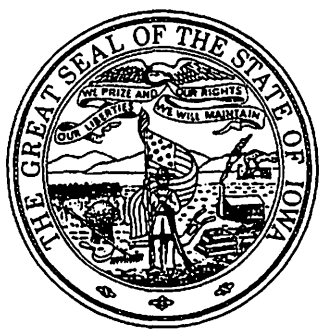
State of Iowa

Iowa Administrative Code Supplement

Biweekly
September 22, 1999



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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
September 22, 1999, Biweekly Supplement

[Previous Supplement dated 9/8/99]

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

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*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.

CHAPTER 27
PREFERRED PROVIDER ARRANGEMENTS

191—27.1(514F) Purpose. The purpose of this chapter is to encourage health care cost containment while preserving quality of care by allowing health care insurers to enter into preferred provider arrangements and by establishing minimum standards for preferred arrangements and the health benefit plans associated with those arrangements.

191—27.2(514F) Definitions. As used in this chapter, unless the context otherwise requires:

"Commissioner" means the commissioner of insurance.

"Covered person" means a person on whose behalf the health care insurer is obligated to pay for or provide health care services.

"Covered services" means health care services which the health care insurer is obligated to pay for or provide under the health benefit plan.

"Emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish such services and are needed to evaluate or stabilize an emergency medical condition. The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that absence of immediate medical attention to result in one of the following:

1. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child, in serious jeopardy;
2. Serious impairment to bodily function; or
3. Serious dysfunction of any bodily organ or part.

"Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the covered services and benefit levels available.

"Health care insurer" means a third-party payer of health benefits including, but not limited to, a person providing a policy or contract providing for third-party payment or prepayment of health or medical expenses, including the following:

1. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.
2. An individual or group hospital or medical service contract issued pursuant to Iowa Code chapter 509, 514 or 514A.
3. An individual or group health maintenance organization contract regulated under Iowa Code chapter 514B.
4. An individual or group Medicare supplement policy.
5. A fraternal benefit society.

"Health care provider" or *"provider"* means a provider of health care services as defined in rule 191—34.2(514).

"Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes, but is not limited to, hospital, medical, surgical, dental, vision, and pharmaceutical services or products.

"Preferred provider" means a health care provider or group of providers who have contracted to provide specified covered services.

"Preferred provider arrangement" means a contract between or on behalf of the health care insurer and a preferred provider which complies with all the requirements of this chapter.

191—27.3(514F) Preferred provider arrangements. Notwithstanding any provisions of law to the contrary, any health care insurer may enter into a preferred provider arrangement.

27.3(1) A preferred provider arrangement shall at minimum:

a. Establish the amount and manner of payment to the preferred provider. The amount and manner of payment may include capitation payments for preferred providers.

b. Include mechanisms which are designed to minimize the cost of the health benefit plan. These mechanisms may include among others:

(1) The review or control of utilization of health care costs.

(2) A procedure for determining whether health care services rendered are medically necessary.

c. Ensure reasonable access to covered services available under the preferred provider arrangement.

27.3(2) A preferred provider arrangement shall not unfairly deny health benefits for medically necessary covered services.

27.3(3) If an entity enters into a contract providing covered services with a health care provider, but is not engaged in activities which would require it to be licensed as a health care insurer, such entity shall file with the commissioner information describing its activities and a description of the contract or agreement it has entered into with the health care providers. An employer which contracts with health care providers for the exclusive benefit of that employer's employees and employees' dependents is exempt from this requirement. This exemption does not apply to any producer, agent, or administrator acting on behalf of one or more employers.

27.3(4) Rescinded IAB 7/14/99, effective 7/1/99.

191—27.4(514F) Health benefit plans.

27.4(1) A health care insurer may issue a health benefit plan which provides for incentives for covered persons to use the health care services of a preferred provider. The policies or subscriber agreements shall contain at least all of the following provisions:

a. A provision that if a covered person receives emergency services specified in the preferred provider arrangement and cannot reasonably reach a preferred provider, emergency services rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider, subject to any restriction which may govern payment by a preferred provider for emergency services.

b. A provision which clearly identifies the differentials in benefit levels for health care services of preferred providers and benefit levels for health care services of nonpreferred providers.

27.4(2) If a health benefit plan provides differences in benefit levels payable to preferred providers compared to other providers, such differences shall not unfairly deny payment for covered services and shall be no greater than necessary to provide a reasonable incentive for covered persons to use the preferred provider.

191—27.5(514F) Preferred provider participation requirements.

27.5(1) A health care insurer may place reasonable limits on the number or classes of preferred providers which satisfy the standards set forth by the health care insurer, provided that there is no discrimination against providers on the basis of religion, race, color, national origin, age, sex or marital status.

27.5(2) Notwithstanding any other provision of this chapter, a health care insurer may issue policies or subscriber agreements which provide benefits for health care services only if the services have been rendered by a preferred provider, provided the program has met all standards imposed by the commissioner for availability and adequacy of covered services.

27.5(3) A health care insurer shall file with the commissioner for the commissioner's prior review a prototype of any preferred provider arrangement and of the health care plan's policy, contract, or subscriber agreement associated with the arrangement, together with any changes in the prototype. Use of the prototypical preferred provider arrangement and health care plan's policy, contract, or subscriber agreement is conditioned upon approval of these documents by the commissioner.

191—27.6(514F) General requirements. A health care insurer subject to this chapter shall be subject to and is required to comply with all other applicable laws and rules and regulations of this state.

191—27.7(514F) Civil penalties. Civil penalties for violation of this chapter shall be imposed in the amount, and pursuant to the procedure, set forth in Iowa Code sections 507B.6, 507B.7, and 507B.8.

191—27.8(514F) Health care insurer requirements.

27.8(1) A health care insurer shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the health care insurer's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the health care insurer or a person contracting with the health care insurer.

27.8(2) A health care insurer shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health care insurer that, in the opinion of the provider, jeopardizes patient health or welfare.

These rules are intended to implement Iowa Code section 514F.3 and 1999 Iowa Acts, Senate File 276.

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(5) Payment of service fees applicable to plan design, payment of claims, materials explaining plan benefits, actuarial assistance, legal assistance, and accounting assistance.

(6) Other expenses directly related to the operation of the plan.

g. Aggregate excess loss coverage shall be obtained which will limit a public body's total claim liability for each year to not more than 125 percent of the level of claims liability as projected by an independent actuary or insurance company. A public body shall fund this potential additional liability of 25 percent by either allocating necessary funds from the operating fund of the general fund or by setting up an additional reserve in the operating fund. Specific excess loss coverage may also be obtained if a public body wishes to limit its total annual liability on claims for any one claimant.

35.20(3) Plan shortfalls. If the resources of any self-funded plan subject to this rule are not adequate to fully cover all claims under that plan, then the public body sponsoring that plan shall make up the shortfall from other resources.

35.20(4) Confidentiality. Information held by the plan administrator of a self-funded plan shall be kept confidential. An employee or agent of the plan administrator shall not use or disclose any information to any person, except to the extent necessary to administer claims or as otherwise authorized by law.

35.20(5) An accident and health self-funded plan subject to these rules shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of a self-funded plan's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the self-funded plan or a person contracting with the self-funded plan.

The self-funded plan shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the self-funded plan that, in the opinion of the provider, jeopardizes patient health or welfare.

35.20(6) Benefits shall be available by the accident and health self-funded plan for inpatient and outpatient emergency services. Since self-funded plans may not contract with every emergency care provider in an area, self-funded plans shall make every effort to inform members of participating providers.

The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

The term "emergency medical condition" means a medical condition manifesting itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

1. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;
2. Serious impairment to bodily function; or
3. Serious dysfunction of any bodily organ or part.

Reimbursement to a provider of "emergency services" shall not be denied by any health maintenance organization without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that a noncontracted provider performed services. If reimbursement for emergency services is denied, the enrollee may file a complaint with the self-funded plan. Upon denial of reimbursement for emergency services, the self-funded plan shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

35.20(7) A life and health self-funded plan subject to this rule shall allow a female member direct access to obstetrical or gynecological services from network and participating providers. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

191—35.21(509) Review of certificates issued under group policies.

35.21(1) *Nondiscretionary groups.* A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall not be reviewed by the commissioner if the policy is issued outside of this state.

35.21(2) *Discretionary groups.* A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group not substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall not be reviewed by the commissioner if the policy is issued outside of this state and if the policy is issued or offered in a state which has reviewed and approved the policy under a statute substantially similar to Iowa Code section 509.1(8).

These rules are intended to implement Iowa Code sections 509.1, 509.6, and 509A.14.

LARGE GROUP HEALTH INSURANCE COVERAGE

191—35.22(509) Purpose. This division of Chapter 35 implements the requirements of Pub.L. 104-191, the Health Insurance Portability and Accountability Act of 1996 and Iowa Code section 509.3 for large group health insurance coverage.

191—35.23(509) Definitions.

"Affiliation period" means a period of time that must expire before health insurance coverage provided by an HMO becomes effective, and during which the HMO is not required to provide benefits.

"Beneficiary" has the meaning given the term under Section 3(8) of the Employee Retirement Income Security Act of 1974 (ERISA), which states, "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit" under the plan.

"Bona fide association" means, with respect to group health insurance coverage offered in Iowa, an association that meets the following conditions:

1. Has been actively in existence for at least five years.
2. Has been formed and maintained in good faith for purposes other than obtaining insurance.
3. Does not condition membership in the association on any health status-related factor relating to an individual including an employee of an employer or a dependent of any employee.
4. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member.
5. Does not make health insurance coverage offered through the association available other than in connection with a member of the association.

"Carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"Commissioner" means the commissioner of insurance.

d. The plan administrator's name, address and telephone number;

e. A telephone number to call for further information if different from above;

f. Either a statement that the person has at least 18 months' creditable coverage without a significant break of coverage or the date any waiting period and creditable coverage began;

g. The date creditable coverage ended or an indication that the coverage is in force.

35.28(4) Family information. Information for families may be combined on one certificate. Any differences in creditable coverages shall be clearly delineated.

35.28(5) Dependent coverage transition rule. A group health plan, carrier, or ODS that does not maintain dependent data is deemed to have satisfied the requirement to issue dependent certificates by naming the employee and specifying that the coverage on the certificate is for dependent coverage.

35.28(6) Delivering certificates. The certificate shall be given to the individual, plan, carrier, or ODS requesting the certificate. The certificates may be sent by first-class mail. When a dependent's last-known address differs from the employee's last-known address, a separate certificate shall be provided to the dependent at the dependent's last-known address. Separate certificates may be mailed together to the same location.

35.28(7) A group health plan, carrier, or ODS shall establish a procedure for individuals to request and receive certificates.

35.28(8) A certificate is not required to be furnished until the group health plan, carrier, or ODS knows or should have known that dependent's coverage terminated.

35.28(9) Demonstrating creditable coverage. An individual has the right to demonstrate creditable coverage, waiting periods, and affiliation periods when the accuracy of the certificate is contested or a certificate is unavailable. A group health plan, carrier, or ODS shall consider information obtained by it or presented on behalf of an individual to determine whether the individual has creditable coverage.

191—35.29(509) Notification requirements.

35.29(1) A group health plan, carrier, or ODS shall provide written notice to the employee and dependents that includes the following:

a. The existence of any preexisting condition exclusions.

b. A determination that the group health plan, carrier, or ODS intends to impose a preexisting condition exclusion and:

(1) The basis for the decision to do so;

(2) The length of time to which the exclusion will apply;

(3) The right of the employee or dependent to appeal a decision to impose a preexisting condition exclusion;

(4) The right of the person to demonstrate creditable coverage including the right of the person to request a certificate from a prior group health plan, carrier, or ODS and a statement that the current group health plan, carrier, or ODS will assist in obtaining the certificate.

c. That the group health plan, carrier, or ODS will use the alternative method of counting creditable coverage.

d. Special enrollment rights when an employee declines coverage for the employee or dependents.

35.29(2) A group health plan, carrier, or ODS shall provide written notice to the employee and dependents of a modification of a prior creditable coverage decision when the group health plan, carrier, or ODS subsequently determines either no or less creditable coverage existed provided that the group health plan, carrier, or ODS acts according to its initial determination until the final determination is made.

191—35.30(509) Mental health benefits.

35.30(1) A carrier or organized delivery system offering mental health benefits shall not set annual or lifetime dollar limits on mental health benefits that are lower than limits for medical and surgical benefits. Health insurance coverage that does not impose an annual or lifetime dollar limit on medical and surgical benefits shall not impose a dollar limit on mental health benefits.

35.30(2) This rule does not apply to benefits for substance abuse or chemical dependency. This rule does not apply to health insurance coverage if costs increase 1 percent or more due to the application of these requirements. The calculation and notification requirements of the 1 percent exemption shall be performed pursuant to 45 CFR Part 146.136.

35.30(3) This rule applies to health insurance coverage for plan years beginning on or after January 1, 1998, and will cease to apply to benefits for services furnished on or after September 30, 2001.

191—35.31(509) Disclosure requirements. All carriers and ODSs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, all carriers and ODSs offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers and ODSs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—35.32(514C) Treatment options.

35.32(1) A carrier shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the carrier's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier.

35.32(2) A carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the carrier that, in the opinion of the provider, jeopardizes patient health or welfare.

191—35.33(514C) Emergency services. Benefits shall be available by the carrier for inpatient and outpatient emergency services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

35.33(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

35.33(2) The term "emergency medical condition" means a medical condition manifesting itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

35.33(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the carrier. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—35.34(514C) Provider access. A carrier subject to this chapter shall allow a female enrollee direct access to obstetrical and gynecological services from network or participating providers. The carrier shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapters 509 and 514C and 1999 Iowa Acts, Senate File 276.

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*See IAB Insurance Division

CHAPTER 40
HEALTH MAINTENANCE ORGANIZATIONS
(Health and Insurance—Joint Rules)

Appeared as Ch 12, July 1974 Supplement
[Prior to 10/22/86, Insurance Department [510]]

PREAMBLE

The following rules developed by the division of insurance govern the organization and regulation of health maintenance organizations pursuant to the authority set forth in Iowa Code chapter 514B.

191—40.1(514B) Definitions.

"Act" when used in these rules shall mean Iowa Code chapter 514B.

"Complaint" means a written communication expressing a grievance concerning a health maintenance organization.

"Dental care" means care by licensed dentists or by appropriate auxiliary dental personnel working under the supervision of a dentist. It includes the necessary diagnostic, treatment, and preventive services required to maintain proper oral health.

"Governing body" means the persons in which the ultimate responsibility and authority for the conduct of the HMO is vested.

"HMO" means health maintenance organization and shall be abbreviated as HMO in these rules.

"Inpatient hospital care" means inpatient hospital care provided through a licensed hospital on a 24-hour basis.

"Outpatient medical services" means outpatient medical services provided within or outside of a hospital. This shall include, but not be limited to, laboratory and diagnostic X-ray with emphasis directed toward primary care.

"Physician care" means care by a licensed physician or by paramedical or other ancillary health personnel under the direction of the licensed physician. It shall be of sufficient type and amount to adequately provide for the contracted services including emergency care, inpatient hospital care, and outpatient medical services.

191—40.2(514B) Application. An application on forms provided by the insurance division accompanied by a filing fee of $100 payable to State Treasurer, State of Iowa, shall be completed by an officer or authorized representative of the health maintenance organization. The application with copies in duplicate shall be verified and shall be accompanied by the information found in Iowa Code section 514B.3(1 to 14). An application shall not be deemed to be filed until all information necessary to properly process said application has been received by the commissioner. See 40.11(514B).

An amendment to the application form shall be filed in the same manner as the application and approved by the commissioner before the change proposed by the amendment is effective.

191—40.3(514B) Inspection of evidence of coverage. An enrollee may, if evidence of coverage is not satisfactory for any reason, return evidence of coverage within ten days of receipt of same and receive full refund of the deposit paid, if any. This right shall not act as a cure for misleading or deceptive advertising or marketing methods, nor may it be exercised if the enrollee utilizes the services of the HMO within the ten-day period.

191—40.4(514B) Governing body and enrollee representation. An HMO shall have a basic written organizational document setting forth its scheme of organization and establishing a governing body appropriate to its form of organization. The governing body shall be responsible for matters of policy and operation.

The HMO shall develop bylaws or guidelines which describe the scope of the health care services the HMO renders to enrollees either directly by its medical staff or dental staff, if dental care is provided, or through arrangements with others outside of the organization. Initial bylaws, guidelines, and revisions thereto shall be submitted to the commissioner of insurance for review and approval.

The bylaws, guidelines, or similar document shall provide for "reasonable representation" on the governing body by enrollees. "Reasonable representation" as used in Iowa Code section 514B.7 shall require not less than 30 percent of the governing board members be enrollees who are not providers or are not associated with a provider. Enrollees shall have the opportunity to nominate said enrollee representatives.

The HMO may provide upon its initial formation that all representatives on the governing board shall be selected by the organizers of the HMO. Such members shall serve until the first annual meeting or election. If there are no enrollee representatives on the initial governing board, they shall be elected at the first annual meeting or election.

