rule 645—220.212(272C).

These rules are intended to implement Iowa Code section 136C.3 and chapters 147 and 149.

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**CHAPTERS 222 to 224**

Reserved

**CHAPTER 225**

**IMPAIRED PRACTITIONER REVIEW COMMITTEE**

Rescinded IAB 7/28/99, effective 9/1/99

**CHAPTER 226**

**CHILD SUPPORT NONCOMPLIANCE**

Rescinded IAB 7/28/99, effective 9/1/99

**CHAPTER 227**

**PETITIONS FOR RULE MAKING**

Rescinded IAB 7/28/99, effective 9/1/99

**CHAPTER 228**

**AGENCY PROCEDURE FOR RULE MAKING**

Rescinded IAB 7/28/99, effective 9/1/99

**CHAPTER 229**

**PUBLIC RECORDS AND FAIR INFORMATION PRACTICES**

Rescinded IAB 7/28/99, effective 9/1/99

**CHAPTER 230**

**DECLARATORY RULINGS**

Rescinded IAB 7/28/99, effective 9/1/99

**CHAPTERS 231 to 239**

Reserved



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## CHAPTER 15

LAW ENFORCEMENT ADMINISTRATOR'S  
TELECOMMUNICATIONS ADVISORY  
COMMITTEE (LEATAC)

- 15.1(693) Establishment of committee
- 15.2(693) Membership of committee
- 15.3(693) Terms of appointment
- 15.4(693) Officers
- 15.5(693) Bylaws
- 15.6(693) Duties

## CHAPTER 16

## STATE OF IOWA BUILDING CODE

- 16.1(103A) Purpose
- 16.2(103A) When applicable
- 16.3(103A) Building code commissioner
- 16.4(103A) Building code advisory council
- 16.5(103A) Adoption of rules
- 16.6(103A) Board of review
- 16.7(103A) Forms and publications
- 16.8 to 16.109 Reserved

## DIVISION I

## Part 1

- 16.110(103A) Legislative
- 16.111 to 16.119 Reserved

## Part 2

- 16.120(103A) General administration
- 16.121(103A) Optional alternate to adopted codes
- 16.122(103A) Definitions
- 16.123(103A) Other rules
- 16.124 to 16.129 Reserved

## Part 3

- 16.130(103A) Scope
- 16.131(103A) Plans and specifications review
- 16.132(470) Life cycle cost analysis
- 16.133 to 16.139 Reserved

## Part 4

- 16.140(103A) General construction rules and regulations

16.141 to 16.199 Reserved

## DIVISION II

- 16.200(103A) Electrical rules and regulations—adoption

16.201 to 16.299 Reserved

## DIVISION III

- 16.300(103A) Mechanical rules and regulations

16.301 to 16.399 Reserved

## DIVISION IV

- 16.400(103A) Plumbing rules and regulations

16.401(104B) Minimum toilet facility standard

16.402(103A) Fuel gas piping

16.403 to 16.499 Reserved

## DIVISION V

16.500(103A) One- and two-family dwelling rules and regulations

16.501 to 16.599 Reserved

## DIVISION VI

## Part 1

16.600(103A) Factory-built structures rules and regulations

16.601 to 16.609 Reserved

16.610(103A) "Modular factory-built structures"

16.611 to 16.619 Reserved

## Part 2

16.620(103A) Manufactured home construction

16.621(103A) Installation of manufactured homes

16.622(103A) Installer compliance

16.623(103A) Installation seal and certificate procedures for manufactured homes

16.624 Reserved

16.625(103A) Inspections and fee structure

16.626(103A) Support and anchorage of manufactured homes

16.627(103A) Approval of existing manufactured home tie-down systems

16.628(103A) Procedure for governmental subdivisions for installation of factory-built structures

16.629(103A) Support and anchoring systems approval procedures

16.630 to 16.699 Reserved

## DIVISION VII

16.700(103A) Accessibility rules and regulations for the physically handicapped

16.701(103A) Definitions

16.702(103A) Administration and enforcement

16.703(103A) General principles and considerations

16.704(103A) Site development

16.705(103A) Building elements and spaces accessible to the physically handicapped

- 16.706(103A) Making apartments accessible and functional for the physically handicapped
- 16.707 to 16.799 Reserved
- 16.800(103A) Iowa state building code thermal and lighting efficiency standards
- 16.801(103A) Adoption of residential energy code
- 16.802(103A) Adoption of nonresidential energy code

CHAPTER 17  
Reserved

CHAPTER 18  
HANDICAPPED PARKING

- 18.1(321L) Scope
- 18.2(321L) Location
- 18.3(321L) Dimensions
- 18.4(321L) Access aisles and loading zones
- 18.5(321L) Designation
- 18.6(321L) Numbers of handicapped parking spaces required in off-street parking facilities
- 18.7(321L) Handicapped parking at residential facilities
- 18.8(321L) On-street parking

CHAPTER 19  
MISSING PERSON INFORMATION  
CLEARINGHOUSE

- 19.1(694) Missing person information clearinghouse
- 19.2(694) Administration of missing person information clearinghouse
- 19.3(694) Definitions
- 19.4(694) Program information
- 19.5(694) Forms
- 19.6(694) Program and material submission information
- 19.7(694) Submission for approval
- 19.8(694) Qualifications for approval
- 19.9(694) Program and material modification
- 19.10(694) Disqualification after initial approval
- 19.11(694) Removal from registry
- 19.12(694) Hearings
- 19.13(694) Release of information
- 19.14(694) Dissemination
- 19.15(694) Training

CHAPTER 20  
GOVERNOR'S TRAFFIC SAFETY  
BUREAU

- 20.1(23 USC 402, ExecOrd 23) Authority
- 20.2(23 USC 402, ExecOrd 23) Purpose
- 20.3(23 USC 402, ExecOrd 23) Responsibilities
- 20.4(23 USC 402, ExecOrd 23) Funding criteria
- 20.5(23 USC 402, ExecOrd 23) Program requirements

CHAPTERS 21 and 22  
Reserved

CHAPTER 23  
CLOSED CIRCUIT VIDEOTAPE  
SURVEILLANCE SYSTEMS ON  
EXCURSION GAMBLING BOATS

- 23.1(99F) Definitions
- 23.2(99F) Minimum standards
- 23.3(99F) Closed circuit television
- 23.4(99F) Required equipment
- 23.5(99F) Required surveillance
- 23.6(99F) Equipment in DCI offices
- 23.7(99F) Camera lenses
- 23.8(99F) Lighting
- 23.9(99F) Surveillance room
- 23.10(99F) Nongambling hours
- 23.11(99F) Waivers from requirements

CHAPTER 24  
Reserved



**661—8.205(692) Review of criminal intelligence files—purge.**

**8.205(1)** The intelligence bureau of the department of public safety, other agencies operating criminal intelligence systems, and recipients of criminal intelligence files from criminal intelligence systems shall regularly review the information in the criminal intelligence files for reclassification or purge. Decisions to retain, reclassify, or purge criminal intelligence files shall:

- a. Ensure the information is current, accurate and relevant to the needs of the agency.
- b. Safeguard individual privacy interests protected by federal and state laws.
- c. Ensure that security classifications remain appropriate.

**8.205(2)** Information that is misleading, unreliable, or is no longer useful shall be purged or reclassified when necessary within 24 hours of the discovery that it is misleading, unreliable, or is no longer useful. Any person or agency to whom the criminal intelligence file was disseminated shall be notified of the reclassification or purge.

**8.205(3)** All information shall be reviewed within a five-year period of its submission to ensure compliance with subrule 8.205(1).

**8.205(4)** All information retained as a result of a review shall reflect the name of the reviewer, date of review, and explanation of decision to retain.

**8.205(5)** Information that is not retained in the criminal intelligence file after a review shall be destroyed by shredding, mulching, or burning.

**661—8.206(692) Prohibition on surveillance data.** No surveillance data shall be placed in files or manual or automated data storage systems maintained by any peace officer or criminal justice agency.

**661—8.207(692) Subpoenas and court orders.** Any agency or individual shall notify the department of public safety in writing within 24 hours, excluding weekends and holidays, of the receipt of any subpoena, court order, request for production, or other legal process demanding the production of a criminal intelligence file, so that the department has an opportunity to make a timely resistance.

**661—8.208 to 8.300** Reserved.

These rules are intended to implement Iowa Code sections 692.8, 692.10, and 692.19.

DIVISION III  
IOWA SEX OFFENDER REGISTRY

**661—8.301(692A) Sex offender registry established.** The Iowa sex offender registry, as authorized by Iowa Code chapter 692A, is hereby established in the division of criminal investigation.

**661—8.302(692A) Definitions.** The following definitions apply to rules 661—8.301(692A) to 661—8.399.

**8.302(1)** “*Affirmative public notification*” means any form of communication or release undertaken by the department of public safety or other Iowa criminal or juvenile justice agency regarding the identity or characteristics of an individual registrant or registrants. “*Affirmative public notification*” does not mean release of information to a criminal or juvenile justice agency or agencies nor does it mean release of information about an individual registrant in response to an inquiry about that individual based upon the name and address of the individual, as provided in Iowa Code section 692A.13, subsection 6.

**8.302(2)** “*Convicted*” or “*conviction*” means a guilty verdict in a criminal case or an adjudication of delinquency in juvenile court for an offense specified in these rules or in Iowa Code chapter 692A as requiring registration with the Iowa sex offender registry. For purposes of these rules, “convicted” or “conviction” includes deferred judgments, deferred sentences, and acquittals by reason of insanity, and adjudications of delinquency of persons whose juvenile court records have been sealed under Iowa Code section 232.150.

**8.302(3)** “*Criminal or juvenile justice agency*” means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies, or departments, which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

**8.302(4)** “*Criminal offense against a minor*” means violations of any of the following sections of the Code of Iowa or equivalent laws of the United States or of any other jurisdiction, if committed against a minor:

a. Enticing a person into a brothel or detaining a person in a brothel by force, intimidation, or false pretenses in violation of Iowa Code section 709.7.

b. Kidnapping of a minor.

c. False imprisonment of a minor.

d. Any indictable offense involving sexual conduct directed toward a minor:

(1) Stalking in violation of Iowa Code section 708.11, subsection 3, paragraph “b,” subparagraph (3), if the offense is sexually motivated.

(2) Any violation of the following Iowa Code sections, subsections, and paragraphs: 709.3(2), 709.4(2) “b,” 709.4(2) “c,” 709.8, 709.12, or 709.14.

(3) Any violation of the following Iowa Code sections with a minor victim: 709.2, 709.3, 709.4, 709.9, 709.15, 709.16, or 726.2; violations of section 698.1 (Iowa Code, 1975), 704.1 (Iowa Code, 1975), or 705.2 (Iowa Code, 1975).

e. Solicitation of a minor to engage in an illegal sex act; any violation of Iowa Code section 709A.6 involving an offense which would warrant registration.

f. Enticing away a child in violation of Iowa Code section 710.10.

g. Use of a minor in a sexual performance: any violation of Iowa Code section 728.12(1).

h. Sexual exploitation of a minor in violation of Iowa Code section 728.12, subsections 2 or 3.

i. Solicitation of a minor to practice prostitution: any violation of Iowa Code section 725.3(2).

j. Incest in violation of Iowa Code section 726.2, when committed against a minor.

k. Dissemination or exhibition of obscene materials to minors:

(1) Any violation of Iowa Code sections 728.2 or 728.15.

(2) Any violation of Iowa Code section 728.4 if delivery is to a minor.

l. Admitting minors to premises where obscene material is exhibited: any violation of Iowa Code section 728.3.

m. An attempt to commit sexual abuse of a minor: any violation of Iowa Code section 709.11; also, violations of section 698.4 (Iowa Code, 1975).

**8.302(5)** “*Offender*” means a person who is required to register with the Iowa sex offender registry.

**8.302(6)** “*Other relevant offenses*” means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.

b. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.

c. Indecent exposure in violation of Iowa Code section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “c” if committed in this state.

**8.302(7)** “*Registrant*” means a person who is currently registered with the Iowa sex offender registry.

**8.302(8)** “*Sexual exploitation*” means sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

**8.302(9)** “*Sexually violent offense*” means any of the following indictable offenses:

- a. Sexual abuse as defined in Iowa Code section 709.1.
- b. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- c. Sexual misconduct with offenders in violation of Iowa Code section 709.16.
- d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.
- e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “d” of this subrule if committed in this state.

**8.302(10)** “*Sexually violent predator*” means a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

**8.302(11)** “*Aggravated offense*” means a conviction for any of the following offenses:

- a. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
- b. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
- c. Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
- d. Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.
- e. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- f. Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph “d.”
- g. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
- h. Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.

**8.302(12)** “*Full-time or part-time*” means a period of time exceeding 14 days or an aggregate period of time exceeding 30 days during any calendar year pursuant to 42 U.S.C. § 14071(a)(3)(F).

**661—8.303(692A) Forms and procedures.** The following forms and procedures are prescribed for use with the Iowa sex offender registry. Supplies of these forms may be obtained by contacting the Iowa sex offender registry at the division of criminal investigation.

**8.303(1) Notification.** Form DCI-144, “Notification of Registration Requirement,” which notifies offenders of their duty to register with the Iowa sex offender registry shall be provided to persons identified as being required to register. Failure to provide offenders with Form DCI-144 does not relieve offenders of their duty to register with the Iowa sex offender registry.

**8.303(2) Registration.**

a. Form DCI-145, “Sex Offender Registration,” shall be completed by or on behalf of each offender and submitted to the sheriff of the county in which the offender will be residing and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry.

b. Form DCI-145 shall also be used to report changes of residence, telephone number, or name of registrants. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant’s place of residence, telephone number, or name changes within ten days of the change of residence, telephone number, or name, whether within or outside the state of Iowa. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

If a registrant moves from one county to another, the registrant shall submit copies of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant's new state of residence of the registrant's name, new address, and telephone number.

c. Upon initial submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender. Current photographs of the registrant shall accompany submission of Form DCI-145 upon each subsequent submission of Form DCI-145 unless the registrant's appearance has not changed significantly in the judgment of the submitting agency.

d. A list of all registrants within a county shall be provided each month by the division of criminal investigation to the county sheriff. Each county sheriff may provide copies of these lists to other law enforcement, criminal justice, and juvenile justice agencies with jurisdiction in the county.

**8.303(3) Annual verification.** Form DCI-146, "Annual Verification of Address," shall be mailed by the division of criminal investigation to each registrant to the last address known to the registry annually during the month of original registration. Form DCI-146 shall be returned by the registrant to the division of criminal investigation within ten days of receipt. Form DCI-146 shall be mailed to the registrant in an envelope clearly stating that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

**EXCEPTION:** Form DCI-146 shall be mailed quarterly by the division of criminal investigation to each registrant who is a sexually violent predator to the last address known to the registry and shall be completed and returned to the division of criminal investigation by the registrant within ten days of receipt.

**8.303(4) Application for determination.** Form DCI-148, "Application for Determination," shall be completed by a registrant to initiate a request that the department review whether one or more offenses of which the registrant has been convicted require registration with the Iowa sex offender registry or whether the time period during which the registrant is required to register has expired. A registrant who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts which the registrant intends to present to the department in support of the application. Failure to submit any of the required orders shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, and relevant statutory provisions, the commissioner may refer the matter to an administrative law judge or presiding officer for a hearing.

**8.303(5) Decision of determination.** Form DCI-149, "Decision of Determination," shall be used by the division of criminal investigation to notify a registrant who has submitted a request for determination (Form DCI-148) of the results of that review. A completed Form DCI-149 shall be mailed to any registrant who has filed a completed Form DCI-148 within 90 days of the receipt by the division of criminal investigation of the completed Form DCI-148 and all required supporting documents. A decision of determination shall be signed by the commissioner and shall constitute final agency action for the purposes of Iowa Code chapter 17A.

If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

**8.303(6) Request for information.** Form DCI-150, "Request for Registry Information," shall be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry shall submit a completed copy of Form DCI-150 to a sheriff or police department. A separate form shall be submitted for each person about whom information is being requested.

**8.303(7) Confidential background investigation.** A government agency conducting a confidential background investigation shall submit a completed Form DCI-151 to the division of criminal investigation to request information regarding the individual about whom the background investigation is being conducted.

**8.303(8) Affirmative public notification.**

a. Form DCI-152, "Notice of Intent to Make Affirmative Public Notification," shall be used by the division of criminal investigation to notify a registrant that the division intends to engage in affirmative public notification regarding the registrant in accordance with subrule 8.304(1).

b. Form DCI-153 shall be used by the division of criminal investigation to carry out affirmative public notification regarding a particular registrant in accordance with subrule 8.304(1). Additional information, including, but not limited to, a photograph of the registrant may be attached to Form DCI-153.

**8.303(9) Confidential records.** Completed forms filled out pursuant to rules 8.301(692A) through 8.399 are confidential records that may not be released to the public.

EXCEPTION: Completed copies of Form DCI-150 are public records only if public release of a form is authorized by the person completing the form.

**661—8.304(692A) Release of information.** The purpose of release of information from the Iowa sex offender registry is to afford protection to the public. The procedures specified here are intended to maximize the degree of protection afforded the public from potential risks presented by registrants while ensuring registrants their due process rights.

**8.304(1) Affirmative public notification for public protection.** A criminal or juvenile justice agency may initiate affirmative public notification regarding the identity and location of a specific registrant subsequent to the completion of a risk assessment of the registrant by the division of criminal investigation, the department of corrections, or the department of human services which has resulted in a finding that the registrant is "at risk." A request for confirmation that a risk assessment resulting in classifying the registrant as "at risk" has been completed may be sent to the division of criminal investigation by mail, electronic mail via the Internet to [isor@dps.state.ia.us](mailto:isor@dps.state.ia.us), fax transmission or via the Iowa on-line warrants and articles (IOWA) system.

A criminal or juvenile justice agency shall not initiate affirmative public notification regarding an individual who has been convicted of kidnapping or false imprisonment, and the crime did not involve attempted sexual abuse or sexual abuse, and the person has not committed another offense that would require the person to register.

a. *Risk assessment.* An assessment of the risk presented by a registrant shall be prepared prior to any affirmative public notification regarding that registrant. The assessment of risk for a registrant shall be prepared by the division of criminal investigation for a registrant who has moved to Iowa but is not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Risk assessments shall be prepared by the department of corrections, juvenile court officers, or the department of human services for registrants as specified in 1999 Iowa Acts, Senate File 294 [1999 Iowa Code Supplement section 692A.13A]. Risk assessments shall be completed following procedures prescribed by the department of corrections.

b. *Risk categories.* The assessment of risk presented to the community by a registrant shall result in placement of the registrant into one of the following categories: "low risk" or "at risk." "At risk" includes registrants who have been assessed to be a "moderate risk" or "high risk."

All registrants are by virtue of their presence on the registry classified as "low-risk" offenders, unless they are classified as offenders "at risk" on the basis of assessments completed by the division of criminal investigation, department of corrections, department of human services, or a juvenile court officer.

c. *Affirmative public notification procedures.* The means, method, and scope of release of information shall be based upon the determination of level of risk presented by a registrant. The following forms of notification may be utilized for each level of risk assessed.

(1) *Low risk.* For a registrant classified as presenting a low risk to the community, notification of the registrant's name, current address, criminal history, and a current photograph of the registrant may be provided to any law enforcement agency likely to encounter the registrant. These shall include, but are not limited to, any county or municipal agency with jurisdiction over the registrant's place of residence, place of employment or school or any other place to which the registrant is known to travel on a frequent basis.

(2) *At risk.* For a registrant classified as "at risk," the notification described in subparagraph (1) shall be completed. Also, persons likely to encounter the registrant may be notified through the following means. The department shall consult with the county attorney, sheriff, and local law enforcement agencies with jurisdiction in the registrant's place of residence, employment, school attendance, and other locations that the registrant is known to frequent, regarding appropriate forms of affirmative public notification. Form DCI-153 shall be used to carry out affirmative public notification initiated by the division of criminal investigation.

1. Notification of agencies or organizations in the community in which the registrant lives, is employed or attends school, or is known to frequent, where there are potential victims.

2. Personal or written notification of neighbors in the vicinity of the residence of the registrant, the registrant's place of employment or school, or other places the registrant is known to frequent.

3. Releases to media outlets which cover the community or communities in which the registrant resides, is employed or attends school, or is known to frequent including but not limited to the registrant's name and photograph.

4. Distribution of leaflets to residences and businesses in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

5. Posting of notices in public locations in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

(3) Responsibility for affirmative public notification. Affirmative public notification is intended to be a process of cooperation between the department of public safety and local law enforcement agencies with jurisdiction in locations where the registrant resides, is employed, attends school, or is known to frequent.

(4) Any county sheriff or police department shall provide access to the list of all registrants classified as "at risk" within the county in which the sheriff or police department has jurisdiction to any person who requests such a list; however, records of persons protected under 18 U.S.C. § 3521 shall not be disclosed.

(5) Subject to the availability of sufficient funds, the department shall provide electronic access to information from the Iowa sex offender registry regarding registrants who:

1. Commit a criminal offense against a minor, an aggravated offense, sexual exploitation, a sexually violent offense, or another relevant offense on or after July 1, 1999, of this Act and who have been assessed to be a "moderate risk" or "high risk."

2. Committed an offense prior to July 1, 1999, and who have been assessed to be a "moderate risk" or "high risk" and whose opportunity to request a hearing regarding the assessment of risk has lapsed.

*d. Findings—prior notice—right to appeal—affirmative public notification by department.*

(1) When a risk assessment has been completed by the division of criminal investigation, the department of corrections, or the department of human services, the agency which conducted the risk assessment shall notify, or cause to be notified, the registrant of the initial finding, by providing to the registrant a completed copy of Form DCI-152 and of the risk assessment. Procedures for notifying a registrant of the results of a risk assessment and providing for appeals thereof shall be subject to the rules of the agency conducting the risk assessment. Copies of the risk assessment and related documents, including any appeals and documentation of the results of appeals shall be provided to the division of criminal investigation. When a risk assessment has been completed by a juvenile court officer, the juvenile court officer shall notify the division of criminal investigation of the results of the risk assessment and provide a copy of the risk assessment to the division of criminal investigation.

When a risk assessment has been completed by the division of criminal investigation or the division of criminal investigation has received a completed risk assessment from a juvenile court officer, notice shall be given by the division of criminal investigation to the registrant by personal service or by certified mail, return receipt requested, 14 days prior to the commencement of any affirmative public notification, unless it is impracticable to give timely notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of certified mail or if certified mail is undeliverable because the registrant has not complied with registry requirements to provide a current address. The notice shall contain the following information:

1. The result of the risk assessment;

2. A description of the scope of affirmative public notification which may result from the risk assessment;

3. That unless application is made for a hearing on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant;

4. That the offender may make application for a hearing by filing a written request for a hearing and mailing or serving it on the department at an address prescribed on the notice so it is received on or by the date mentioned in the notice;

5. That if application is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice, there will be no affirmative public notification until and unless the result of the risk assessment is affirmed, or is modified, through the hearing process.

(2) A registrant who has received notice from the division of criminal investigation that a risk assessment has been completed by the division of criminal investigation or a juvenile court officer may appeal the result of the risk assessment in writing to the administrative services division of the department of public safety within 14 days of the date on which the notice is sent to the registrant by the division of criminal investigation.

(3) Affirmative public notification shall not proceed until at least 14 days after notice of the result of the risk assessment has been mailed or delivered to the registrant.

EXCEPTION: If the director of the division of criminal investigation finds that the registrant presents an immediate threat to the safety of the public, affirmative public notification may proceed at the same time as notice is sent to the registrant. In such a case, the notice shall inform the registrant that affirmative public notification may proceed immediately, based upon the finding that the registrant presents an immediate threat to the safety of the public.

(4) If the department does not receive a written application for a hearing within the time guidelines set forth above, the department may undertake affirmative public notification if the result of the risk assessment was that the registrant is "at risk."

(5) When the department receives an application for a hearing, the department shall refer the matter to an administrative law judge or a presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial finding to the presiding officer with the application for hearing. The administrative law judge or presiding officer shall set a hearing within seven days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

(6) All documents relating to the hearing shall be confidential prior to, during, and after the hearing. The hearing itself shall be conducted *in camera*.

(7) Rule 661—10.321(17A), which governs introduction and consideration of evidence, shall apply to proceedings under this rule.

(8) The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

(9) After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue a written order affirming, reversing, or modifying the result of the risk assessment. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party. The order itself shall remain confidential, in accordance with Iowa Code section 692A.13.

(10) The registrant or the director of the division of criminal investigation may appeal the administrative law judge's or presiding officer's order to the commissioner of public safety. Appeal must be served in writing within 14 days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision, and the department or other criminal or juvenile justice agency may undertake affirmative public notification, if warranted by the result of the risk assessment.

(11) The commissioner shall consider an appeal on the record made before the administrative law judge or presiding officer. The commissioner shall not consider any additional facts on appeal. The commissioner may, at the commissioner's discretion, request written briefs or oral argument in an appeal. The commissioner shall issue a written decision affirming, reversing, or modifying the order of the presiding officer. A copy of the decision shall be promptly mailed to each party. The decision, and all related information, shall remain confidential, in accordance with Iowa Code section 692A.13. The commissioner's decision shall constitute final agency action for purposes of Iowa Code section 17A.19.