The nomination procedures for enrollee representatives should provide for the following to assure an adequate opportunity for participation by enrollees:

40.4(1) An opportunity for adult enrollees to nominate candidates for the governing body.

40.4(2) Notice to all adult enrollees of the nomination and election procedures.

The HMO shall be deemed to have complied with these requirements if it provides notice in its regular newsletter to enrollees of the opportunity to and the procedures for nomination of enrollee representatives.

Nomination procedures may be waived by the commissioner for a period of up to three years from the HMO's commencement of delivery of services to enrollees.

For purposes of this rule, an HMO operated directly by a corporation or corporations subject to Iowa Code chapter 514 and rule 191—34.7(514) shall be deemed to be in compliance with this rule if it is or they are in compliance with Iowa Code section 514.4 and rule 191—34.7(514).

This rule is intended to implement Iowa Code section 514B.7.

191—40.5(514B) Quality of care. Each HMO shall:

40.5(1) Provide primary care physicians' services commensurate with the need of the enrollees, but at a level of not less than that established in the community.

40.5(2) Advise the insurance division annually pursuant to Iowa Code section 514B.12 of the ratio of full-time equivalent physicians, paramedical and ancillary health personnel to enrollees and fee-for-service patients. Changes in the physician ratios shall be immediately reported together with action taken to correct any deficiencies in the ratios.

40.5(3) Provide assurance that all physicians, paramedical and ancillary health personnel engaged in the provisions of health services to enrollees and fee-for-service patients are currently licensed or certified by the appropriate state agency where they are located to practice their respective profession. These personnel shall be no less qualified in their respective profession than the current level of qualification, which is maintained in their community.

191—40.11(514B) Application for certificate of authority. The application for certificate of authority shall be in the following form:

HEALTH MAINTENANCE ORGANIZATION
APPLICATION FOR CERTIFICATE OF AUTHORITY

_____
(Name of Health Maintenance Organization)

Organized as _____
under the laws of the state of _____, hereby makes application to the commissioner of insurance for a certificate of authority to establish and operate a health maintenance organization in compliance with Iowa Code chapter 514B.

Attached hereto and hereby made a part of this application are exhibits bearing numbers corresponding to the following:

1. A copy of the basic organizational document, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all of its amendments.

2. A copy of the bylaws, rules or similar document, regulating the conduct of the internal affairs of the applicant.

3. A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if a corporation and the partners or members if a partnership or association.

3.1 A list of the names and addresses of each owner of 5 percent or more of the health maintenance organization.

4. A copy of any contract made or to be made between any providers and the applicant.

4.1 A copy of any contract made or to be made between the applicant and any person listed in item (3).

4.2 A copy of any contract made or to be made between the applicant and any person for management services.

5. A statement generally describing the health maintenance organization including, but not limited to, a description of its facilities and personnel.

6. A copy of the form of evidence of coverage.

7. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.

8. Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement is attached.

8.1 A copy of any contract made or to be made between the applicant and its reinsurer.

8.2 A copy of any contract made or to be made between the applicant and any person for cash or asset management services.

9. A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.

10. A power of attorney executed by the applicant, if not domiciled in this state, appointing the commissioner, his successors in office and deputies as the true and lawful attorney of the applicant for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served.

11. A statement reasonably describing the geographic area to be served and assessing in detail the economic feasibility of the HMO's projected operation.

12. A description of the complaint procedures to be utilized as required under Iowa Code section 514B.14.

13. A description of the procedures and programs to be implemented to meet the requirements for quality of health care as determined by the commissioner of insurance in consideration, when deemed appropriate, with the director of public health, under Iowa Code section 514B.4.

14. A description of the mechanism by which enrollees shall be allowed to participate in matters of policy and operation as required by Iowa Code section 514B.7.

14.1 A copy of the notice to be given to enrollees of the procedure for nomination and election of members of the governing body.

15. A schedule of the liability and workmen's compensation insurance to be maintained in force by the health maintenance organization.

15.1 Copies of the forms of policies or contracts to be offered to terminated enrollees as provided in 40.10(2).

VERIFICATION

The undersigned deposes and says that deponent has duly executed the attached application dated _____, 19 _____, for and on behalf of _____;
(Name of Applicant)
that deponent is the _____ of such company,
(Title of Officer)
and that deponent is authorized to execute and file such instrument. Deponent further says that deponent is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

Subscribed and sworn to before me by _____on this _____ day of _____, 19 _____.

_____
(Notary Public)

191—40.12(514B) Net worth.

40.12(1) An HMO shall not be authorized to transact business with a net worth less than $1 million.

40.12(2) No HMO incorporated by or organized under the laws of any other state or government shall transact business in this state unless it possesses the net worth required of an HMO organized by the laws of this state and is authorized to do business in this state.

40.12(3) As deemed necessary by the division, each health maintenance organization that is a subsidiary of another person shall file with the division, in a form satisfactory to it, a guarantee of the HMO's obligations issued by the ultimate controlling parent or such other person satisfactory to the division.

40.12(4) Each health maintenance organization shall, at the time of application, pay to the division a one-time, nonrefundable fee of $10,000 to be used by the division to create a special fund solely for the payment of administrative expenses in connection with the solvency of an HMO.

191—40.13(514B) Fidelity bond. A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than $100,000 or such other sum as may be prescribed by the commissioner. All such bonds shall be written with at least a one-year discovery period and if written with less than a three-year discovery period shall contain a provision that no cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of cancellation or termination has been filed with the commissioner unless an earlier date of cancellation or termination is approved by the commissioner.

This rule is intended to implement Iowa Code section 514B.5(1).

191—40.14(514B) Annual report. A health maintenance organization shall annually, on or before the first day of March, file with the commissioner of insurance a report verified by at least two of its principal officers and covering the preceding calendar year.

The report shall be on the form designated by the National Association of Insurance Commissioners (NAIC) as the report form for health maintenance organizations. The report shall be completed using "statutory accounting practices" (SAP), and shall include any other information required under law or rule.

The commissioner of insurance may request additional reports and information from a health maintenance organization as often as is deemed necessary to enable the commissioner to carry out the duties of Iowa Code chapter 514B.

This rule is intended to implement Iowa Code section 514B.12.

191—40.15(514B) Cash or asset management agreements. If an HMO utilizes a cash or asset management arrangement with its parent, affiliate, or any other person, the arrangement shall be written and subject to prior approval by the commissioner. Cash or asset management agreements shall meet the following minimum requirements:

40.15(1) Cash receipts shall be under the direct control of the HMO that generated the receipts. If the system is under the control of the HMO's parent or affiliate, then receipts shall be transferred to the HMO within five working days.

40.15(2) Securities purchased shall be in the name of the HMO generating the funds for the security purchase.

40.15(3) An HMO's investments shall not be pooled with other entities' investments unless there is an agreement which vests an undivided interest in the pooled arrangement to the HMO. Such an agreement shall be subject to prior approval by the commissioner.

40.15(4) An HMO's cash or investments shall not be commingled with the cash or investments of any other person.

40.15(5) Investments made on behalf of an HMO shall be subject to the limitations imposed by Iowa Code sections 511.8 and 514B.15.

40.15(6) The agreement shall provide for prompt notice and verification of investments, establish responsibility for brokerage and other fees and provide for periodic reports on earnings and expenses.

40.15(7) A parent, affiliate, person, and employees thereof providing cash or asset management services shall be bonded and responsible for any physical loss of investments.

191—40.16(514B) Deductibles and coinsurance charges. Deductible and coinsurance charges for health care services for each enrollee shall not exceed 200 percent of the total annual premium payable on behalf of the enrollee.

191—40.17(514B) Reinsurance. Reinsurance contracts and stop-loss agreements entered into by an HMO shall be subject to prior approval and shall meet the following minimum requirements:

40.17(1) Reinsurance contracts and stop-loss agreements shall provide that the commissioner of insurance be given notice of termination by certified mail at least 30 days prior to the effective date of termination of the reinsurance contract or stop-loss agreement.

40.17(2) Retention levels shall be reasonable in light of the HMO's financial condition and potential liabilities.

191—40.18(514B) Provider contracts. An HMO's arrangements for health care services shall be by written contract. Initial provider contracts shall be subject to prior approval. Thereafter, any provider contract deviating from previously submitted or approved contracts shall be submitted to the division within 30 days of execution for informational purposes. In all instances, all provider contracts shall include the following provision:

(Provider), or its assignee or subcontractor, hereby agrees that in no event, including, but not limited to nonpayment by the HMO, HMO insolvency or breach of this agreement, shall (Provider), or its assignee or subcontractor, bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against subscriber/enrollee or persons other than the HMO acting on their behalf for services provided pursuant to this Agreement. This provision shall not prohibit collection of supplemental charges or copayments on HMO's behalf made in accordance with terms of (applicable Agreement) between HMO and subscriber/enrollee.

(Provider), or its assignee or subcontractor, further agrees that (1) this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the HMO subscriber/enrollee and that (2) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between (Provider) and subscriber/enrollee or persons acting on their behalf.

191—40.19(514B) Producers' duties. In order to qualify for solicitation, enrollment, or delivery of a certificate of membership or policy in a health maintenance organization, a producer must comply with the licensing rules set forth in 191—Chapter 10 of the Iowa Administrative Code and in particular submit to an examination to determine the applicant's competence to sell accident and health insurance as described in rule 191—10.7(522), classification 6.

191—40.20(514B) Emergency services. Benefits shall be available by the HMO for inpatient and outpatient emergency services. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since HMOs may not contract with every emergency care provider in an area, HMOs shall make every effort to inform members of participating providers.

40.20(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish such services and are needed to evaluate or stabilize an emergency medical condition.

40.20(2) The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that absence of immediate medical attention to result in one of the following:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child, in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

191—40.21(514B) Reimbursement. Reimbursement to a provider of "emergency services," as defined in 191—40.1(514B), shall not be denied by any health maintenance organization without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the HMO as outlined in rule 40.9(514B). Upon denial of reimbursement for emergency services, the HMO shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—40.22(514B) Health maintenance organization requirements.

40.22(1) A health maintenance organization shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the health maintenance organization's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the health maintenance organization or a person contracting with the health maintenance organization.

40.22(2) A health maintenance organization shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health maintenance organization that, in the opinion of the provider, jeopardizes patient health or welfare.

191—40.23(514B) Disclosure requirements. All HMOs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, an HMO offering a plan that includes a prescription drug formulary shall inform enrollees of the plan, and prospective enrollees of the plan during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All HMOs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—40.24(514B) Provider access. A health maintenance organization shall allow a female enrollee direct access to obstetrical and gynecological services from network or participating providers. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapter 514B and 1999 Iowa Acts, Senate File 276.

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21. For sterilization or reversal of sterilizations, or both;

22. For dental work or treatment except for removal of malignant tumors and cysts or accidental injury (eating and chewing mishaps are not accidental injuries for the purposes of this policy) to natural teeth, if the accident occurs while the person is insured and the treatment is received within 12 months after the accident;

23. For treatment of weak, strained or flat feet, including orthopedic shoes or other supportive devices, or for cutting, removal or treatment of corns, callouses or nails, other than with corrective surgery, or for metabolic or peripheral vascular disease;

24. For eyeglasses or contact lenses and the visual examination for prescribing or fitting eyeglasses or contact lenses (except for aphasic patients and soft lenses or sclera shells intended for use in the treatment of disease or injury);

25. For radial keratotomy, myopic keratomileusis and any surgery which involves corneal tissue for the purpose of altering, modifying or correcting myopia, hyperopia or stigmatic error;

26. For hearing aids and supplies, tinnitus maskers, or examinations for the prescription or fitting of hearing aids;

27. For any treatment leading to or in connection with transsexualism, sex changes or modifications, including but not limited to surgery or the treatment of sexual dysfunction not related to organic disease;

28. For any treatment or regimen, medical or surgical, for the purpose of reducing or controlling the insured's weight or for the treatment of obesity;

29. For conditions related to autistic disease of childhood, hyperkinetic syndromes, learning disabilities, behavioral problems, or for inpatient confinement for environmental change;

30. For services and supplies for and related to fertility testing, treatment of infertility and conception by artificial means, including but not limited to: artificial insemination, in vitro fertilization, ovum or embryo placement or transfer, gamete intra-fallopian tube transfer, or cryogenic or other preservation techniques used in such or similar procedures;

31. For travel whether or not recommended by a physician;

32. For complications or side effects arising from services, procedures, or treatments excluded by this policy;

33. For maternity care of dependent children except for complications of pregnancy which is covered as any other illness;

34. For services to the extent that those services are covered by Medicare;

35. For or related to organ transplants (unless a benefit is specifically provided and then only to the limits provided);

36. For or related to the transplantation of animal or artificial organs or tissues;

37. For the care or treatment of any injury that is intentionally self-inflicted, while sane or insane;

38. For the care or treatment of any injury incurred during the commission of, or an attempt to commit, a felony or any injury or sickness incurred while engaging in an illegal act or occupation or participation in a riot;

39. For lifestyle improvements including smoking cessation, nutrition counseling or physical fitness programs;

40. For the purchase of wigs or cranial prosthesis;

41. For weekend admission charges, except for emergencies and nonscheduled maternity admissions;

42. For orthomolecular therapy including nutrients, vitamins and food supplements;

43. For speech therapy, except to restore speech abilities which were lost due to sickness or injury.

71.14(9) All carriers shall provide benefits in the standard health benefit plan for the cost associated with equipment, supplies, and education for the treatment of diabetes pursuant to Iowa Code section 514C.14.

191—71.15(513B) Methods of counting creditable coverage.

71.15(1) For purposes of reducing any preexisting condition exclusion period, a group health plan, a carrier, or ODS offering group health insurance coverage shall determine the amount of an individual's creditable coverage by using the standard method described in subrule 71.15(2), except that the plan, carrier, or ODS may use the alternative method under subrule 71.15(3) with respect to any or all of the categories of benefits described under paragraph 71.15(3)*"b."*

71.15(2) Under the standard method, a group health plan, a health insurance carrier, and an ODS offering group health insurance coverage shall determine the amount of creditable coverage without regard to the specific benefits included in the coverage.

a. For purposes of reducing the preexisting condition exclusion period, a group health plan, a health insurance carrier, or ODS offering group health insurance coverage shall determine the amount of creditable coverage by counting all the days that the individual has under one or more types of creditable coverage. If on a particular day, an individual has creditable coverage from more than one source, all the creditable coverage on that day is counted as one day. Further, any days in a waiting period for a plan or policy are not creditable coverage under the plan or policy.

b. Days of creditable coverage that occur before a significant break in coverage are not required to be counted.

c. Notwithstanding any other provision of paragraph 71.15(2)*"b,"* for purposes of reducing a preexisting condition exclusion period, a group health plan, a health insurance carrier, and an ODS offering group health insurance coverage may determine the amount of creditable coverage in any other manner that is at least as favorable to the individual as the method set forth in paragraph 71.15(2)*"b."*

71.17(2) A group health plan, carrier, or ODS shall provide written notice to the employee and dependents of the modification of a prior creditable coverage decision when the group health plan, carrier, or ODS subsequently determines either no or less creditable coverage existed provided that the group health plan, carrier, or ODS acts according to its initial determination until the final determination is made.

191—71.18(513B) Special enrollments.

71.18(1) A carrier or organized delivery system shall permit individuals to enroll for coverage under terms of a health benefit plan, without regard to other enrollment dates permitted under the group health plan, if an eligible employee requests enrollment or, if the group health plan makes coverage available to dependents, on behalf of dependent who is eligible but not enrolled under the group health plan, during the special enrollment period, which shall be 30 days following an event described in subrules 71.18(2) and 71.18(3) with respect to the individual for whom enrollment is requested. A carrier or organized delivery system may impose enrollment requirements that are otherwise applicable under terms of the group health plan to individuals requesting immediate enrollment.

71.18(2) An individual, who previously had other coverage for medical care and for whom an eligible employee declined coverage under the group health plan, may be enrolled during a special enrollment period if the individual has lost the other coverage for medical care and:

a. If required by the group health plan, the eligible employee stated in writing when declining the coverage, after being given a notice of the requirement form, and the consequences of failure to submit a written statement that coverage was declined because the individual had coverage for medical care under another group health plan or otherwise; and

b. When enrollment was declined for the individual:

(1) The individual had coverage other than under a COBRA continuation provision and the coverage has been exhausted; or

(2) The individual had coverage other than under a COBRA continuation provision and the coverage has been terminated due to loss of eligibility for the coverage, including loss of coverage as a result of legal separation, divorce, death, termination of employment, reduction in the number of hours of employment and any loss of eligibility after a period that is measured by reference to any of the foregoing, or termination of employer contributions toward the other coverage.

c. For purposes of this subparagraph 71.18(2)*"b"*(2):

(1) Loss of eligibility for the coverages does not include loss of eligibility due to the eligible employee's or dependent's failure to make timely premium payments or termination of coverage for cause such as making a fraudulent claim or intentional misrepresentation of material fact in connection with the group health plan; and

(2) Employer contributions include contributions by any current or former employer of the individual or another person that was contributing to coverage for the individual.