(12) Subsequent affirmative public notification. For a registrant who has been assessed as "at risk" and who has been notified of the result of the risk assessment and the possibility of affirmative public notification, a criminal or juvenile justice agency may initiate affirmative public notification in any area in which the registrant resides, is employed, attends school, or frequents subsequent to the initial notification to the registrant.

*e. Affirmative public notification initiated by other criminal or juvenile justice agency.* A criminal or juvenile justice agency may initiate affirmative public notification with regard to a registrant subsequent to the completion by the division of criminal investigation, the department of corrections, or the department of human services of a risk assessment finding that the registrant is "at risk." Prior to initiating affirmative public notification, the agency initiating it shall provide notice to the registrant of the agency's decision to initiate affirmative public notification, of the intended scope and manner of affirmative public notification, and of the registrant's right to contest the decision. A copy of the notice shall be submitted to the division of criminal investigation at the same time as it is transmitted to the registrant. The notice shall contain instructions to the registrant as to the procedures for contesting the decision and the time allowed to do so. Affirmative public notification shall not proceed until the time allowed for contesting the decision has expired or, if the decision is contested, until the decision has been upheld. Any written or published form of affirmative public notification shall prominently display the identity of the agency initiating the notification and the signature of the chief executive of that agency.

Any criminal or juvenile justice agency initiating affirmative public notification regarding any registrant is authorized to request assistance in carrying out affirmative public notification from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant's residence, place of employment or school, or other places which the registrant is known to frequent.

**8.304(2) Release of information in response to individual request.** A sheriff or police department that receives a completed Form DCI-150 shall inquire of the division of criminal investigation as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and shall provide the requester with the following information: name of registrant, address of registrant, age of registrant, gender of registrant, and physical description of registrant.

**8.304(3) Release of information for confidential background investigations.** The division of criminal investigation may release additional information regarding a registrant to personnel of criminal justice agencies or to personnel of government agencies conducting confidential background investigations.

**8.304(4) Release of information for bona-fide research.** Information from the Iowa sex offender registry may be released to persons conducting bona-fide research. A person conducting bona-fide research may request access to information from the Iowa sex offender registry by submitting a completed Form DCI-155 to the division of criminal investigation. Information identifying persons who have requested information about registrants using Form DCI-150 shall not be released to researchers unless permission has been obtained from each person who would be identified.

**8.304(5) Submission of information to the National Sex Offender Registry.** The division shall submit sex offender registry data as required to the National Sex Offender Registry of the Federal Bureau of Investigation.

**661—8.305(692A) Expungement of records.**

**8.305(1)** *Expungement upon reversal of conviction.* The division of criminal investigation shall expunge the registration of any registrant if the conviction which forms the basis for the registrant's being required to register is reversed upon receipt of a certified copy of the court order reversing the conviction, providing that the person has been convicted of no other offense which would require registration.

**8.305(2)** *Expungement upon expiration of registration period.* The division of criminal investigation shall expunge a registrant's registration upon expiration of the period during which the registrant is required to register, provided that the registrant has not subsequently been convicted of an offense that would require registration.

**661—8.306 to 8.399 Reserved.**

These rules are intended to implement Iowa Code chapter 692A as amended by 1999 Iowa Acts, House File 136 and Senate File 294.

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CHAPTER 11  
IDENTIFICATION SECTION OF THE DIVISION OF CRIMINAL INVESTIGATION

[Rules 11.1 to 11.7 appeared as 4.3 prior to 6/27/79]  
[Prior to 4/20/88, see Public Safety Department[680] Ch 11]

**661—11.1(17A,690,692) Identification section.** The identification section maintains information necessary to identify persons with criminal histories. It collects, files and disseminates criminal history data to authorized criminal justice agencies and the public upon request and updates criminal history records as a continual process.

**661—11.2(17A,690,692) Definitions.**

*“Authorized agency”* means a division or office of the state of Iowa designated by a state to report, receive, or disseminate information under Iowa state law, administrative rule or Public Law 103-209.

*“Criminal identification records”* shall mean either of the following records, the forms for which are provided by the department to law enforcement agencies:

1. Department of public safety arrest fingerprint cards.
2. State of Iowa final disposition reports.

*“Dependent adult abuse registry”* means the official registry kept by the department of human services, established pursuant to Iowa Code chapter 235B.

*“Employee”* means a person who provides services to a qualified entity and is compensated for those services.

*“Fee”* means any cost associated with conducting a state or national criminal history record check.

*“Felony”* and *“misdemeanor”* shall have the same meaning and classifications as described in Iowa Code sections 701.7 and 701.8.

*“Fitness determination”* means an analysis of criminal history information to determine whether or not it disqualifies an individual from holding a particular position either as an employee or a volunteer.

*“National record check”* means a criminal history record check from the FBI that is fingerprint-based and is transmitted through the state central repository.

*“Nonlaw enforcement agency”* means an agency authorized by law to receive criminal history data from the department which is not a “criminal justice agency” as defined in Iowa Code section 692.1, subsection 10, or which is not an institution which trains law enforcement officers for certification under Iowa Code chapter 80B.

*“Qualified entity”* means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services. This definition also applies to organizations which provide care to the elderly or the disabled.

The *“taking of fingerprints”* shall mean the obtaining of a fully rolled set of inked fingerprint impressions having suitable quality for fingerprint classification and identification.

*“Volunteer”* means a person who provides services to a qualified entity without compensation.

This rule implements Iowa Code chapters 690 and 692.

**661—11.3(690,692) Release of information.** Records maintained by the identification section are public records and are released to criminal justice agencies and the public as authorized by statute. Only the department of public safety may release criminal history information maintained by the department to non-criminal justice agencies or persons.

**661—11.4(690,692) Right of review.** Any person who has a criminal history record on file with the division of criminal investigation has the right to review and obtain a copy of the record. This right may be exercised by an attorney acting on behalf of the person with the criminal history record with written authorization and fingerprint identification of the person with the criminal history record. A copy of a criminal history record provided pursuant to this rule is subject to the fee provided in rule 661—11.15(692).

**661—11.5(690,692) Review of record.** Any individual or that individual's attorney, acting with written authorization from the individual, may review or obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division in the Wallace State Office Building in Des Moines or by submitting a request on a form provided by the department of public safety. A copy of this request form may be obtained by writing to Identification Section, Division of Criminal Investigation, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by telephoning the identification section at (515)281-8706 or by sending a request by electronic mail to [cchinfo@dps.state.ia.us](mailto:cchinfo@dps.state.ia.us). The request form may also be downloaded from the division's Web site at <http://www.state.ia.us/government/dps/dci/>. The completed request form must be notarized, if submitted by mail, and accompanied by a set of the fingerprints of the individual whose criminal history record is being requested, along with submission of the fee established in rule 661—11.15(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.

**661—11.6(17A,690,692) Inaccuracies in criminal history.** If an individual believes inaccuracies exist in the individual's criminal history, notice may be filed with the division outlining the alleged inaccuracies accompanied by any available supporting data. In all instances where a notice is so filed, the division contacts the arresting agencies, court of record and institutions to verify record accuracy. Any necessary changes shall be made to the individual's record. Any agency previously receiving a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who has so filed a notice of correction within 20 days of said filing. If, after notice is filed and the division makes its final report, the individual is still of the opinion that inaccuracies exist within the records, an appeal of the final decision of the division to the Polk county district court may be made.

**661—11.7(17A,690,692) Fingerprint files and crime reports.** This section also maintains all fingerprint files and has personnel for the entry of crime reports to the criminal system.

**661—11.8(690) Taking of fingerprints.** The taking of fingerprints shall be in compliance with Iowa Code sections 232.148(2), 690.2 and 690.4. Fingerprints taken pursuant to these sections shall be submitted to the identification section of the division of criminal investigation, within two working days and to the Federal Bureau of Investigation.

**661—11.9(17A,690,692) Arresting agency portion of final disposition form.** The sheriff of each county and the chief of police of each city shall complete the arresting agency portion of the final disposition form with the arrest information on all persons whose fingerprints are taken in accordance with the rules or Iowa Code section 690.2, and thereafter forward the form to the appropriate county attorney or to the juvenile court officer who received the referral if the case remains in juvenile court.

**661—11.10(690,692) Final disposition form.** The county attorney of each county or juvenile court officer who received the referral shall complete a final disposition report and submit it to the division of criminal investigation within 30 days when a preliminary information or citation is dismissed without new charges being filed, or when a case is ignored by a grand jury. When an indictment is returned or a county attorney's information filed, the final disposition form shall be forwarded by the county attorney to the clerk of the court having jurisdiction. The clerk of court shall forward a copy to the division of criminal investigation within 30 days after judgment. If a juvenile is processed through juvenile court, the juvenile court officer shall forward the disposition form to the division of criminal investigation.

**661—11.11(692) Destruction of fingerprints.** Rescinded IAB 11/22/95, effective 1/1/96.

**661—11.12(692) Release of information to the public.** The department may release criminal history information to any person, or public or private agency, upon written application. Non-criminal justice agencies may not receive information regarding arrests older than 18 months that do not have dispositions or deferred judgments where the department has received official notice of successful completion of probation, unless a waiver has been given to the requestor from the person who is the subject of the criminal history information and is presented to the department at the time the request for the information is made.

Each record released to a non-criminal justice agency shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT."

**661—11.13(692) Redissemination of criminal history information by youth service agencies.** Rescinded IAB 7/3/96, effective 7/1/96.

**661—11.14(692) Scope of record checks for non-criminal justice agencies and individuals.** Record checks made for non-criminal justice agencies and individuals pursuant to these rules will be based upon name, including maiden name and aliases, if any, and birth date. This information is not sufficient to effect a precise identification of a subject. Persons may have the same name and birth date. Persons may use several names. The records of the department are based upon reports from other agencies. The department, therefore, cannot warrant the completeness or accuracy of the information provided. Agencies and individuals receiving criminal history information are therefore advised to verify all information received from the department to the extent possible (e.g., by contacting the reported arresting agency or court).

**661—11.15(692) Fees.** All individuals, their attorneys, and other non-criminal justice agencies applying for receipt of criminal history information may be assessed a fee. The department may accept cash, money orders, or checks. Other arrangements may be made, such as a prepaid retainer or credit card. The fee for receipt of criminal history information from the department shall be not more than \$13 for each surname for which information is requested and not more than \$15 per surname for fax service. The fee shall be prominently posted at the headquarters of the division of criminal investigation. Each alias or maiden name submitted shall be considered a separate name for purposes of computing this fee. Employers must pay the cost of the criminal history fee of a potential employee.

**661—11.16(692) Subpoenas and civil process.** Rescinded IAB 7/3/96, effective 7/1/96.

**661—11.17(17A,22,692) Requests for criminal history data.**

**11.17(1) *Requests for criminal history data.*** Persons or agencies requesting criminal history data should direct requests in writing using forms or methods approved by the commissioner of public safety. Requests for forms to use in requesting criminal history information may be addressed by mail to the Identification Section, Division of Criminal Investigation, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or by electronic mail via the Internet to [cchinfo@dps.state.ia.us](mailto:cchinfo@dps.state.ia.us).

The commissioner may authorize other methods of requesting criminal history information besides mail. These other methods may include fax transmission, electronic mail, or computer access. This authorization by the commissioner of public safety shall be based on the ability to efficiently and accurately receive and disseminate criminal history information.

**11.17(2) *Public complaints.*** Public complaints concerning the operation of criminal history or intelligence data systems should be directed in writing to the commissioner of public safety. Complaints should be specific in spelling out the time, date and place of the alleged violation and any action requested of the commissioner.

**11.17(3) *Approval of agreements.*** All agreements, arrangements and systems for the transmission and exchange of criminal history data required to be approved by the commissioner shall be submitted in writing at least 30 days before their proposed effective date.

This rule is intended to implement Iowa Code section 692.19.

**661—11.18(690) Administrative sanctions.** The commissioner of public safety shall deny or restrict access to criminal history records maintained by the identification section of the division of criminal investigation to any agency which fails to comply with the requirements of Iowa Code chapters 690 and 692 for submission of fingerprints and disposition reports to the department of public safety. The commissioner shall notify the affected agency in writing prior to denying or restricting access, giving details of the requirements and the nature of the failure to comply.

Any agency which has received notification from the commissioner that their access to criminal history records is to be denied or restricted may protest this action. Protests must be filed with the administrative services division within 30 days of the date of the notification from the commissioner in accordance with rule 661—10.101(17A).