(3) Exhaustion of COBRA continuation coverage means that an individual's COBRA continuation coverage ceases for any reason other than either failure of the individual to pay premiums on a timely basis, or for cause, such as making a fraudulent claim or an intentional misrepresentation of a material fact in connection with the plan. An individual is considered to have exhausted COBRA continuation coverage if the coverage ceases.

71.18(3) If the eligible employee has previously declined enrollment under the group health plan but acquires a dependent through marriage, birth, adoption or placement for adoption, the eligible employee or dependent may be enrolled during the special enrollment period with respect to the individual.

71.18(4) Enrollment of the eligible employee or dependent is effective not later than the first day of the calendar month or, for a newborn or adopted child, on the date of birth, adoption, or placement for adoption.

191—71.19(513B) Disclosure requirements. All carriers and ODSs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any drug formularies. Upon request, a carrier or ODS offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers and ODSs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—71.20(514C) Treatment options.

71.20(1) A carrier shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the carrier's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier.

71.20(2) A carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the carrier that, in the opinion of the provider, jeopardizes patient health or welfare.

191—71.21(514C) Emergency services. Benefits shall be available by the carrier for inpatient and outpatient emergency services. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

71.21(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

71.21(2) The term "emergency medical condition" means a medical condition manifesting itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

71.21(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier or ODS without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—71.22(514C) Provider access. A carrier shall allow a female enrollee direct access to obstetrical or gynecological services from network and participating providers. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapters 513B and 514C and 1999 Iowa Acts, Senate File 276.

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d. A carrier or ODS required to make a filing under 75.5(1)*"b"* shall also make an informational filing with the commissioner of each state in which there are individual health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under 75.5(1)*"b"* and shall include at least the information specified in 75.5(1)*"c"*(1) for the individual health benefit plans in that state.

e. A carrier or ODS shall not transfer or assume the entire insurance obligation or risk of a health benefit plan covering an individual in this state unless it complies with the following provisions:

(1) The carrier or ODS has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in 75.5(1)*"c"* for the health benefit plans covering individuals in this state.

(2) If the assumption of a block of business would result in the assuming carrier or ODS being out of compliance with the limitations related to premium rates contained in Iowa Code section 513C.5, the assuming carrier shall make a filing with the commissioner pursuant to section 513C.5 seeking suspension of the application of section 513C.5.

(3) An assuming carrier or ODS seeking suspension of the application of Iowa Code section 513C.5 shall not complete the assumption of health benefit plans covering individuals unless the commissioner grants the suspension requested pursuant to 75.5(1)*"e"*(2).

(4) Unless a different period is approved by the commissioner, a suspension of the application of Iowa Code section 513C.5 shall, with respect to an assumed block of business, be for no more than 15 months and, with respect to each individual, last only until the anniversary date of such individual's coverage. With respect to an individual this period may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within 3 months of the date of assumption of the block of business.

75.5(2) Except as provided in subrule 75.5(1), a carrier or ODS shall not cede or assume the entire insurance obligation or risk for a health benefit plan, other than reinsurance, unless the carrier cedes to the assuming carrier the entire block of business that includes such health benefit plan, unless otherwise approved by the commissioner.

75.5(3) The commissioner may approve a longer period of transition upon application of a carrier or ODS. The application shall be made within 60 days after the date of assumption of the block of business and shall clearly state the justification for a longer transition period.

75.5(4) Nothing in this rule or in Iowa Code chapter 513C is intended to:

a. Reduce or diminish any legal or contractual obligation or requirements, including any obligation provided in Iowa Code chapters 521 and 521B, of the ceding or assuming carrier or ODS related to the transaction;

b. Authorize a carrier or ODS that is not admitted to transact the business of insurance in this state to offer health benefit plans in this state; or

c. Reduce or diminish the protections related to an assumption reinsurance transaction provided in Iowa Code chapters 521 and 521B or otherwise provided by law.

191—75.6(513C) Restrictions relating to premium rates.

75.6(1) As provided by Iowa Code section 513C.5, each carrier must limit differences in premium due to such factors as experience and duration to the composite effect of 20 percent, 30 percent, and 30 percent. Allocation of cost differences due to experience and duration among the categories outlined in Iowa Code section 513C.5 may be determined by each carrier.

75.6(2) Nothing in this rule shall require rates be filed absent any other statutory requirements.

191—75.7(513C) Availability of coverage.

75.7(1) Except as provided in Iowa Code section 513C.7, the choice between the basic and standard health benefit plans may not be limited, restricted or conditioned upon the risk characteristics of the individuals or their dependents.

75.7(2) Insurers shall not require eligible family members to accept a basic or standard health benefit plan covering all family members. Those family members who qualify for an underwritten plan may be issued separate coverage from those who do not qualify for the underwritten plan but are eligible for guaranteed issue of the basic or standard plan.

75.7(3) Qualifying previous coverage for a newborn shall be the greater of the period or periods of qualifying previous coverage established by either of the newborn's parents prior to the date of birth.

75.7(4) Benefits paid under a basic or standard health benefit plan shall not duplicate benefits paid under any other health insurance coverage. Other coverage means benefits paid for hospital, surgical or other medical care or expenses for a covered person by any of the following:

a. Insurance plan or policy; or
b. Health benefit plan; or
c. Welfare plan; or
d. Prepayment plan; or
e. Hospital service corporation plan or policy; or
f. Medicare;

whether provided on an individual, family, or group basis or through an employer, union or association. If such other coverage is on a provision of service basis, the amount of benefits will be the amount that the services provided would have cost without such other coverage.

191—75.8(513C) Disclosure of information.

75.8(1) General rules. In connection with the offering for sale of a health benefit plan to individuals, each carrier and ODS shall make a reasonable disclosure, as part of its solicitation and sales materials, of the following:

a. The extent to which premium rates for a specified individual are established or adjusted in part based upon the actual or expected variation in claims costs or the actual or expected variation in health conditions of the individual and the individual's dependents, if any.

b. The provisions of such plan concerning the carrier's and ODS's ability to change premium rates and the factors, other than claim experience, which affect changes in premium rates.

c. The provisions of such plan relating to the renewability of policies and contracts.

d. The provisions of such plan relating to the effect of any preexisting condition provision. The expression "preexisting conditions" shall not be used unless appropriately defined in the policy or contract.

e. The availability, upon request, of descriptive information about the benefits and premiums available under individual health benefit plans offered by the carrier and ODS for which the individual is qualified. For purposes of Iowa Code section 513C.7, carriers and ODSs will be permitted to exclude from disclosure of plans those plans within the following categories:

(1) Plans distributed through a separate marketing channel.
(2) Plans offered through a membership association.
(3) Plans offered through a trust in which membership is otherwise limited.
(4) Other plans as reviewed and approved by the commissioner or director.

75.8(2) Information shall be provided under this rule in a manner determined to be understandable by the average individual and shall be accurate and sufficiently comprehensive to reasonably inform individuals of their rights and obligations under the plan.

Nothing in this rule supersedes the requirements for outlines of coverage for individual health insurance policies under IAC 191—36.7(514D).

191—75.9(513C) Standards to ensure fair marketing.

75.9(1) A carrier or ODS shall make available at least one basic and one standard health benefit plan to eligible individuals in this state.

75.9(2) The written information described in this subrule may be provided directly to the individual or delivered through an authorized producer:

20. For screening examinations including X-ray examinations made without film;
21. For sterilization or reversal of sterilizations, or both;
22. For dental work or treatment except for removal of malignant tumors and cysts or accidental injury (eating and chewing mishaps are not accidental injuries for the purposes of this policy) to natural teeth, if the accident occurs while the person is insured and the treatment is received within 12 months after the accident;
23. For treatment of weak, strained or flat feet, including orthopedic shoes or other supportive devices, or for cutting, removal or treatment of corns, calluses or nails, other than with corrective surgery, or for metabolic or peripheral vascular disease;
24. For eyeglasses or contact lenses and the visual examination for prescribing or fitting eyeglasses or contact lenses (except for aphasic patients and soft lenses or sclera shells intended for use in the treatment of disease or injury);
25. For radial keratotomy, myopic keratomileusis and any surgery which involves corneal tissue for the purpose of altering, modifying or correcting myopia, hyperopia or stigmatic error;
26. For hearing aids and supplies, tinnitus maskers, or examinations for the prescription or fitting of hearing aids;
27. For any treatment leading to or in connection with transsexualism, sex changes or modifications, including but not limited to surgery or the treatment of sexual dysfunction not related to organic disease;
28. For any treatment or regimen, medical or surgical, for the purpose of reducing or controlling the insured's weight or for the treatment of obesity;
29. For conditions related to autistic disease of childhood, hyperkinetic syndromes, learning disabilities, behavioral problems, or for inpatient confinement for environmental change;
30. For services and supplies for and related to fertility testing, treatment of infertility and conception by artificial means, including but not limited to: artificial insemination, in vitro fertilization, ovum or embryo placement or transfer, gamete intrafallopian tube transfer, or cryogenic or other preservation techniques used in such or similar procedures;
31. For travel whether or not recommended by a physician;
32. For complications or side effects arising from services, procedures, or treatments excluded by this policy;
33. For maternity care except for complications of pregnancy which is covered as any other illness;
34. For services to the extent that those services are covered by Medicare;
35. For or related to organ transplants (unless a benefit is specifically provided and then only to the limits provided);
36. For or related to the transplantation of animal or artificial organs or tissues;
37. For the care or treatment of any injury that is intentionally self-inflicted, while sane or insane;
38. For the care or treatment of any injury incurred during the commission of, or an attempt to commit, a felony or any injury or sickness incurred while engaging in an illegal act or occupation or participation in a riot;
39. For lifestyle improvements including smoking cessation, nutrition counseling or physical fitness programs;
40. For the purchase of wigs or cranial prosthesis;
41. For weekend admission charges, except for emergencies;
42. For orthomolecular therapy including nutrients, vitamins and food supplements;
43. For speech therapy, except to restore speech abilities which were lost due to sickness or injury.

191—75.11(513C) Maternity benefit rider. Every individual insurance carrier and ODS shall offer an optional maternity benefit rider for the basic and standard health benefit plans providing benefits, as any other illness, for a pregnancy and delivery without complications with a 12-month waiting period. Credit toward meeting the waiting period shall be given for prior coverage of a pregnancy without complications provided there was no more than a 63-day break in coverage. A maternity rider offered under this rule shall only be offered when the basic or standard plan is initially purchased. Premiums for the rider shall be calculated based upon generally accepted actuarial principles and shall not be subject to the premium restrictions in Iowa Code subsection 513C.10(6). The earned premiums and paid losses associated with the rider shall not be considered by the Iowa Individual Health Benefit Reinsurance Association for purposes of Iowa Code section 513C.10.

191—75.12(513C) Disclosure requirements. All carriers and ODSs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any drug formularies. Upon request, a carrier or ODS offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers and ODSs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—75.13(514C) Treatment options.

75.13(1) A carrier shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the carrier's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier.

75.13(2) A carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the carrier that, in the opinion of the provider, jeopardizes patient health or welfare.

191—75.14(514C) Emergency services. Benefits shall be available by the carrier for inpatient and outpatient emergency services. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

75.14(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

75.14(2) The term "emergency medical condition" means a medical condition manifesting itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

75.14(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the carrier. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and provider that they may register a complaint with the commissioner of insurance.

191—75.15(514C) Provider access. A carrier shall allow a female enrollee direct access to obstetrical or gynecological services from network and participating providers. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

191—75.16(514C) Diabetic coverage. All carriers shall provide benefits in the standard health benefit plan for the cost associated with equipment, supplies, and education for the treatment of diabetes pursuant to Iowa Code section 514C.14.

These rules are intended to implement Iowa Code chapters 513C and 514C and 1997 Iowa Acts, House File 701; 1995 Iowa Acts, chapter 204, section 14; 1996 Iowa Acts, chapter 1219, section 52; and 1999 Iowa Acts, Senate File 276.

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SAVINGS AND LOAN DIVISION[197]

Created within the Department of Commerce by 1986 Iowa Acts, chapter 1245, section 702.
Prior to 3/25/87, see Auditor of State[130] Chs 2 to 13.

CHAPTER 15
PETITIONS FOR RULE MAKING

197—15.1(17A) Petition for rule making. Any person may file a petition for rule making with the division at Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
SAVINGS AND LOAN DIVISION

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

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 15.4(17A).

15.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

15.1(2) The division may deny a petition because it does not substantially conform to the required form.

197—15.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

197—15.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

197—15.4(17A) Division consideration.

15.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the division by any person.

15.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rulemaking proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

15.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.

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

[Filed 9/2/99, Notice 4/21/99—published 9/22/99, effective 10/27/99]

CHAPTER 16
DECLARATORY ORDERS

197—16.1(17A) Petition for declaratory order. Any person may file a petition with the savings and loan division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the savings and loan division at Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
SAVINGS AND LOAN DIVISION

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 16.7(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.

197—16.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to 16.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

197—16.3(17A) Intervention.

16.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 21 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

16.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the savings and loan division.

16.3(3) A petition for intervention shall be filed at Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
SAVINGS AND LOAN DIVISION

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

The petition for intervention must provide the following information:

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

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

197—16.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The savings and loan division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

197—16.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

197—16.6(17A) Service and filing of petitions and other papers.

16.6(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.

16.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

16.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule on contested cases 197—17.12(17A).

197—16.7(17A) Consideration. Upon request by petitioner, the savings and loan division must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the savings and loan division to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the savings and loan division by any person.

197—16.8(17A) Action on petition.

16.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the superintendent or the superintendent's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

16.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule on contested cases 197—17.12(17A).

197—16.9(17A) Refusal to issue order.

16.9(1) The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The savings and loan division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other division or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the savings and loan division to determine whether a statute is unconstitutional on its face.

16.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

16.9(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.

197—16.10(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.

197—16.11(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.

197—16.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the savings and loan division, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final division action on the petition.

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

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CHAPTER 17
CONTESTED CASES

197—17.1(17A) Scope and applicability. Except when inconsistent with Iowa Code chapter 534, this chapter applies to contested case proceedings conducted by the savings and loan division.

197—17.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the superintendent of savings and loans, the superintendent's designee or, under certain circumstances, the administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the superintendent did not preside.

197—17.3(17A) Time requirements.

17.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

17.3(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.

197—17.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the division action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific division action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

197—17.5(17A) Notice of hearing.

17.5(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.

17.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

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

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

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., superintendent, superintendent's designee, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 17.6(17A), that the presiding officer be an administrative law judge.

197—17.6(17A) Presiding officer.

17.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the division head or members of the division.

17.6(2) The superintendent may deny the request only upon a finding that one or more of the following apply:

a. Neither the division nor any officer of the division under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule 17.6(4) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

17.6(3) The superintendent shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 17.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

17.6(4) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the division: The administrative law judge shall have had at least five years' experience as an executive officer in a savings and loan or in the regulation or examination of financial institutions.

17.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the superintendent. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

17.6(6) Unless otherwise provided by law, the superintendent, when reviewing a proposed decision upon intradivision appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

197—17.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

197—17.8(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.

197—17.9(17A) Disqualification.

17.9(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.

17.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other division functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 17.9(3) and 17.23(9).

17.9(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.

17.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 17.9(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 17.25(17A) and seek a stay under rule 17.29(17A).

197—17.10(17A) Consolidation—severance.

17.10(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.

17.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

197—17.11(17A) Pleadings.

17.11(1) *Petition.* A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

a. The persons or entities on whose behalf the petition is filed;

b. The particular provisions of statutes and rules involved;

c. The relief demanded and the facts and law relied upon for such relief; and

d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

17.11(2) *Answer.* An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

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

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

17.11(3) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

197—17.12(17A) Service and filing of pleadings and other papers.

17.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the division, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

17.12(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.

17.12(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 Savings and Loan Division, Attn: Contested Case Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the savings and loan division.

17.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the savings and loan division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

17.12(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 Savings and Loan Division, Attn: Contested Case Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, 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)

197—17.13(17A) Discovery.

17.13(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.

17.13(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 17.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

17.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

197—17.14(17A) Subpoenas.

17.14(1) *Issuance.*

a. A division subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

17.14(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.

197—17.15(17A) Motions.

17.15(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.

17.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

17.15(3) The presiding officer may schedule oral argument on any motion.

17.15(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the division or an order of the presiding officer.

197—17.16(17A) Prehearing conference.

17.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

17.16(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.

17.16(3) In addition to the requirements of subrule 17.16(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.

17.16(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.

197—17.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

17.17(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and

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

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

17.17(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.

197—17.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with division rules. Unless otherwise provided, a withdrawal shall be with prejudice.

197—17.19(17A) Intervention.

17.19(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.

17.19(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.

17.19(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.

17.19(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.

197—17.20(17A) Hearing procedures.

17.20(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.

17.20(2) All objections shall be timely made and stated on the record.

17.20(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.

17.20(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.

17.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

17.20(6) Witnesses may be sequestered during the hearing.

17.20(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.

197—17.21(17A) Evidence.

17.21(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.

17.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

17.21(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.

17.21(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.

17.21(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.

17.21(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.

197—17.22(17A) Default.

17.22(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.

17.22(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.

17.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final division action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 17.27(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.

17.22(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.

17.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

17.22(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.

17.22(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 17.25(17A).

17.22(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.

17.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

17.22(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 17.29(17A).

197—17.23(17A) Ex parte communication.

17.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 17.9(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.

17.23(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.

17.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

17.23(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 17.12(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.

17.23(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.

17.23(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 17.23(1).

17.23(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 17.17(17A).

17.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

17.23(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.

17.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

197—17.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

197—17.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the superintendent may review an interlocutory order of the presiding officer. In determining whether to do so, the superintendent shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the division at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

197—17.26(17A) Final decision.

17.26(1) When the superintendent presides over the reception of evidence at the hearing, the superintendent's decision is a final decision.

17.26(2) When the superintendent does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division without further proceedings unless there is an appeal to, or review on motion of, the superintendent within the time provided in rule 17.27(17A).

197—17.27(17A) Appeals and review.

17.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the superintendent within 30 days after issuance of the proposed decision.

17.27(2) *Review.* The superintendent may initiate review of a proposed decision on the superintendent's own motion at any time within 30 days following the issuance of such a decision.

17.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the savings and loan division. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

17.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The superintendent may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

17.27(5) *Scheduling.* The division shall issue a schedule for consideration of the appeal.

17.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The superintendent may resolve the appeal on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

197—17.28(17A) Applications for rehearing.

17.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

17.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 17.27(4), the applicant requests an opportunity to submit additional evidence.

17.28(3) *Time of filing.* The application shall be filed with the savings and loan division within 20 days after issuance of the final decision.

17.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the savings and loan division shall serve copies on all parties.

17.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the division grants the application within 20 days after its filing.

197—17.29(17A) Stays of division actions.

17.29(1) *When available.*

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

b. Any party to a contested case proceeding may petition the savings and loan division for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

17.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or superintendent shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

17.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the division or any other party.

197—17.30(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.

197—17.31(17A) Emergency adjudicative proceedings.

17.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the superintendent may issue a written order in compliance with 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 superintendent by emergency adjudicative order. Before issuing an emergency adjudicative order, the superintendent shall consider factors including, but not limited to, the following:

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

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

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

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

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

17.31(2) *Issuance of order.*

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

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

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the division;

(3) Certified mail to the last address on file with the division;

(4) First-class mail to the last address on file with the division; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

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

17.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

17.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

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

[Filed 9/2/99, Notice 4/21/99—published 9/22/99, effective 10/27/99]

UTILITIES DIVISION[199]

Former Commerce Commission[250] renamed Utilities Division[199]
under the "umbrella" of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

CHAPTER 4
DECLARATORY ORDERS
[Prior to 10/8/86, see Commerce Commission[250]]

199—4.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the utilities board, at 350 Maple Street, Des Moines, Iowa 50319-0069. A petition is deemed filed when it is received by that office. The utilities board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

STATE OF IOWA
BEFORE THE IOWA STATE UTILITIES BOARD

IN RE: THE PETITION OF (insert petitioner's name) FOR A DECLARATORY ORDER ON (insert rule number, statute, etc., for which interpretation is sought).	}	DOCKET NO.___ (completed by board) PETITION FOR DECLARATORY ORDER

COMES NOW (insert name of petitioner) and requests a declaratory order on (state rule number, statute, order, decision, or other written statement of law or policy of which an interpretation is sought), and in support petitioner states:

(The petition shall then set forth in separately numbered statements:)

1. A clear and concise statement of all relevant facts on which the ruling is requested.
2. A citation to and the relevant language of the specific statutes, rules, policies, decisions, or orders, the applicability of which has been 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 as provided for by rule 4.7(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.]

WHEREFORE, (insert petitioner's name) prays that the board issue a declaratory order on (insert proposed subject of the requested order).

Respectfully submitted,

_____
(Signature of petitioner or representative)
(Typed or printed name of signer)
(Address and telephone number)

199—4.2(17A) Notice of petition. Within five days after receipt of a petition for a declaratory order, the utilities board shall give notice to all persons not served by the petitioner pursuant to rule 4.6(17A) to whom notice is required by any provision of law. The utilities board may also give notice to any other persons.

199—4.3(17A) Intervention.

4.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 14 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

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

4.3(3) A petition for intervention shall be filed at 350 Maple Street, Des Moines, Iowa 50319-0069. Such a petition shall be deemed filed when it is received by that office. The utilities board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

STATE OF IOWA
BEFORE THE IOWA STATE UTILITIES BOARD

IN RE: THE PETITION OF (insert petitioner's name) FOR A DECLARATORY ORDER ON (insert rule number, statute, etc., for which interpretation is sought).	}	DOCKET NO.___ (insert docket number) PETITION FOR INTERVENTION

COMES NOW (insert name of petitioner) and requests intervention in this matter and in support petitioner states:

(The petition shall then set forth in separately numbered statements:)

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 another 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 other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition.
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 concerning the petition should be directed.]

WHEREFORE, (insert intervenor's name) prays that the board grant it intervention and issue a declaratory order on (insert proposed subject of the requested order).

Respectfully submitted,

_____
(Signature of intervenor or representative)
(Typed or printed name of signer)
(Address and telephone number)

199—4.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The utilities board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

199—4.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

199—4.6(17A) Service and filing of petitions and other papers.

4.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on any persons who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law, simultaneously with their filing. The party filing a document is responsible for service on all parties and other required persons.

4.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers filed in a proceeding for a declaratory order shall be filed with the Executive Secretary, 350 Maple Street, Des Moines, Iowa 50319-0069. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the utilities board.

4.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 199—subrule 7.6(1).

199—4.7(17A) Agency consideration. Upon request by petitioner, the utilities board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the utilities board, a member of the utilities board, or a member of the staff of the utilities board to discuss the questions raised. The utilities board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the utilities board by any person.

199—4.8(17A) Action on petition. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the utilities board or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

199—4.9(17A) Refusal to issue order.

4.9(1) The utilities board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all of the questions raised for the following reasons:

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

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

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

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

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

4.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

199—4.10(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 the 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 conclusions.

A declaratory order is effective on the date of issuance.

199—4.11(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.

199—4.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the utilities board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the utilities board. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13, and Iowa Code section 476.1.

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[Published 6/17/98 to update name and address of board]
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IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]
[Prior to 4/3/91, Iowa Finance Authority[524]]

CHAPTER 7
CONTESTED CASES

CHAPTER 8
PRIVATE ACTIVITY BOND ALLOCATION

CHAPTER 9
TITLE GUARANTY DIVISION

CHAPTER 10
MORTGAGE CREDIT CERTIFICATES

CHAPTER 11
Reserved

CHAPTER 12
LOW-INCOME HOUSING CREDIT

CHAPTER 1
GENERAL

265—1.1(16) Description of Iowa finance authority organization. The Iowa finance authority consists of nine members, appointed by the governor and confirmed by two-thirds of the members of the senate. A chairperson, vice-chairperson and treasurer are elected by the membership. Authority staff consists of an executive director, also appointed by the governor and confirmed by two-thirds of the members of the senate, and additional staff as approved by the authority.

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

265—1.2(16) General course and method of operations. Regular meetings of the authority shall be held on the first Wednesday of each month at 9 a.m. at 100 East Grand Avenue, Suite 250, Des Moines, Iowa, unless another time and place of meeting is designated by the authority. If the meeting date coincides with a legal holiday, it shall be held on the next succeeding business day. The purposes of such meetings shall be to review progress in implementation and administration of authority programs, to consider and act upon proposals for authority assistance, to establish policy as needed, and take other actions as necessary and appropriate.

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

265—1.3(16) Location where public may submit requests for assistance or obtain information. Requests for assistance or information should be directed to Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309, telephone (515)281-4058. Requests may be made personally, by phone, mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility of the authority at other times will be provided as needed.

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

265—1.4(16) Petition to promulgate, amend or repeal a rule. Rescinded IAB 9/22/99, effective 9/3/99.

265—1.5(16) Request for oral presentation concerning intended rule making. Rescinded IAB 9/22/99, effective 9/3/99.

265—1.6(16) Declaratory rulings. Rescinded IAB 9/22/99, effective 9/3/99.

265—1.7(16) Procedure for informal settlements in contested cases. Rescinded IAB 9/22/99, effective 9/3/99.

265—1.8(16) Operational definitions.

1.8(1) *Adjusted income.* The gross annual income from all sources and before taxes or withholding of all members of a family living in a housing unit, after deducting the following:

a. Ten percent of combined gross annual income.

b. The income of any family member (other than the head of household or spouse) who is under 18 years of age.

c. The first $300 of the income of a secondary wage earner who is the spouse of the head of the household.

d. Three hundred dollars for each dependent member of the family residing in the household (other than the head of the household or spouse) who is under 18 years of age or older but has no income.

e. Unusual income, as determined by the authority.

f. Extraordinary medical payments, as determined by the authority.

g. Job related child care expenses.

1.8(2) *Administrative agent.* A business enterprise which has as one of its principal purposes the origination and servicing of loans secured by real estate mortgages. Such origination and servicing must be part of the administrative agent's normal course of business. Each administrative agent must demonstrate a capacity to originate and service loans as an approved mortgagee of the Federal Housing Administration (FHA) and Veterans Administration (VA).

1.8(3) *Area.* A county, group of counties or a standard metropolitan statistical area which is acceptable to the authority for the purpose of establishing median income.

1.8(4) *Displaced family.* A family who is displaced by governmental action or as a result of a disaster as proclaimed by the governor.

1.8(5) *Elderly families* means families of low or moderate income where the head of the household or spouse is at least 62 years of age or older, or the surviving member of any such tenant family.

1.8(6) *Existing housing.* A dwelling unit which has been occupied or available for occupancy for more than 18 months from the date of completion of construction.

1.8(7) *Family.*

a. Any group related by birth, marriage or adoption and residing as a single family housekeeping unit.

b. An individual person who is 62 years of age, or disabled or handicapped, or living with another person who is essential to such individual's care or well-being.

c. A single individual.

1.8(8) *Family with one or more persons handicapped or disabled.* A family which includes or consists of one or more persons handicapped or disabled residing with such family.

1.8(9) *Income adjustments necessary due to unusual prevailing conditions in the area.* The authority may establish adjusted income ceilings higher or lower than the median for the area, on the basis of findings that such variations are reasonable and necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors which, in the judgment of the authority, are relevant to income available for housing costs.

1.8(10) *Iowa homesteading program.* A housing rehabilitation program so designated by the authority.

1.8(11) *Low or moderate income family.*

a. A family who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

b. The authority shall by rule which may be adopted without notice determine the maximum permissible adjusted income separately for each series or issue of bonds prior to or at the time the bonds are issued. The authority may by rule after notice revise maximums from time to time, and may revise the maximum for any one series or issue of bonds independently from the maximums for any other series or issue of bonds.

Pursuant to Iowa Code section 17A.4, subsection 2, the authority has determined that it would be impracticable or contrary to the public interest for the initial determinations to be made after giving notice of its intended action in accordance with section 17A.4, subsection 1, because in most cases the authority will issue bonds in 30 to 45 days after making a determination. Giving notice of its intended action would slow down the issuance of bonds by from two to four weeks, and interest rates could rise in the period of delay necessitated by the rule-making procedures to the point that bonds could not be sold.

The result would be that Iowa residents would be unable to receive the benefits of mortgaging financing from the sale of tax-exempt bonds.

Furthermore, the notice is unnecessary as the determination by the authority will be based on standards that are widely known in the mortgage credit underwriting field. As the discretion of the authority in initially setting the maximum permissible adjusted income is quite restricted, notice is not necessary before adopting the initial limit.

c. Rescinded IAB 4/3/91, effective 5/8/91.

d. Notwithstanding anything in these rules to the contrary, "low or moderate income family" includes families purchasing or renting qualified residential housing as defined in Iowa Code chapter 16.

1.8(12) *Lower income family.* A family whose adjusted income does not exceed 80 percent of the median income for the area.

1.8(13) *Median income.* An estimate, acceptable to the authority, of the annual family income which occupies a level between the highest and lowest incomes for an area.

1.8(14) *Multifamily housing.* A residential structure which is designed to include greater than four single-family dwelling units.

1.8(15) *Newly built housing.* A dwelling unit which is under construction or has been occupied or available for occupancy for 18 months or less, from date of completion of construction.

1.8(16) *Single-family housing.* A residential structure which is designed to include one to four single-family dwelling units.

1.8(17) *Temporary loan.* A short-term financial obligation secured by collateral acceptable to the authority.

1.8(18) *Very low income family.* A family whose adjusted income does not exceed 50 percent of the median income for the area.

This rule is intended to implement Iowa Code sections 16.1, 16.5, 16.14 and 16.17.

265—1.9(16) Local contributing effort. The authority shall consider the contribution of any of the following items in determining whether the local contributing effort has been fulfilled:

1. Payment of governmental funds by a political subdivision or governmental entity, or of private funds by a private entity. Evidence of payment and authority to provide same shall be furnished upon request of the authority.
2. Real property which may be vacant or improved property, suitable, in the judgment of the authority, to the proposed housing project. Liens and encumbrances, if any, shall be disclosed to satisfaction of the authority.
3. Personal property which may include appliances, furnishings, property maintenance tools, remodeling material to be purchased subsequent to project approval, and any other personal property, which in the judgment of the authority, is of relevance to the proposed housing project.

The authority may consider any type of proposed local contributing effort, in addition to or other than the above. Proposals which, in the judgment of the authority are truly innovative, will receive priority.

Local contributing efforts may be combined by type or source.

For the purpose of the rent supplement program provided in Iowa Code chapter 16, the local contributing effort shall be as described in paragraph "1," and shall be provided on a one-to-one matching basis.

In the case where all or part of the costs of a housing project is to be funded from proceeds of the sale of authority notes or bonds, moneys paid to the authority by participating mortgage lenders may, to the extent such payments exceed the payments due from the authority to its note and bond holders, be considered satisfactory fulfillment of the local contributing effort.

This rule is intended to implement Iowa Code section 16.4(3).

265—1.10(16) Forms. The executive director shall prepare and, as needed, revise and amend, with approval of the authority, such forms as necessary for administration of authority programs. The number and type of forms shall be sufficient to safeguard the interests of the authority.

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

This rule is intended to implement Iowa Code sections 17A.3(1)*"b"* and 16.7(2).

265—1.11(16) Waiver. The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with any housing development or housing unit with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with the Act.

This rule is intended to implement Iowa Code sections 16.4(4); 16.5(15); 16.12(1); 16.15(2)*"a,"* (2)*"c."*

265—1.12(16) Public record. Any result, finding, conclusion, report, publication, document, program or housing project that is prepared with financial assistance under the innovative housing grant or loan program shall be a matter of public record.

This rule is intended to implement Iowa Code section 16.5(15).

265—1.13(16) Tandem of programs. Prospective sponsors and applicants may request authority assistance in form of specific combinations or programs authorized under the Act. To the extent of available staff resources, the executive director may provide staff assistance to sponsors and applicants to determine workable combinations of programs appropriate to the purposes identified.

Authority processing of a tandem of programs shall follow a composite of the statutory and administrative requirements for all programs in the proposed tandem. The composite shall be developed by the sponsor or developer to provide for development and administration of a tandem program appropriate to the purposes identified, and free of duplication or conflict with these rules or the Act.

This rule is intended to implement Iowa Code section 16.11.

265—1.14(16) Severability. If any word, phrase, sentence, paragraph, section or part of these rules is finally adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of these rules.

This rule is intended to implement Iowa Code section 4.12.

265—1.15 Name change. Rescinded IAB 4/3/91, effective 5/8/91.

265—1.16(16) Quorum. Five members of the board constitute a quorum. A majority of a quorum is necessary for any substantive action taken by the authority. A quorum may include any member who has a conflict of interest and a statement of a conflict of interest shall be conclusive for this purpose. Any member who has a conflict of interest shall not defeat the quorum and shall not be eligible to vote on the matter in conflict. Any vote by a member with a conflict shall be excluded.

This rule is intended to implement Iowa Code section 16.2.

[Filed 5/11/77, Notice 4/6/77—published 6/1/77, effective 7/6/77]
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[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]

CHAPTER 2
LOAN PROGRAMS
GENERAL PROVISIONS

265—2.1(16) Administrative agents. The authority may contract with an administrative agent or agents to provide origination and servicing of mortgage and temporary loans on behalf of the authority, and to provide a level of services on behalf of the authority as it would customarily provide on mortgage or temporary loans made of its own account.

This rule is intended to implement Iowa Code sections 16.5(5), 16.5(14), 16.12(3).

TERMS AND CONDITIONS

265—2.2(16) Interest and fees. The authority may establish fees for its services and shall establish interest on all loans. Such fees and interest shall be based on its estimate of interest cost on its bonds and notes, administrative costs, and reserve requirements.

This rule is intended to implement Iowa Code sections 16.12(4), 16.14(4), 16.5(15).

265—2.3 Amortization. Rescinded IAB 4/3/91, effective 5/8/91.

265—2.4(16) Loan conditions. The loan to value ratio, maximum loan amount, amortization period, repayment, prepayment, assumption, and assignment terms of a permanent mortgage loan shall be determined by the authority. The terms of a temporary loan, repayment thereof and of partial payment on principal thereof and partial release of security therefor upon the sale of individual housing units (when appropriate) shall also be determined by the authority. All loan conditions shall be stated in a certificate of approval issued by or on behalf of the authority.