This rule is intended to implement Iowa Code section 690.5.

**661—11.19(232) Juvenile fingerprints and criminal histories.**

**11.19(1) *Authority to fingerprint.*** A law enforcement agency may fingerprint and photograph any juvenile who has been taken into custody and charged with the commission of an offense which would be a serious misdemeanor or above if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

**11.19(2) *Fingerprints of juveniles waived to adult court.*** If jurisdiction over a juvenile suspect has been transferred from juvenile court to adult court, then fingerprints of that suspect taken pursuant to Iowa Code section 232.148 and transmitted to the division of criminal investigation shall be handled by the division in the same manner as fingerprints of adult suspects are handled and are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

**11.19(3) *Fingerprints entered into Automated Fingerprint Identification System (AFIS).*** Fingerprints of juveniles shall be entered into the AFIS maintained by the department of public safety.

**11.19(4) *Juvenile criminal histories.***

a. A fingerprint card received for a juvenile suspect shall be used to establish a criminal history record for the suspect.

b. Criminal histories of juveniles over whom jurisdiction has been transferred from juvenile court to adult court shall be handled in the same manner as criminal histories of adults.

c. Criminal histories of juveniles who remain under the jurisdiction of the juvenile court shall be maintained only if the juvenile is adjudicated delinquent based upon an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult. The criminal history record established in response to receiving a fingerprint card shall be expunged if the delinquency petition is dismissed. Juvenile court judges shall order that juveniles be fingerprinted and the prints submitted to the division of criminal investigation if the juvenile has been adjudicated delinquent for an offense of serious misdemeanor or above if committed by an adult.

d. Criminal history records of juveniles over whom jurisdiction has not been transferred from juvenile to adult court shall be expunged when the subject reaches the age of 21 unless the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21. If the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21, the criminal history record shall be maintained in the same manner as adult criminal history records.

**11.19(5) Tracking criminal history records.** The division of criminal investigation shall establish an internal procedure for tracking criminal history records expunged from the files of the division for audit purposes only.

This rule is intended to implement Iowa Code section 232.148 as amended by 1999 Iowa Acts, House File 403.

**661—11.20(135C) Release of dependent adult abuse records.** Effective July 1, 1997, the department of public safety, division of criminal investigation, may release to health care facilities licensed under Iowa Code chapter 135C dependent adult abuse registry information received from the department of human services. The department of public safety and the department of human services shall enter into a 28E agreement to carry out this rule.

**661—11.21(692) Criminal history checks for qualified entities.**

**11.21(1)** The department of public safety may process requests for national criminal history record checks for a qualified entity.

**11.21(2)** All qualified entities requesting criminal history record checks shall be required to pay any applicable state and federal fees associated with non-criminal justice record checks. The qualified entity is responsible for such fees whether the qualified entity requests or receives the information directly or through an agency authorized to make fitness determinations as provided in subrule 11.21(3).

**11.21(3)** Any public entity which has been duly authorized by statute or administrative rule to conduct fitness determinations of volunteers or employees of a qualified entity may receive state and national criminal history checks in order to do so.

These rules are intended to implement Iowa Code chapter 692.

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**CHAPTER 20**  
**GOVERNOR'S TRAFFIC SAFETY BUREAU**  
[Prior to 4/20/88, see Planning and Programming[630] Ch 12]

**661—20.1(23USC402,ExecOrd23) Authority.** Title 23 U.S.C. section 402 requires each state to have a highway safety program sponsored by the U.S. Secretary of Transportation and for which the governor of the state shall be responsible.

**20.1(1)** The governor has designated the commissioner of the department of public safety as governor's highway safety representative for Iowa and established the department of public safety as the state highway safety agency in Governor's Executive Order Number Twenty-Three, signed June 9, 1986, and published in the Iowa Administrative Bulletin on July 2, 1986.

**20.1(2)** The governor's traffic safety bureau shall administer the state highway safety program in accordance with the provisions of Title 23 U.S.C. and Governor's Executive Order Number Twenty-Three.

**661—20.2(23USC402,ExecOrd23) Purpose.** The purpose of the highway safety program is to provide a coordinated federal, state and local effort to reduce traffic-related deaths, injuries, and property damage crashes.

The following eight highway safety priority areas have been established by the federal government to provide a guide to program involvement and reimbursement: alcohol; police traffic services; emergency medical services; traffic records; occupant restraints; engineering; motorcycles; and pedestrians/bicycles.

**661—20.3(23USC402,ExecOrd23) Responsibilities.**

**20.3(1)** The governor's traffic safety bureau shall develop and prepare the state's highway safety plan based on evaluation of highway crashes and traffic safety problems within the state.

**20.3(2)** The governor's traffic safety bureau shall encourage and assist local units of government in improving their traffic safety programs.

**20.3(3)** The governor's traffic safety bureau shall serve as a reviewing authority for federal and state traffic safety programs.

**20.3(4)** The governor's traffic safety bureau shall monitor safety program activity and expenditures of funds by state and local agencies as authorized by Title 23 U.S.C. 402.

**20.3(5)** The governor's traffic safety bureau shall coordinate the state highway safety plan with other state agencies.

**20.3(6) Application for funding.**

*a.* Proposals for funding highway safety programs may be submitted at any time by any city, county, or state agency, or nonprofit organization or any other eligible organization or individual.

*b.* Applications must be received on or before March 1 to be considered for funding in the next federal fiscal year beginning October 1.

*c.* Initial proposals should include project title, statement of the highway safety problem to be addressed supported by three years of crash data, what is being proposed to solve the problem, how it will be evaluated, a proposed budget, and a letter of intent accepting responsibility for the proposed project from the responsible authority of the organization making application.

*d.* Only written requests containing the listed elements will be considered for funding.

*e.* Assistance in developing and submitting proposals for highway safety funding may be obtained by contacting the Director, Governor's Traffic Safety Bureau, Iowa Department of Public Safety, 307 East 7th Street, Des Moines, Iowa 50319, or by electronic mail via the Internet at [gtsbinfo@safe.ia.gov](mailto:gtsbinfo@safe.ia.gov).

**EXCEPTION:** Applications for funding of programs pursuant to the authority of 23 U.S.C. 153 must be received by the governor's traffic safety bureau on or before June 1 to be considered for the following federal fiscal year.

**661—20.4(23USC402,ExecOrd23) Funding criteria.**

**20.4(1)** Allocation of federally appropriated funds administered by the governor's traffic safety bureau pursuant to Title 23 U.S.C. as amended through September 1, 1993, shall be based on: (1) federally mandated projects; and (2) high fatality and personal injury crash causations and locations.

The following criteria will be used to rank Iowa's counties according to the severity of their highway safety problems:

- a. Fatal crashes by county.
- b. Personal injury crashes by county.
- c. Serious personal injury crashes by county.
- d. Alcohol-related fatal crashes by county.
- e. Alcohol-related personal injury crashes by county.
- f. Vehicle miles of travel by county.
- g. Serious traffic offenses by county.
- h. Fatal and injury crashes involving motorcycles by county.
- i. Fatal and injury crashes involving pedestrians and bicycles by county.

Eligibility of counties, and cities within those counties, for the limited federal funds available will be determined according to county rankings on the nine listed criteria.

**20.4(2)** At least 40 percent of all federal funds apportioned to the state of Iowa pursuant to Title 23 U.S.C., Section 402, for any fiscal year shall be expended by political subdivisions of the state to carry out local highway safety programs authorized by the governor's representative for highway safety.

**661—20.5(23USC402,ExecOrd23) Program requirements.**

**20.5(1)** All approved programs funded by the governor's traffic safety bureau must be administered in compliance with the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual, 1993.

**20.5(2)** Highway safety contract procedures and reporting forms and their explanations are contained in the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual, 1993.

**20.5(3)** Single copies of the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual may be obtained on request from the Director, Governor's Traffic Safety Bureau, Iowa Department of Public Safety, 307 East 7th Street, Des Moines, Iowa 50319.

These rules are intended to implement Title 23 U.S.C., Section 402, as amended through September 1, 1993, and Governor's Executive Order Number Twenty-Three, signed June 9, 1986.

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**CHAPTER 21****STATE MEDICAL EXAMINER**

[Prior to 4/20/88, see Medical Examiner, State[566] Ch 1]

Rescinded IAB 7/28/99, effective 7/1/99; see 641—Ch 126.

**CHAPTER 22**

Reserved

**18.5(3)** The gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, merchandise or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public, shall be exempt. The exclusion from exemption for municipally owned pay television service is applicable to sales occurring and services provided on and after July 1, 1991. On and after April 1, 1992, providing sewage service or solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall be taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information). Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

**EXAMPLES:**

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

c. An instrumentality of government includes an area agency on aging as designated by the Iowa department of elder affairs pursuant to Iowa Code section 231.32.

This tax exemption does not apply to independent contractors who deal with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services which a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor. See 701—Chapter 19. See also *NLO, Inc. v. Limbach*, 613 N.E.2d 193, 66 Ohio St.3d 389 (1993); *Bill Roberts Inc. v. McNamara*, 539 So.2d 1226 (La. 1989) reh. den. April 27, 1989; *White Oak Corporation v. Department of Revenue Services*, 503 A.2d 582, 198 Conn. 413 (1986).

This rule is intended to implement Iowa Code section 422.45(5).

**701—18.6(422,423) Relief agencies.**

**18.6(1)** Relief agency means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work. Nonexclusive examples of relief agencies are Salvation Army, Royal Neighbors, and Masonic Lodge. The sales of tangible personal property or enumerated services to relief agencies are subject to tax. A relief agency may apply to the director for refund of the amount of tax imposed and paid by it, upon the purchase of goods, wares, merchandise, or services rendered, furnished, or performed that are used for free distribution to the poor and needy.

**18.6(2)** Persons are determined to be in the poor and needy category when their incomes and resources are at or below poverty level. The department will use federal poverty guidelines in making this determination.

**18.6(3)** Listed below are some examples where the tax may or may not be refunded to the relief agency:

**EXAMPLE:** A relief agency purchases clothing for free distribution to a poor and needy person. The tax is refundable.

**EXAMPLE:** A relief agency pays the gas, light, or telephone bill for a person who is poor and needy. The tax is refundable.

**EXAMPLE:** An agency purchases items of clothing for residents of their living facility, and is partially reimbursed by the person using the items based upon the recipient's ability to pay. Tax on the portion of cost not recovered by the agency can be claimed as a refund of tax paid by using formula stated in 18.6(6).

**18.6(4)** Demolition v. repair costs. A nonprofit noneducational relief agency is not entitled to a refund of sales tax paid by contractors on building materials used in the alteration, expansion, repair, remodeling or construction of the facility since the materials were sold tax paid to the contractor who is the consumer of the material by statute. See Iowa Code section 422.42(9). However, the relief agency would be entitled to a refund of sales tax paid on the cost of the demolition of the building since the demolition of the building indirectly benefited the poor and needy. 1968 O.A.G. #841.

**EXAMPLE:** A relief agency, which is not part of a governmental unit, operates a home or orphanage for persons who are poor and needy or for orphan children. Food, lodging, and necessary items are furnished free-of-charge to the residents. The relief agency would be entitled to a refund of any taxes paid to operate this facility; such as, but not limited to, lights, heat, water, telephone, and repair items or services needed to maintain the facility.

**18.6(5)** Claims for refund must be filed quarterly with the department within 45 days after the end of the quarter for which the refund is claimed. Claims are to be submitted on forms provided by the department.

The claim shall include the following information:

a. The total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed used for free distribution to the poor and needy.

b. List the persons making the sales to the relief agency.

1. Include the date of the sale.

2. Include the total amount expended, itemizing sales tax.

3. Include the date of payment.

4. Include the check number, receipt number, or paid invoice verifying payment.

c. List the total operating income received (residents, donations, etc.)

d. List the operating income received from residents only.

e. The claim shall be signed by an authorized agent of the relief agency.

**18.6(6)** When a relief agency receives part of its operating income from the poor and needy it is serving, this income will be considered in computing the tax refund paid upon sales to it of products or services used for free distribution to the poor and needy.

To reasonably approximate the correct amount of tax to be refunded, where only a portion of the tax qualifies for refund, a formula will be used by the department. The prescribed formula the department will allow is operating income received from the poor and needy served divided by total operating income received. This percentage will be multiplied by the applicable gross receipts which are considered refundable to arrive at the correct amount of tax to be refunded.

If a person requests an alternative formula, the person shall first list the reasons why an alternative formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw the approval or require adjustments in the formula upon notice to the person. Additional refunds or assessments may be made if an audit discloses the formula is incorrect.

This rule is intended to implement Iowa Code sections 422.42(7), 422.43, 422.47, 423.1 and 423.2.

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**24.26(11)** The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

**24.26(12)** When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

**24.26(13)** A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

**24.26(14)** Rescinded IAB 7/28/99, effective 9/1/99.

**\*24.26(15)** Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

**24.26(16)** The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

**24.26(17)** Reserved.

**24.26(18)** Reserved.

**24.26(19)** The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

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**24.26(20)** The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

**24.26(21)** The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

**24.26(22)** The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

**24.26(23)** The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

**24.26(24)** Reserved.

**24.26(25)** Temporary active military duty. A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty. The employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position; provided, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position.

**24.26(26)** Reserved.

**24.26(27)** Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

**24.26(28)** The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.19(38).

**871—24.27(96) Voluntary quit of part-time employment and requalification.** An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1) "g."



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## CHAPTER 26 CONTESTED CASE PROCEEDINGS

[Prior to 9/24/86, Employment Security[370] Ch 6]  
[Former 345—6.5(96) and 6.8(96) transferred to 345—9.2(17A,96) and 9.1(17A,96) respectively, IAC 6/10/92]  
[Prior to 3/12/97, Job Service Division [345] Ch 6]

**871—26.1(17A,96) Applicability.** The rules in this chapter govern the procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

**871—26.2(17A,96) Definitions.** Terms defined in the Iowa employment security law and the Iowa administrative procedure Act and which are used in these rules shall have the same meaning as provided by such laws. In addition, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“*Contested case*” means a proceeding defined in Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case in 1998 Iowa Acts, chapter 1202, section 14. It specifically includes any appeal from a determination of a representative of the department or any appeal or request for a hearing by an employer or employing unit from an experience rating, charge determination or other decision affecting its liability. Except as provided in subrule 26.17(5), a final decision of the employment appeal board of the department of inspections and appeals shall constitute final agency action. A presiding officer’s decision shall be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections and appeals.

“*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 an administrative law judge employed by the department of workforce development.

**871—26.3(17A,96) Time requirements.**

**26.3(1)** Time shall be computed as provided in Iowa Code section 4.1(22).

**26.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute.

**871—26.4(17A,96) Commencement of unemployment benefits contested case.**

**26.4(1)** An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, of a written appeal by a party with the appeals section of the department. The appeal shall be addressed or delivered to: Appeals Section, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**26.4(2)** An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and
- c. The grounds upon which the appeal is based.

**26.4(3)** Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual’s eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

**26.4(4)** Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual’s eligibility to receive benefits within 15 days from the mailing date of the quarterly billing of benefit charges.

**26.4(5)** Appeals transmitted by facsimile which are received by the appeals section after 11:59 p.m. Central time shall be deemed filed as of the next regular business day.

**871—26.5(17A,96) Commencement of employer liability contested case.**

**26.5(1)** An employer liability contested case is commenced with the filing of a written appeal with the appeals section of the department. The appeal shall be addressed or delivered to: Appeals Section, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**26.5(2)** An appeal from a decision of the tax section of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers shall be filed, by mail, facsimile or in person, not later than 30 calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall set forth the following:

- a. The name, address, and Iowa employer account number of the employer;
- b. The name and title of the person filing the appeal;
- c. A reference to the decision from which the appeal is taken; and
- d. The grounds upon which the appeal is based.

**26.5(3)** Appeals transmitted by facsimile which are received by the appeals section after 11:59 p.m. Central time shall be deemed filed as of the next regular business day.

**871—26.6(17A,96) Notice of hearing.**

**26.6(1)** A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Notice of hearing shall be sent by first-class mail to all parties at their last-known address and shall include:

- a. The date, time and place of an in-person hearing, or the date and time of a telephone hearing, including instructions for calling the appeals section in advance of the hearing to provide the names and telephone numbers of all witnesses; and
- b. The nature of the hearing, including the legal authority and jurisdiction under which the hearing is held; and
- c. A statement of the issues and the applicable sections of the Iowa Code or Iowa Administrative Code; and
- d. A description of who will serve as presiding officer.

**26.6(2)** The seven-day notice of hearing may be waived upon the agreement of the parties.

**26.6(3)** An in-person hearing shall be scheduled in the following workforce development centers: Burlington, Carroll, Cedar Rapids, Creston, Council Bluffs, Davenport, Decorah, Des Moines, Dubuque, Fort Dodge, Mason City, Ottumwa, Sioux City, Spencer, Storm Lake, and Waterloo.

**26.6(4)** A hearing shall be scheduled promptly and shall be conducted by telephone unless a party requests that it be held in person. A request for an in-person hearing may be denied if factors such as the distance between the parties, the number of parties or the health of any party makes it impractical or impossible to conduct a fair hearing in person. An in-person hearing may be scheduled at the discretion of the presiding officer to whom the contested case is assigned or, in that presiding officer's absence, the chief administrative law judge of the appeals section. The party requesting an in-person hearing will ordinarily be required to travel the greater distance if all parties are not located near the same hearing site. As a matter of discretion, the appeals section may schedule an in-person hearing at a regular hearing site approximately equidistant from the parties. In the discretion of the presiding officer to whom the contested case is assigned, witnesses or representatives may be allowed to participate via telephone in an in-person hearing, provided that each party has at least one witness present at the hearing site. When two or more parties are involved, the evidence shall be presented during the same hearing.

**26.6(5)** Whenever it appears that other parties should be joined to dispose of all issues in a contested case, the presiding officer shall so order and shall grant such continuance and hold such additional proceedings, upon notice to all parties, as may be necessary.

**26.6(6)** Any number of appeals involving similar issues of law or fact may be consolidated for hearing so long as no substantial rights of any party would be prejudiced by so doing.

**26.6(7)** Any party may appear in any proceeding. Any partnership, corporation, or association may be represented by any of its members, officers, or a duly authorized representative. Any party may appear by, or be represented by, an attorney-at-law or a duly authorized representative of an interested party.

**26.6(8)** Where a party not attending the hearing will be represented by another person, such person shall submit written proof of such representation, signed by the party such person purports to represent, at least three days before the hearing to the presiding officer.

**871—26.7(17A,96) Recusal.**

**26.7(1)** A presiding officer shall withdraw from participation in the hearing or the making of any decision in a contested case if:

a. The presiding officer has a personal bias or prejudice concerning a party or a representative of a party;

b. The presiding officer has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying the case, or another pending factually related case or pending factually related controversy that may culminate in a contested case involving the same parties;

c. The presiding officer 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 the contested case, or a pending factually related contested case or controversy involving the same parties;

d. The presiding officer has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. The presiding officer 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. The presiding officer has a spouse or relative within the third degree of relationship that: is a party to the case, or an officer, director or trustee of a party; is a lawyer in the case; is known to have an interest that could be substantially affected by the outcome of the case; or is likely to be a material witness in the case; or

g. The presiding officer has any other legally sufficient cause to withdraw from participation in the hearing and decision making in that case.

**26.7(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 subrule 26.10(7).

**26.7(3)** If the presiding officer knows of information which might reasonably be deemed a basis for recusal but decides recusal is unnecessary, the presiding officer shall submit the relevant information for the record along with a statement of the reasons for declining recusal.

**26.7(4)** If a party asserts disqualification of the presiding officer for any appropriate ground, the party shall file an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, as soon as the reason alleged in the affidavit becomes known to the party. If, during the course of a hearing, a party first becomes aware of evidence of bias or other ground for recusal, the party may move for recusal but must establish the grounds by the introduction of evidence into the record. If the presiding officer determines that recusal is appropriate, the presiding officer shall withdraw. If the presiding officer decides that recusal is not required, the presiding officer shall enter an order to that effect. This order may be the basis of the aggrieved party's appeal from the decision in the case.

**871—26.8(17A,96) Withdrawals and postponements.**

**26.8(1)** An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer to whom the case is assigned. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the presiding officer.

**26.8(2)** A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

**26.8(3)** If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

**26.8(4)** A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

**26.8(5)** If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

**871—26.9(17A,96) Discovery.**

**26.9(1)** Discovery procedures applicable to civil actions are available to all parties in interest in contested cases.

**26.9(2)** Unless otherwise limited by a protective order, the frequency of use of discovery methods is not limited. Upon application by any adversely affected party or upon the presiding officer's own motion, the presiding officer may order otherwise in the following situations:

- a. The discovery sought is unduly repetitious, or the information sought may be obtained in another method that is more convenient, less burdensome or less expensive; or
- b. The party seeking discovery has had prior ample opportunity to obtain the information; or
- c. The discovery is unduly burdensome or expensive when viewed in the context of the factual issues to be resolved, the limited resources of the parties, and the parties' interest in prompt resolution of the contested case.

**26.9(3)** A party may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the contested case, including the existence, description, nature, custody, condition and location of any tangible items and the identity and location of persons having knowledge of discoverable matters. Information may be discovered, even if inadmissible itself, if it appears reasonably calculated to lead to the discovery of admissible evidence. In any event, the names of a party's witnesses, their expected testimony, and exhibits to be offered into evidence may be obtained by discovery.

**26.9(4)** A party who has responded to a request for discovery with a response which was complete and accurate when made need not supplement the response to include information obtained after the response. However, a party must promptly supplement its response to requests for the identity and location of persons having knowledge of discoverable matters, the identity of each person expected to be called to testify at the hearing, and the party must produce copies of exhibits expected to be offered into evidence at the hearing as such decisions are made. A party must also promptly amend any response if it obtains information establishing that its prior response was incorrect when made or, though correct when made, is no longer correct.

**26.9(5)** No motion relating to discovery, including motions for imposition of sanctions, will be considered unless the moving party alleges that it has made a good-faith but unsuccessful effort to resolve the issues raised in the motion with the opposing party without intervention by the presiding officer.

**26.9(6)** Upon motion by a party or the person from whom discovery is sought or by any person who may be adversely affected thereby, and for good cause shown, the presiding officer before whom the contested case is pending may make any order which justice requires to protect a party or person from oppression or undue burden of expense. Such order may deny the request for discovery or limit terms, conditions, manner and scope thereof.

**26.9(7)** A party may, in accordance with subrule 26.9(5), apply to the presiding officer before whom a contested case is pending for an order compelling discovery if the party upon whom the request has been served fails within a reasonable time to make a complete, good-faith response. After notice to both parties and hearing upon the motion, the presiding officer shall enter an order which denies or compels discovery, which order may be combined with a protective order pursuant to subrule 26.9(6).

**26.9(8)** Upon application by any party or upon the presiding officer's own motion, the presiding officer may impose sanctions for the failure to make discovery; however, sanctions shall not be imposed without prior specific notice from the presiding officer of the contemplated sanction, opportunity to be heard, and, if necessary, further opportunity to cure its failure. The sanctions may include the following:

- a. The granting of a postponement to a party demonstrably prejudiced by the failure;
- b. The exclusion of the testimony of witnesses not identified in response to a specific request for such information;
- c. The exclusion from the record of those exhibits not identified in response to a specific request for such information;
- d. The exclusion of the party from participation in the contested case proceedings;
- e. The dismissal of the party's appeal.

**26.9(9)** Requests for discovery shall be filed with the Appeals Section, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319, for service on other parties and persons. Responses must be filed with the party requesting the discovery within ten days after mailing by the department unless an extension of time in which to comply has been granted by the presiding officer. Requests for discovery received within five days before a scheduled contested case hearing will not be honored in the absence of a request for a postponement showing good cause therefor. A party's inattention to preparation is not good cause for postponement.

**871—26.10(17A,96) Ex parte communications.**

**26.10(1)** An ex parte communication is an oral or written communication relating directly to the facts or legal questions at issue in a contested case proceeding which is made by a party to the presiding officer to whom the case has been assigned without the knowledge or outside the presence of the other parties and with the object of affecting the outcome of the case.

**26.10(2)** Ex parte communication does not include:

*a.* Statements given by the parties to representatives of the department for use in making the initial determination;

*b.* Statements contained in a party's appeal from the initial determination;

*c.* Statements relating only to procedural or scheduling matters, such as requests for discovery, subpoenas, postponements or withdrawals of appeals;

*d.* Requests for clarification of a legal issue involved in a contested case, but only to the extent of requesting information on the applicable law sections and not as to matters of fact.

**26.10(3)** Unless required for the disposition of ex parte matters specifically authorized by statute, no party or its representative shall communicate directly or indirectly with the presiding officer to whom a contested case is assigned, nor shall the presiding officer communicate directly or indirectly with a party or its representative concerning any issue of fact or law in a contested case unless:

*a.* Each party or its representative is given written notification of the communication. Such notification shall contain a summary of the communication, if oral, or a copy of the communication, if written, as well as the time, place and means of the communication.