This rule is intended to implement Iowa Code sections 16.5(9), 16.12(4), 16.18 and 16.18(2).

265—2.5(16) Security for loans. The authority may take security for any loan. The form of such security may include but not be limited to one or more of the following:

1. Promissory note.
2. First real estate mortgage.
3. Assignment of option.
4. Assignment of lease.
5. Lien on personal property.

This rule is intended to implement Iowa Code section 16.5(15).

265—2.6(16) Types of loans. The authority may make permanent mortgage loans to eligible applicants for rehabilitated, newly built or existing housing for eligible occupants. The authority may make temporary loans as follows:

1. For eligible costs associated with development activities set forth in the Iowa Code chapter 16,
2. For eligible costs associated with development of housing which, in the judgment of the authority, deals innovatively with the housing problems of eligible recipients.

This rule is intended to implement Iowa Code sections 16.12, 16.14, 16.17(3), 16.18(2), 16.20 and 16.21.

265—2.7(16) Delinquency and foreclosure. Before the ninetieth day following the due date of the earliest unpaid installment of an authority mortgage loan, the administrative agent shall recommend either foreclosure or other appropriate servicing action based on the particular circumstances of each mortgage. The authority, upon determination that no other course of action will cure the delinquency, may direct the administrative agent to promptly initiate foreclosure proceedings.

This rule is intended to implement Iowa Code section 16.4(1).

265—2.8(16) Application processing. Procedures, instructions and guidelines for receipt and processing of applications for authority mortgage loans and temporary loans, and other actions necessary or desirable for implementation and administration of the authority's programs may be established and modified from time to time by the executive director, with the approval thereof by the authority, at all times consistent with the Act and these rules.

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

265—2.9(16) Mortgage purchase or loans to lenders for existing, newly built single-family or multifamily housing—general information. For the purpose of providing permanent mortgage loans for purchase or refinance of existing or newly built single-family or multifamily housing, the authority may provide loan funds to a mortgage lender either by a loan to such lender, or by authority purchase, or advance commitment to purchase a mortgage from a mortgage lender.

2.9(1) *Eligible recipients.* Families who are of low and moderate income.

2.9(2) *Applicability to authority programs.* The authority may, by means of a loan to a mortgage lender, or purchase of a mortgage from a mortgage lender, provide permanent mortgage loans for special needs housing, area preservation, or refinance of Iowa homesteading loans.

2.9(3) *Application procedure for mortgage lenders.* Specific instructions concerning application procedures will be contained in the authority's processing procedures, instructions and guidelines promulgated pursuant to 2.8(16).

2.9(4) *Allocation of bond proceeds among mortgage lenders.* The authority may allocate bond proceeds in principal amounts and at rates of interest among mortgage lenders on the basis of the total amount of funds available, the amount of funds and interest specified in the individual request of each mortgage lender, and the ability in the judgment of the authority, of each mortgage lender to fully utilize the funds for the purposes intended.

2.9(5) *Discount of authority loans.* In order to attain consistency between interest on authority obligations and on authority loans to lenders or mortgages purchased, the authority may, by means of discount of loan principal or mortgage purchase price, adjust the effective yield of such loans or mortgages purchased.

2.9(6) *Procedures for commitment and disbursement by mortgage lenders with respect to new mortgage loans as a result of an authority loan or mortgage purchase.* Specific instructions concerning procedures for commitment and disbursement by mortgage lenders will be contained in the authority's processing procedures, instructions and guidelines promulgated pursuant to 2.8(16).

This rule is intended to implement Iowa Code sections 16.20 to 16.22.

265—2.10(16) Assumption of mortgages. Where such permission is required or contemplated by the mortgage documents, the Iowa finance authority will grant written permission for a subsequent buyer of a home financed by an IFA mortgage to assume the outstanding mortgage loan if all of the conditions established in these rules are met.

2.10(1) *Eligible assumptions.* The buyer or buyers meet all of the requirements of an eligible mortgagor under IFA guidelines relating to mortgages issued under a particular series of bonds except that no income restrictions shall apply.

2.10(2) *Rate of prepayments.* The prepayments received by the Iowa finance authority for a given series of mortgages must equal or exceed the rate of prepayments that was anticipated in structuring the principal repayment dates and amounts for that series of bonds.

This rule is intended to implement Iowa Code sections 16.22 and 16.38.

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CHAPTER 7
CONTESTED CASES

265—7.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the authority.

265—7.2(17A) Definitions. Except where otherwise specifically defined by law:

"Authority" means the Iowa finance authority, as designated in Iowa Code chapter 220.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Executive director" means the executive director of the authority or an authorized representative of the executive director.

"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 board of the authority.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the entire board of the authority did not preside.

265—7.3(17A) Time requirements.

7.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

265—7.4(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 from the authority 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 authority action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific authority 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.

265—7.5(17A) Notice of hearing.

7.5(1) *Delivery.* Delivery of the notice of hearing to the person requesting a contested case 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.

7.5(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 authority 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 authority or the state and of parties' counsel where known;

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

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the board of the authority, members of the authority's board, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1) and rule 7.6(17A), that the presiding officer be an administrative law judge.

265—7.6(17A) Presiding officer.

7.6(1) In each contested case in which Iowa Code chapter 17A requires an evidentiary hearing, the chairperson of the authority will determine whether the hearing shall be held before the authority, one or more members of the authority's board, or an administrative law judge. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the authority's board or members of the authority's board.

7.6(2) The executive director may deny the request only upon a finding that one or more of the following apply:

a. Neither the authority nor any officer of the authority under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interauthority appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

7.6(3) The executive director shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 7.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

7.6(4) An administrative law judge assigned to act as presiding officer in any of the authority's cases shall have the following technical expertness unless waived by the authority.

7.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board of the authority. A party must seek any available intra-authority appeal in order to exhaust adequate administrative remedies.

7.6(6) Unless otherwise provided by law, members of the authority's board, when reviewing a proposed decision upon intra-authority appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

265—7.7(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 authority in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

265—7.8(17A) Telephone or video proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings or interactive video proceedings, including the hearing for the contested case proceeding, may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or an interactive video hearing may be assessed equally to each party.

265—7.9(17A) Disqualification.

7.9(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.

7.9(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 authority 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 9, and subrules 7.9(3) and 7.23(9).

7.9(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.

7.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.9(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 7.25(17A) and seek a stay under rule 7.29(17A).

265—7.10(17A) Consolidation—severance.

7.10(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.

7.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

265—7.11(17A) Pleadings.

7.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

7.11(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.

7.11(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.

7.11(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.

265—7.12(17A) Service and filing of pleadings and other papers.

7.12(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 authority, 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.

7.12(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.

7.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Executive Director, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

7.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309, 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.

7.12(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 (authority 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)

265—7.13(17A) Discovery.

7.13(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.

7.13(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 7.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

7.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

265—7.14(17A) Subpoenas.

7.14(1) *Issuance.*

a. An authority 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.

7.14(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.

265—7.15(17A) Motions.

7.15(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.

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

7.15(3) The presiding officer may schedule oral argument on any motion.

7.15(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 authority or an order of the presiding officer.

7.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 7.28(17A) and appeal pursuant to rule 7.27(17A).

265—7.16(17A) Prehearing conference.

7.16(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 or on behalf of the authority to all parties. For good cause the presiding officer may permit variances from this rule.

7.16(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.

7.16(3) In addition to the requirements of subrule 7.16(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.

7.16(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.

265—7.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

7.17(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 authority may waive notice of such requests for a particular case or an entire class of cases.

7.17(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.

265—7.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with authority rules. Unless otherwise provided, a withdrawal shall be with prejudice.

265—7.19(17A) Intervention.

7.19(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.

7.19(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.

7.19(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.

7.19(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.

265—7.20(17A) Hearing procedures.

7.20(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.

7.20(2) All objections shall be timely made and stated on the record.

7.20(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.

7.20(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.

7.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

7.20(6) Witnesses may be sequestered during the hearing.

7.20(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.

265—7.21(17A) Evidence.

7.21(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.

7.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.21(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.

7.21(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.

7.21(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.

7.21(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.

265—7.22(17A) Default.

7.22(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.

7.22(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.

7.22(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 authority action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 7.27(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.

7.22(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.

7.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

7.22(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.

7.22(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 7.25(17A).

7.22(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.

7.22(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.

7.22(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 7.29(17A).

265—7.23(17A) Ex parte communication.

7.23(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 7.9(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.

7.23(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.

7.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

7.23(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 7.12(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.

7.23(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.

7.23(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 7.23(1).

7.23(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 7.17(17A).

7.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

7.23(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 subsection 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.

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

265—7.24(17A) Recording costs. Upon request, the authority 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.

265—7.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board of the authority may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

265—7.26(17A) Posthearing procedures and orders.

7.26(1) *Filing by parties of briefs and proposed findings.* The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

7.26(2) *Final decision or order.*

a. When a quorum of the entire board of the authority presides over the reception of evidence at the hearing, its decision is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

b. In a contested case in which the hearing is held before an administrative law judge or a panel of the authority's board members constituting less than a quorum of the board, the presiding officer or panel shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the authority without further proceedings unless there is an appeal to, or review on motion of, the authority within 30 days.

7.26(3) *Decisions and orders.*

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. Content of decision or order. The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed finding of fact in accordance with subrule 7.26(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

265—7.27(17A) Appeals and review.

7.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board of the authority within 30 days after issuance of the proposed decision.

7.27(2) *Review.* The board of the authority may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

7.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the authority. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a member of the authority's board or the authority initiates review of a proposed decision, the executive director shall mail a notice of review to all parties. The notice of appeal or the notice of review shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

7.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board of the authority may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

7.27(5) *Scheduling.* The authority shall issue a schedule for consideration of the appeal.

7.27(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 authority may resolve the appeal on the briefs or provide an opportunity for oral argument. The authority may shorten or extend the briefing period as appropriate.

265—7.28(17A) Applications for rehearing.

7.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

7.28(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 authority decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.27(4), the applicant requests an opportunity to submit additional evidence.

7.28(3) *Time of filing.* The application shall be filed with the authority within 20 days after issuance of the final decision.

7.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the authority shall serve copies on all parties.

7.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the authority grants the application within 20 days after its filing.

265—7.29(17A) Stays of authority actions.

7.29(1) *When available.*

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

b. Any party to a contested case proceeding may petition the authority 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.

7.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or authority shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

7.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the authority or any other party.

265—7.30(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.

265—7.31(17A) Emergency adjudicative proceedings.

7.31(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 authority may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the authority by emergency adjudicative order. Before issuing an emergency adjudicative order the authority shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the authority 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 authority is necessary to avoid the immediate danger.

7.31(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 authority'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 authority;

(3) Certified mail to the last address on file with the authority;

(4) First-class mail to the last address on file with the authority; 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 authority orders be sent by fax and has provided a fax number for that purpose.

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

7.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the authority shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

7.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the authority 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 the authority's proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further authority proceedings to a later date will be granted only in compelling circumstances upon application in writing.

265—7.32(17A,16) Informal procedure prior to hearing. Any person who desires to pursue informal settlement of any contested case may make a request for an informal settlement to the executive director. When the authority is a party, all informal settlements shall be made by the executive director. All informal settlements are subject to ratification by the authority. A request for informal settlement should be received by the executive director not less than 15 days before the board meeting at which it is to be considered. The executive director shall schedule consideration of the request at the next regular board meeting occurring more than 15 days after the request for an informal settlement is made. Not more than 10 days after the authority meeting at which the request is scheduled for consideration, the executive director will notify the petitioner in writing of the authority's disposition of the request. If the authority determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 7.31(17A). If informal settlement is unsuccessful, formal contested case proceedings may be instituted in accordance with rule 7.5(17A).

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

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CHAPTER 9
TITLE GUARANTY DIVISION

265—9.1(16) Location. The title guaranty division ("division") of the Iowa finance authority ("authority") is located at the offices of the Iowa Finance Authority, 100 East Grand Avenue, Suite 250, De Moines, Iowa 50309, telephone: 515-242-5128.

265—9.2(16) Business hours. The business hours for the division are 8 a.m. to 4:30 p.m. Monday to Friday except for legal holidays.

265—9.3(16) Division board. The division has a five-member board which acts through the board of the authority. The membership includes an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender, and a representative of the housing development industry. Members are appointed by the governor and confirmed by the senate for a six-year term. The members of the board annually elect a chairperson, vice chairperson and secretary and other officers as they determine are necessary.

265—9.4(16) Authority staff. The executive director of the authority shall appoint a director of the division who shall be an attorney and serve as an ex-officio member of the board of the division.

265—9.5(16) Board meetings. Meetings of the board shall be held at the call of the chairperson or when a majority of the members so request. Three members of the board constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division.

265—9.6(16) Duties of the division. The division is directed by state law to establish a title guaranty program to protect against loss or damage caused by defective title to real property.

265—9.7(16) Information and forms. Information and forms may be obtained from the division. All submissions shall be made to the division.

Rules 9.1(16) to 9.7(16) are intended to implement Iowa Code sections 17A.3, 16.1(34), 16.1(35), 16.2(1), 16.3(14), 16.5(15), 16.40, 16.91, and 535A.12.

265—9.8(16) Petition to promulgate, amend or repeal a rule. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.9(16) Request for oral presentation concerning intended rule making. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.10(16) Declaratory rulings. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.11(16) Procedure for informal settlements in contested cases. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.12(16) General. The title guaranty division of the Iowa finance authority has established a program for offering mortgage lenders and the general public low cost protection against loss or damage caused by defective titles to Iowa real property. The title guaranties offered by the division will facilitate mortgage lender participation in the secondary market and add to the integrity of the land-title transfer system in the state. Title guaranty owners and lenders certificates will be available through participating attorneys throughout the state who shall act as limited agents for the division for the sole purpose of issuing title guaranty certificates subject to the rules of the division and applicable law. Any participating attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the division. The division shall require participating abstracters to update the abstract to any real property for which a guaranty is desired, in accord with division standards. Upon request by a mortgagor or participating lender, the participating attorney will issue a title guaranty commitment and the final guaranty certificate after reviewing an abstract prepared by a participating abstracter.

265—9.13(16) Participation requirements for attorneys. Any attorney licensed to practice law in the state of Iowa shall be eligible to participate in the title guaranty program upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement will require that the participating attorney:

1. Maintain attorney's liability insurance with limits of not less than $100,000 per claim and not less than $300,000 total annual limit, and disclose to the division the name, address, and telephone number of the liability carrier and the amount of the insurance maintained.
2. Examine real estate titles for the purpose of accurately reporting the state of the title involved in accordance with the Iowa Land Title Examination Standards of the Iowa State Bar Association, where applicable, or other applicable law.
3. Pay an initial participation fee of $25.
4. Abide by the rules of the division and applicable law.

265—9.14(16) Participation requirements for abstracters. Any abstracter or abstracting concern shall be eligible to participate in the title guaranty program upon execution, and acceptance of a participation agreement in a form prescribed by the division. The participation agreement shall require the participating abstracter or abstracting concern to:

1. Prepare abstracts in accord with the most current Iowa Land Title Association Uniform Abstracting Standards, where applicable.
2. Own or lease, and maintain and use in the preparation of abstracts as up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstracter's participation in the title guaranty program. Provided however, participating attorneys providing abstract services continuously from November 12, 1986, to the date of application either personally or through persons under their supervision and control shall be exempt from the requirements of this paragraph.
3. Maintain abstracter's liability insurance in an amount not less than $50,000 total annual limit, and disclose to the division the name of the liability carrier and the amount of insurance maintained.
4. Pay an initial participation fee of $25.
5. Retain either a carbon copy or a mechanical reproduction of each certificate continuation and new abstract of title prepared after December 31, 1986, for which a title guaranty is issued.
6. Abide by the rules of the division and applicable law.

265—9.15(16) Participation requirements for lenders. Any mortgage lender as defined in Iowa Code section 16.1(14) that is authorized to make mortgage loans on Iowa real estate shall be eligible to participate in the title guaranty program.

265—9.16(16) Forms, endorsements, and manuals. The division shall adopt title guaranty certificate forms and endorsement forms that are acceptable to the secondary market in accord with the provisions of Iowa Code chapter 16. In addition, the division shall publish a manual for use by participating attorneys, abstracters, and lenders, which manual may be revised from time to time. Such manual shall include forms of the certificates and endorsements. The manual shall also include the membership participation standards and requirements, and such other matters deemed necessary by the division for implementation and effective administration of the title guaranty program.

265—9.17(16) Application for waiver of participation requirements. It is the intention of the division to make title guaranties available statewide. Therefore, in order to achieve the widest possible geographic coverage, the division will allow any abstracter or attorney the opportunity to apply for a waiver of the participation requirements set out in rules 9.13(16) and 9.14(16). Any application for waiver of participating requirements should be directed to the board of the division and should succinctly state which participation requirements are requested to be waived. The request should contain adequate supporting information and argument so that the board may make an informed decision on the request. It is the intention of the board to waive participation requirements only when it is determined that they result in a hardship to the requesting abstracter or attorney and the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

265—9.18(16) Rates. The division shall fix the rate for the owner's guaranty, the lender's guaranty, and the various endorsements that will be offered by the division. The division shall make a published rate schedule available to mortgage lenders.

265—9.19(16) Charges. No participant in the title guaranty program shall charge or receive any portion of the charge for the guaranty as a result of participation in the title guaranty program.

265—9.20(16) Disclosure information. Rescinded IAB 5/2/90, effective 6/6/90.

265—9.21(16) Seal. The division shall have a corporate seal that may be altered from time to time. The seal shall impress the words "Title Guaranty Division Iowa Finance Authority" and may be used to authenticate acts and legal instruments of the division.

Rules 9.8(16) through 9.21(16) are intended to implement Iowa Code sections 17A.3, 17A.9, 17A.10, 16.1, 16.2, 16.3, 16.5, 16.40, 16.91, 535.8(10), and 535A.12.

265—9.22(17A,16) Contested case proceedings presiding officer. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.23(17A,16) Right to contested case proceedings. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.24(17A,16) Time limit for request. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.25(17A,16) Notice of contested case. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.26(17A,16) Form of request. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.27(17A,16) Subpoena power. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.28(17A,16) Conduct of contested case. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.29(17A,16) Decisions. Decisions of the board shall be in writing and shall be mailed to the parties involved in the proceeding.

265—9.30(17A,16) Petition for receipt of additional evidence. If, prior to the issuance of the final decision, any party feels that the submission of additional evidence is necessary, the party shall request an opportunity to present additional evidence by mailing a request to the chair of the division's board by ordinary mail, c/o the division's office at Suite 222, 200 East Grand Avenue, Des Moines, Iowa 50309. The party shall, in addition, notify all opposing parties by certified mail, return receipt requested, including in such notice to the opposing parties all information submitted to the chair.

The chair shall review the requests and either reject the request or establish an additional hearing no sooner than seven calendar days from the chair's decision. The chair shall notify the parties of a decision to adopt additional evidence by certified mail, return receipt requested. Notice of a decision to reject additional evidence may be by ordinary mail.

Rules 9.29(17A,16) and 9.30(17A,16) are intended to implement Iowa Code sections 17A.10 to 17A.18.

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CHAPTER 10
MORTGAGE CREDIT CERTIFICATES

265—10.1(16) General. Mortgage credit certificates (MCCs) were authorized by Congress in the 1984 Tax Reform Act as a new concept for providing housing assistance. The Iowa finance authority may elect to allocate a portion of its mortgage revenue bonding authority for single-family housing toward an MCC program. The program will be made available to home buyers through participating Iowa lenders on a first-come, first-served basis.

The MCC operates as a federal income tax credit. The MCC tax credit will reduce the federal income taxes of qualified home buyers purchasing qualified residences, in effect assisting buyers with their house payments.

A purchaser of a new or existing single-family residence may apply for an MCC through a participating lender at the time of purchasing a home and obtaining financing through the lender. An MCC cannot be issued to a home buyer who is refinancing an existing mortgage or land contract, nor can it be used in conjunction with a mortgage financed through a mortgage subsidy bond.

MCCs will be made available to home buyers with generally the same noncredit eligibility requirements as are in effect for the authority's single-family mortgage program. However, mobile and manufactured housing are eligible under the MCC program.

265—10.2(16) Participating lenders. The authority will disseminate a summary of the MCC program to mortgage lenders operating within Iowa. Each branch office of a mortgage lender is deemed to be a separate mortgage lender. Any mortgage lender as defined in Iowa Code section 16.1 may become a participating lender by entering into an MCC lender participation agreement with the authority. All other participating lenders may take applications for MCCs on loans closed after the effective date of the participation agreement. Each participating lender shall pay a $100 annual participation fee.

265—10.3(16) Eligible borrowers. To be eligible to receive a mortgage credit certificate, an eligible borrower must, on the date the loan is closed:

1. Be a resident of Iowa.
2. Be a purchaser of a single-family residence who will occupy the single-family residence as a permanent, primary, principal residence located within the state.
3. Have the legal capacity to incur the obligations of the loan.
4. Agree not to rent the single-family residence any time during the term of the loan except under special circumstances and with a lease arrangement, the terms and conditions of which are acceptable to the authority.
5. To the extent determined by the authority to assure its MCCs will be qualified mortgage credit certificates pursuant to a qualified mortgage credit certificate program, the authority shall require that the eligible borrower meet the requirements of Section 25 of the Internal Revenue Code and the rules and regulations promulgated thereunder, as well as the requirements set forth in the MCC program guide. Copies of the program guide are available from the authority.

265—10.4(16) MCC procedures. Applications for MCCs may be made with any participating lender. The applicant shall provide the lender with all information that is necessary to secure a mortgage loan and an MCC. An applicant must meet the eligibility requirements set out in rule 10.3(16). If the eligibility requirements are met, the participating lenders may nonetheless deny a loan, subject to all reporting and disclosure requirements of applicable state and federal law, for any reason premised on sound lending practices, including underwriting risk evaluation, portfolio diversification, and limitations on restrictions on investments or available funds. If the loan is approved, the terms of the loan, including interest rate, length of loan, down payment, fees, origination charge and repayment schedule, shall not be greater than those available to similar customers that do not make application for an MCC. However, the lender may collect a one-time MCC commitment fee of up to $200, which may be paid by the borrower, lender, or any other party. Of this fee, $100 must accompany the MCC application and be submitted to the authority by the lender. The balance of the fee may be kept by the lender as compensation for processing the MCC.

No MCC will be issued unless the requirements and procedures set out in the MCC program guide are complied with by all parties to the home sale and financing.

These rules are intended to implement Iowa Code section 16.15, subsection 7.

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CHAPTER 11
TARGETED SMALL BUSINESS LOAN GUARANTEE PROGRAM

Rescinded IAB 4/3/91, effective 5/8/91; see Economic Development 261—Chapter 27

CHAPTER 16
DECLARATORY ORDERS

265—16.1(17A) Petition for declaratory order. Any person may file a petition with the authority for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the authority, at Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The authority shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE
IOWA FINANCE AUTHORITY

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 16.7(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.

265—16.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the authority shall give notice of the petition to all persons not served by the petitioner pursuant to rule 16.6(17A) to whom notice is required by any provision of law. The authority may also give notice to any other persons.

265—16.3(17A) Intervention.

16.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

16.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the authority.

16.3(3) A petition for intervention shall be filed at Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Such a petition is deemed filed when it is received by that office. The authority will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE
IOWA FINANCE AUTHORITY

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.

265—16.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The authority may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

265—16.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309.

265—16.6(17A) Service and filing of petitions and other papers.

16.6(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.

16.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

16.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 265—7.12(17A).

265—16.7(17A) Consideration. Upon request by petitioner, the authority must schedule a brief and informal meeting between the original petitioner, all intervenors, and the authority, a member of the authority's board, or a member of the staff of the authority, to discuss the questions raised. The authority may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the authority by any person.

265—16.8(17A) Action on petition.

16.8(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).

16.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 265—7.2(17A).

265—16.9(17A) Refusal to issue order.

16.9(1) The authority shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the authority to issue an order.
3. The authority 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 authority 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 authority decision already made.

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

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

16.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final authority action on the petition.

16.9(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.

265—16.10(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.

265—16.11(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.

265—16.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the authority, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the authority. The issuance of a declaratory order constitutes final authority action on the petition.

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

[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]

CHAPTER 17
PROCEDURE FOR RULE MAKING

265—17.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the authority are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

265—17.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the authority may, before publication of a Notice of Intended Action under Iowa Code subsection 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the authority by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

265—17.3(17A) Public rule-making docket.

17.3(1) *Docket maintained.* The authority shall maintain a current public rule-making docket.

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

17.3(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 authority determinations with respect thereto;

h. Any known timetable for authority 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.

265—17.4(17A) Notice of proposed rule making.

17.4(1) *Contents.* At least 35 days before the adoption of a rule the authority 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 authority 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 authority for the resolution of each of those issues.

17.4(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 17.12(2) of this chapter.

17.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the authority 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 authority 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 authority for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of six months.

265—17.5(17A) Public participation.

17.5(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 Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309, or the person designated in the Notice of Intended Action.

17.5(2) *Oral proceedings.* The authority may, at any time, schedule an oral proceeding on a proposed rule. The authority 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 authority 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.

17.5(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 authority, a member of the authority, or another person designated by the authority who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the authority does not preside, the presiding officer shall prepare a memorandum for consideration by the authority summarizing the contents of the presentations made at the oral proceeding unless the authority determines that such a memorandum is unnecessary because the authority 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 authority 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 authority 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 authority.

(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.

17.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the authority may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

17.5(5) *Accessibility.* The authority 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 Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309, telephone number (515)281-4058, in advance to arrange access or other needed services.

265—17.6(17A) Regulatory analysis.

17.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

17.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the authority's small business impact list by making a written application addressed to the Executive Director, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. 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 authority 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 authority 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.

17.6(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 authority 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 authority 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.

17.6(4) *Qualified requesters for regulatory analysis—economic impact.* The authority 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.

17.6(5) *Qualified requesters for regulatory analysis—business impact.* The authority 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.

17.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the authority shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

17.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the authority. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

17.6(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).

17.6(9) *Publication of a concise summary.* The authority shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

17.6(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.

17.6(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).

265—17.7(17A,25B) Fiscal impact statement.

17.7(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.

17.7(2) If the authority determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the authority shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

265—17.8(17A) Time and manner of rule adoption.

17.8(1) *Time of adoption.* The authority 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 authority 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.

17.8(2) *Consideration of public comment.* Before the adoption of a rule, the authority 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.

17.8(3) *Reliance on authority expertise.* Except as otherwise provided by law, the authority may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

265—17.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

17.9(1) The authority 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.

17.9(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 authority 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.

17.9(3) The authority 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 authority finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

17.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the authority to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

265—17.10(17A) Exemptions from public rule-making procedures.

17.10(1) *Omission of notice and comment.* To the extent the authority 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 authority 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 authority shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

17.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

a. Emergency housing assistance in the event of a disaster.

b. Conduit financing to aid victims of a disaster.

17.10(3) *Public proceedings on rules adopted without them.* The authority 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 17.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the authority shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 17.10(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 authority may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 17.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

265—17.11(17A) Concise statement of reasons.

17.11(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 authority shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Executive Director, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. 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.

17.11(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 authority's reasons for overruling the arguments made against the rule.

17.11(3) *Time of issuance.* After a proper request, the authority 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.

265—17.12(17A) Contents, style, and form of rule.

17.12(1) *Contents.* Each rule adopted by the authority shall contain the text of the rule and, in addition:

a. The date the authority adopted the rule;

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

g. The effective date of the rule.

17.12(2) *Incorporation by reference.* The authority 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 authority finds that the incorporation of its text in the authority proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the authority 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 authority may incorporate such matter by reference in a proposed or adopted rule only if the authority 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 authority, 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 authority shall retain permanently a copy of any materials incorporated by reference in a rule of the authority.

If the authority 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.

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

17.12(4) *Style and form.* In preparing its rules, the authority shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

265—17.13(17A) Authority rule-making record.

17.13(1) *Requirement.* The authority 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.

17.13(2) *Contents.* The authority 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 authority submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the authority'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 authority, 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 authority and considered by the authority, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the authority 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 authority 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 authority 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.

17.13(3) *Effect of record.* Except as otherwise required by a provision of law, the authority rule-making record required by this rule need not constitute the exclusive basis for authority action on that rule.

17.13(4) *Maintenance of record.* The authority 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 17.13(2)*"g," "h," "i,"* or *"j."*

265—17.14(17A) Filing of rules. The authority 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 authority shall use the standard form prescribed by the administrative rules coordinator.

265—17.15(17A) Effectiveness of rules prior to publication.

17.15(1) *Grounds.* The authority 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 authority shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

17.15(2) *Special notice.* When the authority 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 authority 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 authority 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 authority 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 17.15(2).

265—17.16(17A) General statements of policy.

17.16(1) *Compilation, indexing, public inspection.* The authority 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.

17.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the authority to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 17.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

265—17.17(17A) Review by authority of rules.

17.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the authority to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the authority 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 authority 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.

17.17(2) In conducting the formal review, the authority 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 authority'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 authority or granted by the authority. 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 authority's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

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

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CHAPTER 35
CONTRACTOR REQUIREMENTS

CHAPTER 36
EGG HANDLERS

CHAPTER 37
HOTEL AND MOTEL INSPECTIONS

CHAPTERS 38 and 39
Reserved

CHAPTER 40
FOSTER CARE FACILITY INSPECTIONS

CHAPTER 41
PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN (PMIC)

INSPECTIONS DIVISION

CHAPTER 30
FOOD AND CONSUMER SAFETY

481—30.1(10A) Inspections division's food and consumer safety bureau. The inspections division's food and consumer safety bureau inspects egg handlers, food establishments (retail), food processing establishments (wholesale), food and beverage vending machines, hotels, and food service operations in schools, correctional and penal institutions.

481—30.2(10A) Definitions.

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home, but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Boarder" means a person who rents a room, rooms or apartment for at least a week. A boarder is considered permanent and is not a transient guest.

"Boarding house" means a house in which lodging is rented and meals are served to permanent guests. A boarding house is not a food service establishment or hotel unless it rents or caters to transient guests.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Department" means the department of inspections and appeals.

"Egg handler" or *"handler"* means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food. An egg handler does not include a food establishment or home food establishment if either establishment obtains eggs from a licensed egg handler or supplier which meets standards referred to in rule 481—31.2(137F). Producers who sell eggs produced exclusively from their own flocks directly to egg handlers or to consumer customers are exempt from regulation as egg handlers.

"Farmers market" means a marketplace which operates seasonally as a common market for fresh fruits and vegetables on a retail basis for consumption elsewhere.

The following products may be sold at a farmers market without being licensed under Iowa Code section 137F.4 at the market location:

1. Baked goods except the following: soft pies and bakery products with custard or cream fillings, as well as other potentially hazardous items. These products must be labeled in accordance with rule 481—34.3(137D).
2. Wholesome, fresh eggs.
3. Honey which is labeled per rule 481—34.3(137D).

4. Prepackaged, nonhazardous food products prepared in an establishment licensed under Iowa Code section 137F.4 as a food establishment or a food processing establishment.

5. Fresh fruits and vegetables.

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. "Food establishment" does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are nonpotentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. "Not potentially hazardous food" means only the following:

- Baked goods, except the following: soft pies, bakery products with custard or cream fillings, or any other potentially hazardous goods.
- Wholesome, fresh eggs that are kept at a temperature of 45 degrees Fahrenheit or 7 degrees Celsius or less.
- Honey which is labeled with the name of the product, and the name and address of the person preparing the food.

7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home that receives catered or home-delivered food.
9. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.
10. Supply vehicles, vending machine locations or boarding houses for permanent guests.
11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
12. Premises covered by a current Class "A" beer permit as provided in Iowa Code chapter 123.
13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include premises covered by a Class "A" beer permit as provided in Iowa Code chapter 123.

"Food service establishment" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or subject to Iowa sales tax as provided in Iowa Code section 422.45.

481—30.10(137C,137D,137F) Local contracts. The department may contract with municipal corporations to inspect and collect license fees from any establishment covered by these rules. Inspections shall be pursuant to 481—Chapters 30, 31 and 37. A list of contracts is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

This rule is intended to implement Iowa Code section 137F.3.

481—30.11(22) Examination of records. Information collected by the inspections division is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

481—30.12(137C,137D,137F,196) Denial, suspension or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

481—30.13(10A) Formal hearing. All decisions of the bureau may be contested by an adversely affected party. Request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

30.13(1) The proposed decision of the administrative law judge becomes final 30 days after it is mailed.

30.13(2) Any request for administrative review of a proposed decision must:

a. Be made in writing;

b. Be filed with the director of the department of inspections and appeals within 30 days after the proposed decision was mailed to the aggrieved party (date of receipt by personal service or the postmarked date is time of filing);

c. State the reason(s) for the request.

30.13(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing.

481—30.14(137D,137F,196) False label or defacement. No person shall use any label required by Iowa Code chapter 137C, 137F or 196 which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by these chapters.

This rule is intended to implement Iowa Code section 137F.3.

These rules are intended to implement Iowa Code sections 10A.104, 10A.502 and 22.11 and Iowa Code chapters 137C, 137D, 137F and 196.

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CHAPTER 31
FOOD ESTABLISHMENT AND FOOD PROCESSING PLANT INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Chs 21 and 22]

481—31.1(137F) Inspection standards. Standards in the 1997 edition of the Food Code Recommendations of the Food and Drug Administration are used to inspect all food establishments. Exceptions to the Code are as follows:

31.1(1) Subparagraph 1-201.10(B)(31) and Section 3-403.10 are deleted.

31.1(2) Food prepared in a home food establishment, licensed under Iowa Code section 137D.2 or a premises as provided in Iowa Code section 137F.1(8)*"f,"* can be offered for sale.