*b.* After notification, all parties have the right, upon written demand, to respond to the ex parte communication, including the right to be present and heard if an oral communication has not been completed. If the communication is written, or if oral and completed, all other parties have the right, upon written demand, to a special hearing to respond to the ex parte communication.

*c.* Whether or not any party requests the opportunity to respond to an ex parte communication made in violation of Iowa Code section 17A.17(2) as amended by 1998 Iowa Acts, chapter 1202, section 19, the presiding officer shall include such communication in the official record of the contested case.

**26.10(4)** 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.

**26.10(5)** 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.

**26.10(6)** 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 as to require the presiding officer's recusal. If the presiding officer determines that recusal 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 the presiding officer determines that recusal 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.

**26.10(7)** 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 material has already been or shortly will be disclosed. 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 shortly will be provided to the parties.



**26.10(8)** The presiding officer may impose appropriate sanctions for violations of this rule, including dismissal of an appellant's contested case, 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 chief administrative law judge for possible sanctions.

**871—26.11(17A,96) Motions.**

**26.11(1)** No technical form for motions is required. Nevertheless, prehearing motions must be in writing, state the grounds for relief and state the relief sought.

**26.11(2)** Any party may file a written response to a motion within five business days after the motion is served, unless the time period is extended or shortened by the presiding officer, who may consider failure to respond within the required time period in the ruling on a motion.

**26.11(3)** The presiding officer may schedule oral arguments on any motion.

**26.11(4)** Motions pertaining to the hearing must be filed and served at least five days prior to the date of the hearing unless there is good cause for permitting later action or the time is lengthened or shortened by the presiding officer.

**871—26.12(17A,96) Prehearing conference.**

**26.12(1)** Any party may request a prehearing conference. A request, or an order for a prehearing conference on the presiding officer's own motion, shall be filed not less than five days prior to the hearing. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variance from this rule.

**26.12(2)** Each party shall bring to the prehearing conference:

*a.* A final list of witnesses who the party anticipates will testify at the 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 the hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

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

**26.12(3)** In addition to the requirements of subrule 26.12(2), the parties at a prehearing conference may: enter into stipulations of fact; enter into stipulations on the admissibility of exhibits; identify matters the parties intend to request be officially noticed; and consider any additional matters which will expedite the hearing.

**26.12(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.

**871—26.13(17A,96) Subpoenas and witnesses.**

**26.13(1)** It is the responsibility of the parties to request the attendance of such witnesses they believe have knowledge of the facts in issue in the contested case.

**26.13(2)** Upon the written request of a party in interest received at least three days prior to the date of a hearing, the presiding officer shall issue a subpoena compelling the attendance of a person at the contested case hearing.

**26.13(3)** The written request shall include:

*a.* The name and address of the person to be served;

b. A statement of the relevance of the witness's testimony and that it will not repeat or duplicate the testimony of other witnesses; and

c. A statement that the witness refuses to testify voluntarily despite the party's request that the person do so.

**26.13(4)** A subpoena duces tecum shall be issued in the manner provided in subrule 26.13(2), except that the request must also state specifically the books, papers, correspondence, memoranda or other records desired.

**26.13(5)** Documents subpoenaed for telephone hearings shall be mailed or faxed to the appeals section prior to the hearing to facilitate the exchange of documents among the parties. Documents subpoenaed for in-person hearings shall be brought to the hearing site at the time of the contested case hearing, unless otherwise ordered by the presiding officer.

**26.13(6)** If the presiding officer deems it appropriate, the person to whom a subpoena is directed shall be notified and given the opportunity to object to the issuance of the subpoena.

a. If an objection to the issuance of the subpoena is raised, the presiding officer may, as a matter of discretion, hear and rule on the objection prior to commencing the evidentiary hearing or postpone the evidentiary hearing and schedule a special hearing to receive arguments from all parties concerning the issuance of the subpoena.

b. The presiding officer shall issue the subpoena if it is established to the presiding officer's satisfaction that the testimony or document sought is material and relevant, is not unduly repetitious of other evidence already of record or expected to be submitted by any party, and, in the case of the subpoena duces tecum, the records requested do not disclose business secrets or cause undue burden on the party to whom the subpoena is directed.

**26.13(7)** If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.19(1), petition the district court for review of the action before proceeding further. The aggrieved party must in that event promptly notify the presiding officer that a petition for judicial review of such order will be filed immediately so that the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the presiding officer's decision in the contested case to the employment appeal board of the department of inspections and appeals.

**26.13(8)** Any subpoenaed witness attending a hearing shall be paid \$10 for each day's attendance, and \$5 for each attendance of less than a full day, plus mileage expenses at the rate specified in Iowa Code section 79.9 for each mile actually traveled.

**26.13(9)** If any person to whom a subpoena is directed refuses to honor the subpoena, the appeals section of the department may apply to the appropriate district court for an order to compel the party to obey the subpoena.

**26.13(10)** A party may request the issuance of a subpoena or a subpoena duces tecum to be served in another state. If the presiding officer finds the witness or evidence sought is material, relevant and not available in this state, the presiding officer shall explore the possibility of obtaining it voluntarily. When necessary and upon proper application, the presiding officer shall have a subpoena or a subpoena duces tecum issued to be served by a sister agency in the state in which the witness or evidence is located, compelling the witness to testify or the evidence to be produced.

#### **871—26.14(17A,96) Conduct of hearings.**

**26.14(1)** Each contested case hearing shall be heard and decided by a presiding officer who is an administrative law judge.

a. All contested case hearings except as provided in paragraphs "b" and "c" below shall be heard and decided by an administrative law judge employed by the department of workforce development. The qualifications for administrative law judges employed by the department of workforce development shall be the same as the qualifications for administrative law judges employed by the division of administrative hearings of the department of inspections and appeals.

b. All contested case hearings in which the department of workforce development is a party shall be heard and decided by a presiding officer who is an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

c. The department of workforce development is a party to all contested case hearings in which it is the employer. It is a party to those contested case hearings involving issues of employer liability, employee/independent contractor status, fraudulent overpayment and administrative penalty in which it or any of its employees request the right to participate in the hearing by offering testimony and cross-examining witnesses for other parties.

**26.14(2)** The presiding officer shall inquire fully into the factual matters at issue and shall receive in evidence the sworn testimony of witnesses and physical evidence which are material and relevant to such matters. Upon the presiding officer's own motion or upon the written application of any party, and for good cause shown, the presiding officer may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the original contested case hearing.

**26.14(3)** The presiding officer shall begin each hearing with a brief statement identifying the parties and issues, outlining the history of the case, advising the parties of their appeal rights and announcing what matters, if any, will be officially noticed. Any party may inspect and use any portion of the administrative file necessary for the presentation of its case. The administrative file may include information from the claimant's files maintained in the agency's computer system.

**26.14(4)** The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing. If, during the course of a hearing, it appears to the presiding officer that a section of the Iowa Code not set forth in the notice of hearing may affect the presiding officer's decision, the presiding officer shall so notify the parties and announce willingness to continue taking testimony on the underlying factual matters if the parties agree to waive on record further notice and make no objection to continuing. If any party objects, the presiding officer shall postpone the hearing and cause new notices of hearing, containing all relevant issues and law sections, to be sent to the parties. Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing.

**26.14(5)** If factual issues generally relevant to a party's eligibility or liability for benefits but unrelated to the underlying facts in controversy in the present contested case are exposed, the presiding officer shall not take testimony or evidence on such issue but shall remand the issue to the appropriate section of the department for investigation and preliminary determination.

**26.14(6)** In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

**26.14(7)** If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

**26.14(8)** The presiding officer shall record all communications with late parties. If the presiding officer does not reopen the record, the decision in the contested case shall state the presiding officer's reason for so doing.

**26.14(9)** If the late party fails once again to participate in the rescheduled hearing, there shall be no further postponements. Nevertheless, a party's failure to participate in a contested case hearing shall not result in a decision automatically being entered against it.

**26.14(10)** Whenever necessary, the presiding officer may require the attendance at a hearing of department employees having knowledge of the facts in controversy or having technical knowledge concerning the issues raised in appeal.

a. If the primary issue is the claimant's ability to work, availability for work or work search, the department shall be named as respondent. The presiding officer may call department personnel having knowledge of the facts in controversy as witnesses.

b. If the issue on appeal is an offer of or recall to work or a job referral by a local workforce development center, both the employer making the offer or recall and the workforce development center representative making the referral may be witnesses at the hearing.

c. If the issue on appeal is the claimant's refusal of employment because of wages, the presiding officer may take the testimony of the workforce development representative having knowledge of prevailing wages in the vicinity. The presiding officer may also obtain testimony and evidence of the hours and other conditions of work for similar jobs in the area.

**26.14(11)** In the discretion of the presiding officer, witnesses may be excluded from the hearing room until called to testify. The presiding officer shall admonish such witnesses not to discuss the case among themselves until after the record has been closed. All witnesses shall be subject to examination by the presiding officer and by all parties.

**26.14(12)** The presiding officer may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

**26.14(13)** If the parties agree that no dispute of material facts exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant material evidence either by stipulation or otherwise as agreed by the parties, without the necessity of a formal evidentiary hearing.

### **871—26.15(17A,96) Evidence.**

**26.15(1)** The presiding officer shall accept testimony and other evidence in accordance with Iowa Code section 17A.14.

**26.15(2)** The parties may stipulate as to all or a portion of the facts at issue in the contested case. The presiding officer may accept the stipulation as establishing the facts of the case or may take additional evidence.

**26.15(3)** Documentary evidence, whether or not verified, may be accepted by the presiding officer. Documentary evidence may be received in the form of copies or excerpts, if the originals are not readily available, provided the copies or excerpts are properly authenticated.

**26.15(4)** Objections to evidentiary offers shall be specific in nature and shall be noted in the record by the presiding officer. The presiding officer may rule immediately or defer ruling until the final decision.

**871—26.16(17A,96) Recording costs.**

**26.16(1)** The presiding officer shall electronically record all evidentiary hearings, prehearing conferences and hearings on motions, all of which constitute a part of the record of the contested case. A party may, at its own expense, also record any hearing electronically or by certified shorthand reporter.

**26.16(2)** The appeals section of the department of workforce development shall provide a copy of the whole or a part of the record at cost, unless there is further appeal in which event the record shall be provided to all parties at no cost.

**871—26.17(17A,96) Decisions.**

**26.17(1)** The presiding officer shall issue a written, signed decision as soon as practicable after the closing of the record in a contested case. Each decision shall:

*a.* Set forth the issues, appeal rights, a concise history of the case, findings of essential facts, the reasons for the decision and the actual disposition of the case;

*b.* Be based on the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs, even if none of such evidence would be admissible in a jury trial in the Iowa district court; and

*c.* Be sent by first-class mail to each of the parties in interest and their representatives.

**26.17(2)** In reaching a decision, the presiding officer shall apply relevant portions of the Iowa Code, decisions of the Supreme Court of Iowa, published decisions of the Iowa Court of Appeals, the Iowa Administrative Code and pertinent state and federal court decisions, statutes and regulations.

**26.17(3)** Copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development, filed according to hearing (appeal) number and indexed by the social security number of the claimant.

**26.17(4)** A presiding officer's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. A presiding officer's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

**26.17(5)** A presiding officer's decision constitutes final agency action in an employer liability contested case.

*a.* Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

*b.* Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

These rules are intended to implement Iowa Code chapters 17A and 96.