31.1(3) Paragraph 3-301.11(b) is changed to read:

a. Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

b. In seeking to minimize employee's physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used alone or in combination, to prevent the transmission of pathogenic organisms:

(1) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(2) Single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(3) The use, pursuant to the manufacturer's instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses or dips. All such soaps, lotions, sanitizers, rinses and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States Environmental Protection Agency, cleared by the United States Food and Drug Administration, and approved by the United States Department of Agriculture.

(4) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in subparagraphs (1) through (3).

c. Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(1) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring system utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(2) A monitoring system used to demonstrate the proper and effective use of sanitary alternatives utilized by the public food service establishment.

31.1(4) Section 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambient temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

31.1(5) Paragraph 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a 30-day 'sell by' date from the date it was packaged, shall be exempt from having a HACCP Plan that contains the information required in this section and Section 8-201.14."

31.1(6) Section 3-603.11 shall be amended by adding the following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

31.1(7) Section 5-203.15 shall be amended so that a carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

31.1(8) Section 2-301.15 shall be amended by adding the following: "Establishments originally licensed prior to the effective date of this law, January 1, 1999, where a combination sink was approved by the department of inspections and appeals for both hand washing and use as a service sink can use this combination sink for both hand washing and as a service sink for the disposal of mop water as long as the establishment is not remodeled."

31.1(9) Section 5-203.13 is amended so that food service establishment license holders for establishments built prior to January 1, 1979, are not required to have a service or utility sink for the disposal of mop water unless the establishment is remodeled.

31.1(10) Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments.

31.1(11) Section 5-203.14 is amended by adding the following: "Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve."

31.1(12) Paragraph 5-402.11(C) is amended by adding the following: "A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air gap of not less than one inch between the outlet and the rim of the floor sink or receptor."

31.1(13) Paragraph 4-301.12(C) is amended by adding the following: "Establishments need not have a three-compartment sink when each of the following conditions is met:

1. Three or fewer utensils are used for food preparation;
2. Utensils are limited to tongs, spatulas and scoops;
3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils."

481—31.2(137F) Food processing plant standards.

1. Standards used to inspect establishments where wholesale food is manufactured, processed, packaged or stored are found in the Code of Federal Regulations in 21 CFR, Part 110, April 1, 1998, publication, "Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food."

2. Standards used to inspect establishments where bakery products, flour, cereals, food dressings and flavorings are manufactured on a wholesale basis are found in the Code of Federal Regulations, in 21 CFR, Parts 136, 137 and 169, April 1, 1998, publication.

3. Standards used to inspect establishments which process low-acid food in hermetically sealed containers are found in 21 CFR, Part 113, April 1, 1998, "Thermally Processed Low-Acid Food Packaged in Hermetically Sealed Containers."

4. Standards used to inspect establishments which process acidified foods are found in 21 CFR, Part 114, April 1, 1998, "Acidified Foods."

5. Standards used to inspect establishments which process bottled drinking water are found in the Code of Federal Regulations in 21 CFR, Parts 129 and 165, April 1, 1998, publication, "Processing and Bottling of Bottled Drinking Water" and "Beverages."

6. In addition to compliance with 31.2"1," manufacturers of packaged ice must comply with the following:

- Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which includes the use of sanitizers to eliminate micro-organisms must be developed and used.
- Packaged ice must be tested every 120 days for the presence of bacteria.
- Plants that use a non-public water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination.

Copies of these regulations are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—31.3(137F) Trichinae control for pork products prepared at retail. Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 1998, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of "certified pork" as authorized by the department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service shall meet the requirements of this rule.

481—31.4(137F) Demonstration of knowledge. Section 2-102.11 shall be amended by adding the following: "Completion of a certification program, as defined in 481—Chapter 32, by the person in charge who has shown proficiency of the required information through passing a test that is part of an approved program. The certification program has been reviewed by the department as meeting the requirements in 481—Chapter 32."

481—31.5(137F) Labeling. The following labeling standards are required in addition to those in the Food Code. Labels on or with packaged foods shall be in legible English and state:

1. The true name, brand or trademark of the article;
2. The names of all ingredients in the food, beginning with the one present in the largest proportion and in descending order of predominance;
3. The quantity of the contents in terms of weight, measure or numerical count;
4. The name and address of the manufacturer, packer, importer, distributor or dealer.

Foods and food products labeled in conformance with the labeling requirements of the government of the United States as listed in the Code of Federal Regulations in 21 CFR, April 1, 1998, publication, Parts 101 and 102, are considered in compliance with the Iowa labeling law.

481—31.6(137F) Adulterated food and disposal. No one may produce, distribute, offer for sale or sell adulterated food. "Adulterated" is defined in the federal Food, Drug and Cosmetic Act, Section 402.

Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

481—31.7(137F) Mobile food units/pushcarts. In addition to the Food Code provisions outlined in the FDA Food Code Mobile Food Establishment Matrix, mobile food units/pushcarts must comply with the following:

31.7(1) *Licenses.* All mobile food units/pushcarts must be licensed by the department. Applications for licenses are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. The unit shall be inspected by a representative of the department and determined to be in compliance with the rules and regulations of the department prior to the granting of the license.

31.7(2) *Personnel.*

a. The person in charge shall take appropriate action to ensure that no person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a mobile food unit/pushcart in any capacity in which there is a likelihood of the person's contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons. The person in charge shall require food employee applicants and food employees to report information about the employee's health and activities as they relate to diseases transmissible through food.

b. Employees shall have clean garments, aprons and effective hair restraints. Smoking, eating or drinking in the mobile food unit/pushcart is not allowed. All unauthorized persons are to be kept out of the mobile food unit/pushcart.

c. All employees shall be under the direction of the person in charge. The person in charge shall ensure that workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

31.7(3) *Food.*

a. Approved food source. All food supplies shall come from a commercial manufacturer or a source that complies with both state and federal laws. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited.

b. Food preparation. Unless washing fruits and vegetables, food employees shall, to the extent practicable, avoid direct, bare-hand contact with ready-to-eat food. All establishments shall train food employees on the need and public health reasons for adequate hand washing and personal hygiene. The person in charge shall monitor employee hand-washing practices to ensure that employees are effectively cleaning their hands. One of the following alternatives shall be used by food employees when handling ready-to-eat food:

(1) Single-use gloves, utensils, deli tissue, spatulas, tongs or dispensing equipment; or

(2) An approved antibacterial soap with all operations that permit limited bare-hand contact with ready-to-eat food.

c. Date marking. All ready-to-eat foods that are potentially hazardous shall be date-marked, if held more than 24 hours, and discarded after seven days if the food is kept at an internal temperature of 41°F or below.

d. Food protection. All food shall be covered and stored off the floor. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. Ice used as a food or a cooling medium shall be made of drinking water and be manufactured in an approved source. Fruits and vegetables must be washed before being used or sold. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means. All cooking and serving areas shall be adequately protected from contamination.

e. Consumer advisory requirement. If raw or undercooked animal food such as beef, eggs, fish, lamb, poultry or shellfish is offered in ready-to-eat form, the license holder (person in charge) shall post the following language as a consumer advisory:

"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at a higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information."

f. Food storage location. During operation, food shall not be displayed or stored in or served from any place other than the licensed mobile food unit/pushcart.

31.7(4) *Food temperature requirements.*

a. Cooking temperatures. As specified in the following chart, the minimum cooking temperatures for food products are:

165°F	• Poultry and game animals that are not commercially raised • Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite • All products cooked in a microwave oven
155°F	• Pork, rabbits, ratite and game meats that are commercially raised • Ground or comminuted (such as hamburgers) meat/fish products • Raw shell eggs not prepared for immediate consumption
145°F	• Raw shell eggs prepared for immediate consumption • Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above

b. Cold storage. Refrigeration units shall be provided to keep potentially hazardous foods at 41°F or below.

c. Hot storage. Hot food storage units shall be used to keep potentially hazardous food at 140°F or above. Steam tables or other hot holding devices are not allowed to heat foods and are only to be used for hot holding after foods have been adequately cooked.

d. Thermometers. Cold food storage units shall have a numerically scaled thermometer to measure the air temperature of the mobile food unit/pushcart accurately. A metal stem thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

31.7(5) *Equipment requirements.*

a. Mobile food units that handle unpackaged food shall have a three-compartment warewashing sink or have daily access to a three-compartment sink located in another licensed establishment, where utensils can be adequately washed and sanitized. The warewashing sink shall be large enough for complete immersion of the utensils and have an adequate means to heat the water required to wash, rinse and sanitize utensils or food-contact equipment.

b. Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the proper concentration of sanitizer to be used.

c. A hand-washing sink, equipped with pressurized hot and cold running water, shall be installed on all mobile food units/pushcarts that handle unpackaged food. The sinks must have a hand cleanser and sanitary towels.

d. Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizer solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

e. Mobile food units/pushcarts shall provide only single-service articles for use by the consumer.

f. All equipment, utensils, food preparation and food-contact surfaces, including the interior of cabinets or storage compartments, shall be safe, smooth, durable, nonabsorbent and easily cleanable.

31.7(6) *Water supply and sewage.*

a. Safe water supply. An adequate supply of clean water (potable) shall be provided from an approved source.

b. Water supply tanks. Standards for water supply tanks are as follows:

(1) Materials shall be safe, durable and easily cleanable.

(2) The water supply tank shall be sloped to drain at a discharge outlet that allows complete drainage of the tank.

(3) An access port for inspection and cleaning shall open at the top of the tank, flanged upward at least one-half inch and equipped with a secure port cover, which is sloped to drain.

(4) A fitting with V-type threads is allowed only when the hose is permanently attached.

(5) If provided, a water tank vent shall end in a downward direction and be covered with 16 mesh when the vent is not exposed to dust or debris or with a protective filter when the vent is exposed to dust or debris.

(6) The tank and its inlet and outlet shall be sloped to drain. The inlet shall be designed so that it is protected from waste discharge, dust, oil or grease.

(7) Hoses used shall be safe and durable, have smooth interior surfaces and be clearly identified as to their use for drinking water.

(8) A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and the drinking water system.

(9) The water inlet, outlet or hose shall be equipped with a cap and keeper chain or other adequate protective device. This device must be attached when the system is not in use.

(10) The water tank, pump and hoses shall be flushed and sanitized before being placed into service after construction, repair, modification or periods of nonuse.

(11) Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

(12) The water supply tank, pump and hoses shall be used to convey drinking water and shall be used for no other purpose.

c. Wastewater disposal. The sewage holding tank shall be 15 percent larger in volume than the water supply tank and shall be sloped to drain. The drain hose (1 inch) shall be larger than the supply hose (¾ inch). Liquid waste shall be removed at an approved servicing area. The liquid waste retention tank shall be thoroughly flushed and drained during the servicing operation. Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.7(7) *Physical facility.*

a. Floors, walls and ceilings. Floors, walls and ceilings shall be designed, constructed and installed so they are smooth and easily cleanable. Exterior surfaces shall be weather-resistant materials. The mobile food unit/pushcart shall be designed and maintained so that outer openings are protected against the entrance of insects and rodents.

b. Lighting. Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

c. Garbage containers. An adequate number of cleanable containers shall be provided.

d. Toilet rooms. An adequate number of approved toilet and hand-washing facilities shall be provided in the area.

e. Clothing. Personal clothing and belongings shall be stored at a designated place, adequately separated from food preparation, food service and dishwashing areas.

31.7(8) *Toxic materials.*

a. Only those toxic items necessary for the operation of the mobile food unit/pushcart shall be maintained or used.

b. Toxic materials and poisonous materials shall bear the manufacturer's label. Working containers of toxic items shall be identified with the common name of the material.

c. Toxic materials and poisons shall be adequately separated from food, equipment, utensils, linens, and single-service and single-use items.

d. Only those toxic materials or poisons permitted by law in food establishments shall be used. These materials shall be used according to the manufacturer's use instructions.

31.7(9) *Servicing.* Servicing areas shall be provided with overhead protection except those areas for the loading of water or discharge of sewage or liquid waste. The mobile food unit/pushcart may operate up to three days at one location, if adequate facilities are maintained for cleaning and servicing, or the unit must report to a home base of operation each day.

481—31.8(137F) Enforcement. A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of $100 for each violation. Prior to the assessment of any civil penalties, a hearing conducted by the appeals division in the department of inspections and appeals must be provided as required in rule 481—30.13(10A). Additionally, the department may employ various other remedies if violations are discovered:

1. A license may be revoked or suspended.
2. An injunction may be sought.
3. A case may be referred to a county or city attorney for criminal prosecution.

481—31.9(137F) Toilets and lavatories.

31.9(1) Retail food establishment license holders. Toilets and lavatories shall be well lighted and available to employees and patrons at all times. Retail food establishments built or remodeled after July 1, 1986, shall be electrically vented to the outside of the building.

31.9(2) Food service establishment license holders.

a. Toilets and lavatories shall be well lighted and available to employees and patrons at all times. Establishments built or remodeled after January 1, 1979, shall be electrically vented to the outside of the building. On-site restrooms are not required in the licensed premises when the licensed premises does not have on-site seating, and restrooms in the mall or shopping center are convenient and available to patrons and employees at all times.

b. Separate toilet facilities for men and women shall be provided in:

(1) Places built or remodeled after January 1, 1979, which seat 50 or more people, or

(2) All places built or remodeled after January 1, 1979, which serve beer or alcoholic beverages.

481—31.10(137F) Warewashing sinks in establishments serving alcoholic beverages. When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils.

481—31.11(137F) Criminal offense—conviction of license holder.

31.11(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a felony as a result.

31.11(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

31.11(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

31.11(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

481—31.12(137F) Temporary food establishments.

31.12(1) *Personnel.*

a. Employees shall keep their hands and exposed portions of their arms clean.

b. Employees shall have clean garments, aprons and effective hair restraints. Smoking, eating or drinking in food booths is not allowed. All nonworking, unauthorized persons are to be kept out of the food booth.

c. All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

d. Employees and volunteers shall not work in a mobile food unit/pushcart if they have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.

e. All employees and volunteers must sign a logbook with the employee's or volunteer's name, address, telephone number and the date and hours worked. The logbook must be maintained for 30 days by the person in charge and be made available to the department upon request.

31.12(2) *Food handling and service.*

a. Dry storage. All food, equipment, utensils and single-service items shall be stored off the ground and above the floor on pallets, tables or shelving.

b. Cold storage. Refrigeration units shall be provided to keep potentially hazardous foods at 41°F or below. The inspector may approve an effectively insulated, hard-sided container with sufficient coolant for storage of less hazardous food or the use of such a container at events of short duration if the container maintains the temperature at 41°F or below.

c. Hot storage. Hot food storage units shall be used to keep potentially hazardous food at 140°F or above. Electrical equipment is required for hot holding, unless the use of propane stoves and grills capable of holding the temperature at 140°F or above is approved by the department. Sterno cans are allowed for hot holding if adequate temperatures can be maintained. Steam tables or other hot holding devices are not allowed to heat foods and are to be used only for hot holding after foods have been adequately cooked.

d. Cooking temperatures. As specified in the following chart, the minimum cooking temperatures for food products are:

165°F	• Poultry and game animals that are not commercially raised • Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite • All products cooked in a microwave oven
155°F	• Pork, rabbits, ratite and game meats that are commercially raised • Ground or comminuted (such as hamburgers) meat/fish products • Raw shell eggs not prepared for immediate consumption
145°F	• Raw shell eggs prepared for immediate consumption • Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above

e. Consumer advisory requirement. If raw or undercooked animal food such as beef, eggs, fish, lamb, poultry or shellfish is offered in ready-to-eat form, the license holder (person in charge) shall post the following language as a consumer advisory:

"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at a higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information."

f. Thermometers. Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. A metal stem thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. Food display. Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

h. Food preparation. Unless washing fruits and vegetables, food employees shall, to the extent practicable, avoid direct, bare-hand contact with ready-to-eat food. Establishments shall train food employees on the need and public health reasons for adequate hand washing and personal hygiene. The person in charge shall monitor employee hand-washing practices to ensure that employees are effectively cleaning their hands. One of the following alternatives shall be used by food employees when handling ready-to-eat food:

(1) Single-use gloves, utensils, deli tissue, spatulas, tongs or dispensing equipment; or

(2) An approved antibacterial soap with all operations that permit limited bare-hand contact with ready-to-eat foods.

i. Approved food source. All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

j. Leftovers. Leftovers may not be used, sold or given away in a temporary food establishment. Hot-held foods that are not used by the end of the day must be discarded.

31.12(3) *Utensil storage and warewashing.*

a. Single-service utensils. The use of single-service plates, cups and tableware is strongly recommended. The use of multiuse eating or drinking utensils must be approved by the department.

b. Dishwashing. An adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

c. Sanitizers. Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

d. Wiping cloths. Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizer solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

31.12(4) *Water.*

a. Water supply. An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

b. Wastewater disposal. Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.12(5) *Premises.*

a. Hand-washing container. An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

b. Floors, walls and ceilings. If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

c. Lighting. Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

d. Food preparation surfaces. All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

e. Garbage containers. An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

f. Toilet rooms. An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

g. Clothing. Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dish-washing areas.

These rules are intended to implement Iowa Code section 137F.7.