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CHAPTERS 27 to 41

Reserved

**NAMES**

*See also TRADEMARKS/TRADE NAMES*

Birth certificates 641—99.6, 100.6, 102.7—102.10

Brand names 21—41.3, 42.3, 45.12

Change, individual 641—102.7—102.10

Employment agencies 875—38.2

**NARCOTICS ENFORCEMENT ADVISORY COUNCIL**

*See also DRUGS; SUBSTANCE ABUSE*

Declaratory orders 551—ch 3

Duties 551—ch 1

Records 551—ch 5

Rule making 551—chs 2, 4

**NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON**

Declaratory orders 555—ch 3, 6.12

Hearings/appeals 555—ch 5

Organization 555—ch 1

Records

*Generally, public/fair information* 555—ch 6

Address 555—6.3(1)

Confidential 555—6.10—6.12

Definitions 555—6.1, 6.9(1)

Disclosure 555—6.9, 6.10

Open 555—6.12

Personally identifiable information 555—6.12

Rule making 555—ch 2, 6.12

**NATIONAL GUARD**

*See also VETERANS*

Emergencies, support 605—6.1“VI”

Motor vehicle registration plates 761—401.22

Process, military offenders, forms 611—ch 1

Taxation exemption, active duty pay 701—40.51

Tuition, college 283—ch 20

**NATIVE AMERICANS**

*See INDIANS*

**NATURAL RESOURCES DEPARTMENT**

## Administration

Addresses 561—1.4, 3.3(2)

Complaints/investigations 561—ch 3

Director 561—1.3; 571—1.4, ch 13, 19.4(7), 28.6, 29.2, 29.12, 111.7

Divisions 561—1.3(2)

Petroleum overcharge funds 565—19.4

Programs 567—1.2, 214.4, 215.4, 216.4, 217.4

Records, *see Records below*

Attorney general representation 61—1.3(2)a

Community builder program 261—ch 80

Concessions 561—ch 14

Contracts 561—ch 8; 567—ch 218

Declaratory orders 561—ch 6

## Disclosure

Ecologically sensitive sites, transportation department 761—4.9(11)

Environmental audits 567—ch 12

Energy and geological resources division, *see ENERGY AND GEOLOGICAL RESOURCES*Environmental protection division, *see ENVIRONMENTAL PROTECTION COMMISSION*

Fuel, tire-derived, fund allocation 567—ch 216

Geological survey bureau 561—2.14(4); 565—chs 50, 51

## Groundwater

Hazard documentation 561—ch 9

Protection programs, evaluation 561—ch 15

Hearings/appeals 481—1.6“12”; 561—ch 7

## Natural resource commission

*See also FISH AND FISHING; HUNTING; RECREATION*

Agricultural lease program 571—chs 21, 32

Barge fleetings 571—ch 17

Birds, nongame 571—76.1(1)

Boats/boating, *see BOATS AND BOATING*

Bonds 571—15.2(3,4), 15.2(5)e(8), 15.3(4), 72.2, 72.3

Camping 571—chs 61, 62

Complaints/investigations 561—ch 3; 571—ch 3

Concessions, state parks/recreation areas 571—ch 14

Contracts 561—1.3(2)d(7); 571—chs 8, 14, 22.5(1,2,4), 22.6(1,4), 22.6(5)f, 22.7,  
82.1



## NATURAL RESOURCES DEPARTMENT (cont'd)

## Natural resource commission

## Cost-sharing programs

*See also Resource Enhancement and Protection (REAP) this subheading below; Water Access Program this subheading below*

Recreational facilities 571—ch 29

Snowmobile/all-terrain vehicle registration revenue 571—ch 28

Tree planting 571—ch 34

Wildlife habitats 571—ch 22

Declaratory orders 571—ch 6

Docks 567—71.10; 571—ch 16

Easements 567—72.2(7)

Endangered species, *see Plants/Animals: Endangered Species this subheading below*

Falconry 571—chs 101, 102

Fees, land use 571—ch 18

Firearms, *see FIREARMS; HUNTING*

Fish/fishing 561—1.2(4), 1.3(2)i; 571—15.4, chs 49, 55, 77.2, 77.4(5-7), 80.3, chs 81-89, *see also FISH AND FISHING*

## Forests/fruit trees

Grants, community forestry challenge 571—ch 34

Harvest 571—54.4

Management 561—1.2(6), 1.3(2)f

Reservations 561—1.3(2)f; 571—chs 32, 73

Game, *see Hunting this subheading below; Salvage, Fish/Game this subheading below*

Game management areas 571—chs 51, 53

Ginseng 571—54.3, ch 78

Grants administration 561—1.3(2)d; 571—23.13, chs 27, 29, 33, *see also GRANTS*

Hearings/appeals 561—1.3(1), ch 7; 571—13.8

Hunting 571—ch 15, 52.1(2), ch 53, 66.3, chs 76, 91-94, 96-103, 105-109, 112, *see also HUNTING*

Jurisdiction 571—chs 18, 52, 77.4

Keggers 571—ch 63

Lakes, *see LAKES*

## Land

Leases 561—1.3(2)d(7); 571—chs 18, 21

Open space heritage exemption 571—ch 32

Tax exemptions 571—ch 25

## Licenses

Collectors, scientific 571—111.1, 111.2

Depositaries 571—15.2, 15.3

*NATURAL RESOURCES DEPARTMENT (cont'd)**Natural resource commission**Licenses*Falconry, *see* HUNTINGFishing, *see* FISH AND FISHINGHunting, *see* HUNTING

Issuance 561—1.2(4,9), 1.3(2)d(5)

Lost/stolen 571—15.3

Meetings 571—ch 1

Metal detectors 571—ch 64

Mushrooms/asparagus 571—54.1

Mussels 571—ch 87

Nursery stock sales 571—ch 71

Nuts 571—54.2

Officials, sales 571—1.11

Park management 561—1.2(9), 1.3(2)e; 571—chs 14, 52, 61, 65

## Permits

Barge fleets 571—ch 17

## Construction

*Generally* 571—ch 13

Docks 571—16.2, 16.3(2,5), 16.5—16.8

Endangered species 571—77.4

Fireworks 571—ch 65

## Fish/fishing

Exemption 571—15.4

Importation 571—89.2, 89.3

Tournaments 571—ch 88

Hunting 571—53.2(4), 53.3(1), 101.1, 101.5(3), 101.6, 106.11

Issuance 561—1.2(4,10—12), 1.3(2)d(5,7), 1.3(2)h

Land use 571—ch 18

Motor vehicles, parks/recreation areas 571—51.7, 61.5(10,11,15), 66.4

Sand/gravel removal 571—ch 19

Taxidermy 571—93.5

Trail use, Saylorville 571—66.4(4)

Wildlife salvage/rehabilitation 571—ch 111

## Plants/animals

Endangered species 561—1.2(9), 1.3(2)e(2); 571—chs 77, 111

Fruit/nuts/ginseng 571—54.2, 54.3

Mushrooms/asparagus 571—54.1

Nursery stock 571—ch 71

*NATURAL RESOURCES DEPARTMENT (cont'd)**Natural resource commission*

Prairies, native, tax exemptions 571—chs 25, 32

Preserves 571—61.2, ch 112, *see also Preserves Board, Advisory below*

Property, seizure/disposition 571—ch 10

Records 561—2.14(2); 571—ch 2, *see also Records below*

Recreation, grants

*See also BOATS AND BOATING; Snowmobiles this subheading below; Trails this subheading below*

Lands and waters conservation fund 571—ch 27

Local facilities, infrastructure program 571—ch 29

Refuges 571—chs 52, 66

Relocation assistance 571—ch 26

Resource enhancement and protection (REAP) 261—ch 80; 571—chs 32, 33

River crossings, pipelines 199—10.14

Rule making 571—chs 4, 5

Salvage, fish/game 571—ch 80, 106.11(5), 111.1, 111.3, 111.8

Sand/gravel 561—1.3(2)d(7); 571—ch 19

Saylorville multiuse trail 571—ch 66

Snakes 571—76.1(2)

Snowmobiles 561—1.2(9), 1.3(2)c(1); 571—15.10, chs 28, 50, 66.4, 67.5, 67.8

Stamps

Design contest 571—ch 9

Promotion programs, wildlife 571—chs 22, 23

Taxidermy 571—93.5

Timber buyers 561—1.2(6); 571—ch 72

Trails 571—ch 29, 33.40(1), chs 66, 67

Trapping, *see HUNTING*

Trees, *see Forests/Fruit Trees this subheading above*

Trotlines 571—ch 85

Turtles 571—ch 86

Vehicles, all-terrain, registration 571—ch 28

Water access program

Agreements 571—ch 30

Application 571—30.8

Cost-sharing rates 571—30.9

Eligibility 571—30.3, 30.4, 30.11

Funding 571—30.2, 30.13, 30.14

Priorities 571—30.7

Reimbursement procedures 571—30.13

**NATURAL RESOURCES DEPARTMENT** (cont'd)*Natural resource commission**Water access program*

Site control 571—30.11

Sponsorship, joint 571—30.10

Waterfowl, captive-reared 571—ch 93, *see also HUNTING*Watersheds 571—ch 31, *see also SOIL CONSERVATION DIVISION*

## Wildlife habitats

*See also Game Management Areas this subheading above*

Agricultural leases 571—ch 21

Development projects, stamp revenues 571—chs 22, 23

Division duties 561—1.2(4), 1.3(2)i, 1.4(5-7)

Refuges 571—ch 52

Tax exemptions 571—chs 25, 32

Organization 561—ch 1

Preserves board, advisory 561—1.3; 571—61.2; 575—chs 1-3

## Records

*Generally*, public/fair information 561—ch 2

Address 561—2.3(1)

Bureaus 561—2.14(3,4)

Changes 561—2.6

Commission 561—2.14(1,2), 2.15(2)

Confidential 561—2.3(4), 2.4, 2.5, 2.7, 2.9(2), 2.11, 2.12, 2.13(2,3), 2.15

Data processing 561—2.14

Definitions 561—2.2, 2.10(1)

Disclosure 561—2.7-2.13

Fees 561—2.3(7)

Objections 561—2.6

Open 561—2.3(3,4,6), 2.9(1), 2.13(1), 2.15

Personally identifiable information 561—2.14

Rule making 561—2.15(1)

Rule making 561—2.15(1), chs 4, 5

Timber sales 561—1.2(6), 8.5; 571—54.4

## Tires, waste

Counties, grants 567—ch 215

Incentive program 567—ch 217

Regents institutions, tire-derived fuel, funds 567—ch 216

Stockpiles, clean-up 567—ch 218

Use, beneficial 567—219.3

Welcome center program, project review committee 261—63.4(6)

**NOTARY PUBLIC**

Registration/certification 721—1.6, 5.14(8), ch 43

**NUCLEAR MATERIALS**

*See DRUGS; ELECTRIC UTILITIES; RADIATION MACHINES AND RADIOACTIVE MATERIALS*

**NURSERIES, HORTICULTURAL**

Bureau inspection 21—1.5(5)

Damages, deer 571—106.11(2)

**Dealers**

Certificates 21—46.9, 46.13

Definition 21—46.6

Shipments 21—46.7; 761—400.47

Definitions 21—46.1—46.6; 871—23.26(2,3)

Greenhouses, fuel taxation exemption 701—17.3(1)d, 18.57(3)

Growers 21—46.4, 46.7

Income, taxation 701—40.38(2)

Insects/diseases 21—46.8, 46.15

Inspections 21—46.8, 46.14

Natural resources department sales 571—ch 71

**Stock**

Definition 21—46.1

Standards 21—46.2, 46.12

Storage/display 21—46.10, 46.11

**NURSES**

*See also HEALTH CARE FACILITIES; HOSPITALS*

Advanced practitioners, *see Registered below*

Aides 441—81.1, 81.16

Anesthetists 441—77.31, 78.35, 79.1(2), 79.1(5)j, 79.1(16)i, 79.14(1)d, 80.2(2)af;  
655—7.2(1)d

Birth centers 481—52.4

Certification, organizations 655—12.3

Children, get-well centers 441—109.14

Child support noncompliance 641—ch 192

Clinical preceptors 655—2.1, 2.9

Colleges/schools, programs

Accreditation 655—2.3(1)g, 3.1

Administration 655—2.3

*NURSES (cont'd)**Colleges/schools, programs*

- Approval 655—2.1, 2.2, 2.10, 3.1
- Changes 655—2.10
- Curriculum 655—2.5
- Definitions 655—2.1
- Evaluations 655—2.3(1)*i*
- Facilities 655—2.4, 2.8
- Faculty 655—2.2(2)*d*, 2.3(1)*h*, 2.3(2), 2.4, 2.6
- Funds 641—110.16, 110.21; 655—2.3(1)*d*
- Records 655—2.7(3,4)
- Reports 655—2.2(2)*e*, 2.10
- Students 655—2.7
- Committee, utilization/cost control review (U.C.C.R.) 655—12.4—12.7
- Complaints 655—4.2
- Continuing education
  - Definitions 655—5.1
  - Licensee requirements 655—3.4(5), 5.2, 7.2(9)
  - Providers
    - Approval criteria 655—5.3(1—4)
    - Disciplinary procedures 655—5.3(5)
    - Records 655—5.3(2)*c*, 5.3(3)*a*(7), 5.3(6)*a*
    - Relinquishment 655—5.3(6)
    - Self-study 655—5.1, 5.2(2)*f*, 5.3(2)*b*(14), 5.3(2)*f*
- Definitions 441—81.1; 655—1.1, 2.1, 3.1, 4.14, 5.1, 6.1, 7.1, 11.1, 12.2, 13.1
- Diabetes education program 641—ch 9
- Discipline 655—3.5(2)*d*, ch 4, 11.2(5), 11.3(2)*d,f*, ch 13
- Disease exposure, emergency care providers, notification 641—11.49, 11.51—11.53
- Examiners board
  - Address 655—1.1
  - Adjudicative proceedings, emergency 655—4.38
  - Authority 655—4.1, 5.2
  - Committee
    - Licensee review 655—4.12
    - Utilization/cost control review (U.C.C.R.) 655—12.4—12.7
- Contested cases, *see Hearings this subheading below*
- Declaratory orders 655—1.3(4), ch 9
- Hearings 655—1.3(5), chs 4, 13
- Meetings 655—1.3(2)
- Organization 655—ch 1

*NURSES (cont'd)**Examiners board*

## Records

Generally, public/fair information 655—ch 11

Address 655—11.2(1)

Confidential 655—11.2(4,5,9)

Data processing 655—11.2(12)

Definitions 655—11.1

Fees 655—11.2(7)a

Open 655—1.3(6), 11.2(3,7)

Personally identifiable information 655—11.3

Rule making 655—chs 8, 10

Home care aides 641—80.8(4), 80.9(2)

Home health agencies 441—77.30(4), 77.33(5), 77.37(19), 78.9(3), 78.28(9), 78.34(4),  
78.37(5), 88.65(3)a(13)

Hospice 481—53.9

Hospitals, *see HOSPITALS*

Impaired practitioner review committee 641—ch 193; 655—4.12

In-home health care 441—50.2(3), 52.1(5), 83.26, ch 177, *see also Home Care Aides  
above; Home Health Agencies above*

Licensed practical nurse (LPN) 641—ch 88; 655—3.4(5), 6.3, 6.5, 6.6

## Licensure/registration

Advanced practitioner 655—7.2(4-8,10,11)

Applications 655—3.3-3.6, 7.2(4,8)

Birth center staff 481—52.4

Continuing education, *see Continuing Education above*

Delinquency 655—3.7(5)

Disabled 655—3.4(7)

Duplicates 655—3.4(9)b, 3.7(7), 7.1

Endorsement 655—3.1, 3.5, 3.6, 3.7(2)

Examinations 655—3.1, 3.4

Exceptions 655—3.2(2)

Fees 655—3.1, 7.1

Foreign education 655—3.4(6)

Hospital employment 481—51.9(4,5)

Inactive status 655—3.1, 3.7(5)e, 3.7(6), 5.2(4)

Mandatory 655—3.2, 3.4(9)b

Qualifications 655—3.3-3.5

Records 655—11.3(2)f

*NURSES (cont'd)**Licensure/registration*

- Reinstatement 641—192.2(5,7), 195.3(7); 655—3.1, 3.7, 4.11
- Reissuance 655—3.7(8)
- Renewal 641—192.1, 192.2(5), 195.2; 655—3.1, 3.6, 3.7, 5.2(2)a, 7.1, 7.2(8,10)
- Revocation/suspension 641—192.2, 195.3; 655—4.7, 4.11, 7.2(11)
- Special 655—3.6
- Temporary 655—3.1, 3.5(3)
- Verification 655—3.1, 3.4(6), 3.5(2,3), 3.8
- Loans, student, noncompliance 641—ch 195
- Medicaid providers, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*
- Midwives 441—75.17, 77.26, 78.29, 79.1(2), 79.14(1)b(18), 80.2(2)z, 88.5(2)a“9,” 88.25(2)a; 481—52.4(2,3); 655—7.2(1)b
- Occupational, disease reports 641—1.4(3), 1.5(9)
- Pediatric 441—78.40
- Peer review committee 655—4.4“3,” 4.5
- Private duty 441—78.1(7), 78.9(10), 78.28(9), 79.1(2)
- Public health nursing
  - Appeals 641—79.11
  - Contractors 641—79.7–79.9, 79.11
  - Definition 641—79.2
  - Department duties 641—79.10, 79.11(3), 170.4(4)
  - Eligibility, client 641—79.6
  - Grants 641—79.9
  - Records 641—175.14(1)a, 175.14(3)e
- Registered
  - Advanced practitioners 441—75.17, 77.26, 77.36, 78.1(9,13), 78.10(1)c, 78.10(2)a,b, 78.10(3), 78.15, 78.25(1), 78.40, 79.1(2), 79.14(1)b(11), 80.2(2)ak; 641—41.1(3)a(7), 42.1(2), 110.16, 110.21; 655—6.1, ch 7; 657—1.1(3)d, 10.2
  - Certification 655—12.2, 12.3
  - Clinical specialist 655—7.1, 7.2(1)a
  - Radiographers 655—6.4(1)
  - Rescue squad/ambulance staff
    - Orders 641—132.9(6)d
    - Training requirements 655—6.4(2)
  - Standards 655—6.2
  - Supervision 655—6.2(5), 6.7
  - Volunteers 641—ch 88



**Schools**

Approval, educational programs  
    *Generally* 655—ch 2  
    Veterans 281—52.5, 52.13

Public 281—12.4(12), 41.9(3)*l*, 41.12(11), 41.96; 282—14.20(11), 15.3“2,” 15.3(14);  
641—1.5(3); 655—6.3(4)*b*, 6.6(2)

Scope of practice 641—ch 194; 655—6.2, 6.3

Telecommunications network access 751—7.7(1)*v*, 7.11

Trauma education 641—ch 137

Utilization/cost review committee, *see Committee, Utilization/Cost Control Review (U.C.C.R.) above*

Volunteers 641—ch 88

**NURSING FACILITIES**

*See HEALTH CARE FACILITIES*

**NURSING HOME ADMINISTRATORS**

Child support noncompliance 641—ch 192

Definitions 645—140.1, 143.1

**Education**

Accreditation, institution 645—142.1

Approval, program 645—142.2, 142.3

**Continuing**

Activities/programs, approval 645—143.3, 143.4

Audits 645—143.2(3), 143.4(1)*d*

Compliance 645—143.2(2)

Definitions 645—143.1

Hearings 645—143.4(1)*e*

Hours 645—141.10(2)*b*, 143.2(4-6)

Inactive practitioners 645—141.10(2)*b*

Record, attendance 645—143.2(7)

Waivers/extensions 645—143.5(2)

Hours 645—141.3(2), 141.10(2)*b*

Practicum 645—141.4

**Examiners board**

*See also PROFESSIONAL LICENSURE DIVISION\**

Address 645—140.3(5)*d*

\* Rules 645—chs 6-17 apply to all professional licensure boards

**NURSING HOME ADMINISTRATORS (cont'd)****Examiners board**

Discipline **645**—141.8(4)c, 141.12

Hearings **645**—143.4(1)e

Meetings **645**—140.3(4,5)

Organization **645**—140.3

Forms **645**—140.4, 141.5(1,5,6), 141.8(3)b, 141.10(1)a

Impaired practitioner review committee **641**—ch 193

Inactive practitioners, *see Licensure below*

Internship **645**—141.4

**Licensure**

Application **645**—141.3, 141.5, 141.11(1)

Denial **641**—192.1, 195.2

Examinations **645**—141.5, 141.6, 141.11(2,3)

Fees **641**—192.2(5); **645**—141.5(5,6), 141.11

Inactive **645**—141.9, 141.10

Preceptors **645**—141.4(1)d

Qualifications **645**—141.2, 141.3

Reinstatement **641**—192.2(5,7), 195.3(7); **645**—141.10, 141.11(12)

Renewal **641**—192.1, 192.2(5), 195.2; **645**—141.8(4), 141.10(1)b, 141.11(5,7,10,11), 143.2(3)

Revocation/suspension **641**—192.2, 195.3

Loans, student, noncompliance **641**—ch 195

Provisional **645**—141.7

Public health department authority **641**—170.4(1)

Scope of practice **641**—ch 194

**NUTRITION**

*See ELDER AFFAIRS DEPARTMENT; FOOD*

Dietitians, licensing **645**—ch 80, *see also DIETITIANS*

Public health department services **641**—170.4(4)

WIC (women/infants/children) program **641**—ch 73

**NUTS**

Gathering, natural resource commission lands **571**—54.2

Producers, deer depredation **571**—106.11

**OBSCENITY**

Forfeited materials, disposal 61—33.4(2)

Sex offenders 661—8.302(4,6), *see also* **CRIME**

**OCCUPATIONAL SAFETY AND HEALTH**

*See* **EMPLOYMENT APPEAL BOARD**

**OCCUPATIONAL THERAPIST**

*See* **PHYSICAL/OCCUPATIONAL THERAPISTS**

**OIL**

*See also* **FUEL; PETROLEUM**

Crude, *see* **PETROLEUM**

**Drilling**

*Generally* 561—1.2(7), 1.3(2)g; 565—ch 51, *see also* **ENERGY AND GEOLOGICAL RESOURCES; WELLS**

Programs, registration 191—50.57(3)

Taxation 701—40.29, 40.30, 53.8(3)

**Fire safety**

Burning equipment 661—5.350

Storage tanks 661—5.301(1,7), 5.307, 5.311—5.313

Household materials, hazardous 567—144.3

Pipeline transmission 565—51.1(27), *see also* **PIPELINES**

Production, *see* **Drilling above**

Recycled/waste 567—23.1(4)ad, ch 119; 591—11.5(2)

Tanks, *see* **ENVIRONMENTAL PROTECTION COMMISSION; PETROLEUM**

Taxation, *see* **Drilling above**

**OLDER AMERICANS ACT OF 1965**

*See* **ELDER AFFAIRS DEPARTMENT: Federal Regulations**

**OMBUDSMAN**

*See also* **CITIZENS' AIDE**

Long-term care, *see* **ELDER AFFAIRS DEPARTMENT: Advocate/Ombudsman Program**

**OPEN BURNING**

*See* **ENVIRONMENTAL PROTECTION COMMISSION: Air Quality: Emissions**

**OPTICIANS**

Medical assistance providers, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*

**OPTOMETRISTS AND OPTOMETRY**

Address change, notification 645—180.8

Advertising 645—180.115(6)

Child support noncompliance 641—ch 192

Continuing education, *see Licenses below*

Definitions 645—180.1

Drugs 657—1.1(3)d

Examiners board

*See also PROFESSIONAL LICENSURE DIVISION\**

*Generally* 645—ch 180

Address 645—180.2, 180.5

Disciplinary sanctions 645—180.115

Meetings 645—180.2, 180.3

Public health department division 641—170.4(1)

Records 645—180.2

Subpoenas 645—180.115(18)

Waivers 645—180.16

Impaired practitioner review committee 641—ch 193

Inactive practitioner 645—180.15, 180.17

Licenses

Applications 645—180.5

Certifications 645—180.5(4-6)

Continuing education 645—180.10(6), 180.12, 180.13, 180.15-180.18, 180.115(17)

Denial 641—192.1, 195.2

Display 645—180.8(4)

Endorsement 645—180.6

Examinations 645—180.2(1), 180.5, 180.7

Fees 641—192.2(5); 645—180.10, 180.12(5)

Reinstatement/renewal 641—192.1, 192.2(5,7), 195.2; 645—180.8, 180.10(2,5), 180.12, 180.17

Suspension/revocation 641—192.2, 195.3

Loans, student, noncompliance 641—ch 195

Malpractice 645—180.115

\* Rules 645—chs 6-17 apply to all professional licensure boards

**OPTOMETRISTS AND OPTOMETRY (cont'd)**

- Medical assistance providers 441—77.6, 78.6, 78.28(3), 79.1(2), 79.14(1)b(21), 80.2(2)m, *see also HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid): Providers*
- Prescriptions, contact lenses/eyeglasses 645—180.9
- Records/reports 645—180.8, 180.12(8), *see also Examiners Board above*
- Scope of practice 641—ch 194
- Study groups 645—180.12(5), 180.13

**ORCHARDS**

- Apple grading 21—ch 11
- Real estate assessment, taxation 701—71.1(3), 71.3, 80.9

**ORGAN DONATIONS/TRANSPLANTS**

*See HOSPITALS*

**ORGANIZED DELIVERY SYSTEMS (ODS)**

- Contracts, state employee 581—15.1(3)c
- Healthy and well kids in Iowa (HAWK-I) program 441—ch 86
- Licensure/regulation 641—ch 201, *see also PUBLIC HEALTH DEPARTMENT*

**ORPHANS, WAR**

- Educational aid 801—1.2(3)c, 1.10, 6.12(6); 871—24.23(24)

**ORTHOPEDIC SHOE DEALERS/REPAIR SHOPS**

- Fluoroscopic devices prohibited 641—38.6
- Medical assistance providers 441—77.18, 78.1(6), 78.5, 78.15, 79.1(2), 79.14(1)b(19), 80.2(2)n

**OSHA**

*See LABOR SERVICES DIVISION*

**OSTEOPATHIC MEDICINE**

*See also PHYSICIANS AND SURGEONS*

- College student aid funds 283—ch 14

**OWI**

*See INTOXICATION*