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CHAPTER 32
FOOD PROTECTION CERTIFICATION PROGRAMS
[Prior to 8/26/87, see Inspections and Appeals Department[481]—Ch 23]

481—32.1(137F) Definitions.

"Accredited" means a review of a certifying organization by an independent organization using specific criteria required in this chapter to verify compliance with food protection certification examination program standards.

"Accrediting organization" means an independent organization that determines whether a food protection manager certification program meets the standards of this chapter.

"Certification" means successful completion of testing to show that an individual has achieved competency levels of skills and knowledge of food protection necessary to perform as a food manager based on the criteria and standards specified in this chapter.

"Certification program" means the sum of individual components including testing according to this chapter that results in certification of individuals as meeting minimum standards of knowledge and food protection.

"Certified food protection manager" means the operator or a manager (person in charge) of a (retail) food establishment who has been certified by an approved food protection certification examination.

"Council on food protection practices" means the council established to advise the department regarding the operation of the certification program. The council membership includes three food regulators, two members from industry or industry trade associations, and two members from an accredited academic institution with a program in food protection.

"Food protection certification examination" means the examination in food protection approved in accordance with this program.

481—32.2(137F) Approval of certification programs.

32.2(1) Certification programs approved by the Conference on Food Protection (CFP) shall be recognized by the department upon receipt of appropriate documentation that the program is approved by the CFP.

32.2(2) The certification program must be reviewed by the council on food protection practices prior to being reviewed or approved by the department as meeting the requirements of this chapter. Each organization seeking approval from the department to develop and administer a certification program examination for certified food protection managers shall provide the following background information:

a. The organization's name, ownership, address, telephone number, contact person and other identifying information.

b. A description of the scope of usage of the examination including the time in use, number of examinations already administered and any government or other agencies that have already approved the examination.

c. Demonstrated experience in the development of psychometrically valid competency examinations.

d. Adequate documentation from an accrediting organization to verify that the examination is accredited.

481—32.3(137F) Test development. The test shall be legally defensible which means the ability to withstand a legal challenge to the appropriateness of the examination for the purpose for which it is used. This means that the examination can be defended due to the perceived bias of the examination, inappropriate chosen content, or claim that the examination does not adequately protect the consumer.

Each organization shall provide information about the development and administration of the examination for which approval is sought, including:

1. Formation of the examination questions with number of items in the question bank, the source of questions, method of composition and job relatedness.
2. Content validity based on "Demonstration of Knowledge" in Section 2-102.11 of the Food Code and requirements in Iowa Code chapter 137F and administrative rules adopted in regard to retail food establishments.
3. Test development, including setting the passing score, based on the most recent edition of Standards for Educational and Psychological Testing, developed by the American Psychological Association, American Educational Research Association and National Council on Measurement in Education, and all appropriate federal requirements (for example, Americans with Disabilities Act, Equal Employment Opportunity Commission standards). Tests must be revised as needed to meet changes in the Standards for Educational and Psychological Testing or any of the federal requirements.
4. Methods used to provide alternative examination forms (retakes) from the bank of questions.
5. Alternative language forms used.
6. Item analysis data to show that each examination is measuring performance at the same difficulty and reliability levels.
7. Policies and procedures used to administer examinations.

481—32.4(137F) Test administration. Each testing organization shall provide adequate security mechanisms that include:

1. Providing effective security during preparation, printing, transportation, handling, administration and destruction of the examinations.
2. Ensuring that approved organization monitors are present during the administration of the examinations.
3. Maintaining a tracking system of all examinations.
4. Making provisions to remove a particular version if the examination has been compromised.

32.4(1) Each testing organization shall ensure administration of examinations in compliance with this chapter by:

a. Verifying the eligibility of candidates according to this subrule and ensuring that the examination taker and applicant are the same person. The monitor shall confirm the identity of the individual who wishes to take the examination by photograph identification, driver's license or student identification card.

b. Providing the necessary staff and resources to administer, monitor and grade examinations. There shall be at least one monitor for every 35 students taking the examination.

c. Maintaining safeguards to ensure that individuals who have cheated on the examination are not granted certification.

d. Providing an individual who speaks English as a second language with the opportunity to take the examination in the individual's language if such is available, or providing the individual with a translator if one is requested.

e. Accommodating the needs of special populations to enable them to take the examination.

32.4(2) The examinations shall be stored and administered under secure conditions. "Secure conditions" means that access to the examination is limited to the monitor of the examination or an agent of the department. The examinations shall be inventoried before and immediately following each administration of the examination. The location of the examinations shall be monitored and kept in a log at all times.

481—32.5(137F) Reporting requirements. Each testing organization shall collect and provide the following performance criteria to the department:

1. Statistics following the examination which indicate the percentage of candidates answering each question correctly, number of candidates choosing each response, reliability estimates and discrimination indices.

2. Within 15 working days of each examination, the following class enrollment information: each candidate's name, home address, passing/failing score, date of examination and names of instructors and monitors.

3. An annual report showing the number of candidates tested, the number passing the examination and the number failing the examination.

481—32.6(137F) Audit by the department. The department reserves the right to audit operations to verify security measures and compliance with these rules.

These rules are intended to implement Iowa Code section 137F.2.

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CHAPTER 33
FOOD AND BEVERAGE VENDING MACHINES INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Ch 24]
Rescinded IAB 2/10/99, effective 3/17/99

CHAPTER 34
HOME FOOD ESTABLISHMENTS

481—34.1(137D) Inspection standards.

34.1(1) All ingredients must come from a licensed or approved source except for fresh fruits and vegetables, nonhazardous baked goods and honey or eggs. The use of food in hermetically sealed containers not prepared in a licensed food processing plant is prohibited.

34.1(2) All food products and ingredients shall be stored in original containers. If removed from the original container, food and ingredients must be stored in labeled and closed containers. Container must be of a material that will not cause the food to become adulterated.

34.1(3) All food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption. Food products shall not be stored on the floor.

34.1(4) All potentially hazardous food must be refrigerated at 41°F or less, or held at 140°F or higher to control bacteria growth. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

34.1(5) Food storage facilities must be kept clean and located to protect food from unsanitary conditions or contamination from any source at all times.

34.1(6) The floors, walls, ceilings, utensils, machinery, equipment and supplies in the food preparation area and all vehicles used in the transportation of food must be kept thoroughly clean. All food contact surfaces shall be easy to clean, smooth, nonabsorbent, and free of cracks or open seams.

34.1(7) All food must be protected against insects and rodents at all times. Outside doors, windows, and other openings must be fitted with screens and self-closing doors, if not otherwise protected. No dogs, cats, or other pets are allowed in the room where food is prepared or stored.

34.1(8) All garbage and refuse must be kept in containers and removed from the premises regularly to eliminate insects and rodents, offensive odors, or health or fire hazards. Garbage and refuse containers must be durable, easy to clean, insect- and rodent-resistant and of material that neither leaks, nor absorbs liquid.

34.1(9) All food handlers must be free from contagious or communicable diseases, sores or infected wounds, and must keep their hair covered and restrained.

34.1(10) All food handlers must keep themselves and their clothing clean. Hands must be washed as frequently as necessary to maintain good sanitation.

34.1(11) Smoking is not permitted while handling or preparing food or in food preparation or storage areas.

34.1(12) All establishments must have an adequate supply of hot and cold potable water under pressure from an approved source. Facilities must ensure that equipment, utensils, and containers used in the preparation of food shall be washed, rinsed and sanitized. If the residence is not served by a public water system, the water must be tested annually for nitrites and coliform. Records of water tests must be maintained by license holders who are not served by a public system. These records must be available to the regulatory authority upon request.

34.1(13) All establishments must have proper toilet facilities, equipped with a hand-washing lavatory, complete with hot and cold potable water under pressure and hand soap. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near the hand-washing facility.

34.1(14) Rescinded IAB 9/22/99, effective 10/27/99.

481—34.2(137D) Enforcement. All critical violations (four- and five-point items) shall be corrected within 10 days. Within 15 days, the license holder shall make a written report to the regulatory authority, stating the action taken to correct the critical violation. All noncritical violations shall be corrected by the next routine inspection.

Violation of these rules or any provision of Iowa Code chapter 137D is a simple misdemeanor. The department may employ various remedies if violations are discovered.

A license may be revoked.

An injunction may be sought.

A case may be referred to a county attorney for criminal prosecution.

481—34.3(137D) Labeling requirement. All labels shall contain the following information in legible English:

1. Name and address of the person(s) preparing the food, and
2. Common name of the food.

481—34.4(137D) Annual gross sales. Annual gross sales shall not exceed $20,000. The license holder shall maintain a record of sales of food licensed under Iowa Code section 137D.1(3). The record shall be available to the regulatory authority when requested.

481—34.5(137D) Criminal offense—conviction of license holder.

34.5(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a felony as a result.

34.5(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

34.5(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

34.5(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

This rule is intended to implement Iowa Code section 137D.8(3).

These rules are intended to implement Iowa Code chapter 137D.

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LAW ENFORCEMENT ACADEMY[501]

[Prior to 1971 IDR, see Dept. of Public Safety]
[Prior to 3/11/87, Law Enforcement Academy[550]]

CHAPTER 7
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(Uniform Rules)

CHAPTER 8
MANDATORY IN-SERVICE TRAINING REQUIREMENTS

CHAPTER 9
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CHAPTER 10
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CHAPTER 11
SALVAGE VEHICLE THEFT EXAMINATIONS

CHAPTER 12
CHILD SUPPORT

CHAPTER 2
MINIMUM STANDARDS FOR IOWA LAW ENFORCEMENT OFFICERS

[Appeared as Ch 1 prior to 4/10/85]
[Prior to 3/11/87, Law Enforcement Academy[550] Ch 2]

501—2.1(80B) General requirements for law enforcement officers. In no case shall any person hereafter be selected or appointed as a law enforcement officer unless the person:

2.1(1) Is a citizen of the United States and a resident of Iowa or intends to become a resident upon being employed; provided that, with the approval of the Iowa law enforcement academy council, a city located on a state border that is within a standard metropolitan statistical area may allow officers to reside in an adjacent state within that statistical area upon written application by the agency administrator to the council showing substantial reason and documenting undue hardship. Railway special agents who are approved by the commissioner of public safety as special agents of the department shall be exempt from the Iowa residency requirement.

2.1(2) Is 18 years of age at the time of appointment.

2.1(3) Has a valid driver's or chauffeur's license issued by the state of Iowa. Railway special agents who are approved by the commissioner of public safety as special agents of the department and officers who are allowed to reside in an adjacent state within a standard metropolitan statistical area shall be required to possess a valid driver's or chauffeur's license.

2.1(4) Is not addicted to drugs or alcohol.

2.1(5) Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted of local, state and national fingerprint files and has not been convicted of a felony or a crime involving moral turpitude. Moral turpitude is defined as an act of baseness, vileness, or depravity in the private and social duties which a person owes to another person, or to society in general, contrary to the accepted and customary rule of right and duty between person and person. It is conduct that is contrary to justice, honesty or good morals. The following nonexclusive list of acts has been held by the courts to involve moral turpitude: income tax evasion, perjury, or its subornation, theft, indecent exposure, sex crimes, conspiracy to commit a crime, defrauding the government and illegal drug sales. Various factors, however, may cause an offense which is generally not regarded as constituting moral turpitude to be regarded as such. The offenses of assault, domestic abuse, or other offenses of domestic violence, stalking, and any offense in which a weapon was used in the commission are crimes involving moral turpitude.

2.1(6) Has successfully passed a physical test adopted by the Iowa law enforcement academy.

2.1(7) Is not by reason of conscience or belief opposed to the use of force, when necessary to fulfill that person's duties.

2.1(8) Is a high school graduate with a diploma, or possesses a GED equivalency certificate.

2.1(9) Has an uncorrected vision of not less than 20/100 in both eyes, corrected to 20/20. Has color vision consistent with the occupational demands of law enforcement. Passing any of the following color vision tests indicates that the applicant has color vision abilities consistent with the occupational demands of law enforcement:

Pseudoisochromatic plates tests such as but not limited to: Tokyo Medical College, Ishihara, Standard Pseudoisochromatic Plates, Dvorine, American Optical HRR Plates, American Optical.

Panel tests such as:

Farnsworth Dichotomous D-15 Test or any other test designed and documented to identify extreme anomalous trichromatic, dichromatic or monochromatic color vision.

Individuals with extreme anomalous trichromatism or monochromasy color vision, as determined through testing, are not eligible to be hired as law enforcement officers in the state of Iowa.

2.1(10) Has normal hearing in each ear. Hearing is considered normal when, tested by an audiometer, hearing sensitivity thresholds are within 25db measured at 1000Hz, 2000Hz and 3000Hz averaged together.

2.1(11) Is examined by a licensed physician or surgeon and meets the physical requirements necessary to fulfill the responsibilities of a law enforcement officer.

501—2.2(80B) Mandatory psychological testing and administrative procedures. In no case shall any person be selected or appointed as a law enforcement officer unless that person has performed satisfactorily in preemployment cognitive or personality tests, or both, prescribed by the Iowa law enforcement academy.

2.2(1) *Required cognitive test.*

a. Entry-level applicants for all law enforcement positions in the state of Iowa shall take the Stanard & Associates' National Police Officer Selection Test (POST).

b. The minimum satisfactory score to be eligible for employment is 70 percent on each of the four sections of this examination. Agencies and civil service commissions may require a higher satisfactory score than 70 percent on each or any of the sections of the test.

2.2(2) *Required personality test.*

a. The Minnesota Multiphasic Personality Inventory (MMPI) test shall be taken by all applicants in the final selection process for a law enforcement position.

b. The prescribed personality test for an applicant in the final selection process shall be administered, scored and interpreted by the academy or by an individual who has been approved by the academy. The prescribed personality test for an applicant in the final selection process shall be evaluated by the Iowa law enforcement academy. These tests shall be evaluated and test results and evaluations shall be forwarded to a law enforcement agency for selection purposes only by the Iowa law enforcement academy upon proper waiver by the applicant.

2.2(3) *Test administration.*

a. Test results may be forwarded by the academy to a law enforcement agency for selection purposes only upon proper waiver by the applicant.

b. The Iowa law enforcement academy shall have prescheduled testing dates each fiscal year. Nonscheduled testing dates may also be provided.

2.2(4) *Cognitive test.*

a. At the discretion of the employing agency, the cognitive test (POST) may be administered by qualified individuals.

b. Arrangements for and administration of the Stanard & Associates' National Police Officer Selection Test (POST) shall be in accordance with directions of the Iowa law enforcement academy.

2.2(5) *Personality tests.*

a. Those law enforcement agencies which choose to administer, score, or interpret the MMPI without using the academy's testing services shall forward to the academy psychological testing information on any individual hired within 14 days of the date hired. Such information shall include, but not be limited to, all scores from MMPI scales used in the evaluation, the MMPI answer sheet, and any resulting reports.

b. The Minnesota Multiphasic Personality Inventory (MMPI) test may be administered to applicants who are not in the final selection process.

2.2(6) *Cost of tests.* The academy will establish and post fee schedules for costs of administering and evaluating the psychological and cognitive test or tests mandated by the academy for agencies who choose to utilize academy testing services.

The cost of the POST test shall be paid by the agencies for which testing is conducted to Stanard & Associates in accordance with the fee schedule approved by and posted at the Iowa law enforcement academy.

2.2(7) *Availability of tests scores.*

a. Forwarding of cognitive test results. Individual cognitive test scores of cognitive tests purchased through the Iowa law enforcement academy shall be provided by the Iowa law enforcement academy to prospective employing agencies upon request and proper waiver by the applicant for a minimal handling fee.

b. Forwarding of Minnesota Multiphasic Personality Inventory (MMPI) test results. The evaluation by the Iowa law enforcement academy of Minnesota Multiphasic Personality Inventory tests will be available to any prospective employing agency upon request and proper waiver by the applicant for a minimal handling fee.

c. Certified law enforcement officers. Law enforcement officers certified through training by the Iowa law enforcement academy are not required to take a cognitive test but may be required to do so at the discretion of the employing agency.

d. Rescinded IAB 9/22/99, effective 10/27/99.

e. Individual POST test scores shall be forwarded by Stanard & Associates to prospective employing agencies upon request and payment of a fee in accordance with the fee schedule approved by and posted at the Iowa law enforcement academy.

f. Individual POST test scores must be postmarked and forwarded to Stanard & Associates within one business day of the date of the examination.

g. Only scores forwarded to Stanard & Associates will be recognized as valid and become part of the Iowa database.

2.2(8) *Tests are valid for specific period.*

a. The Iowa law enforcement academy evaluations of the Minnesota Multiphasic Personality Inventory may only be used for 12 months to comply with these testing rules. Any applicant who has not been hired or placed upon a civil service certified list within 12 months of taking the Minnesota Multiphasic Personality Inventory test must retake the examination and, before the applicant is hired, the results of the examination must be considered by the hiring authority.

b. Rescinded IAB 9/22/99, effective 10/27/99.

c. At its discretion the employing agency may elect to require an applicant to retake any Iowa law enforcement academy required psychological test as well as any other tests that it may deem necessary in its selection process.

d. POST test scores shall be valid for a period of one year from the date of the examination. An applicant who has not been hired or placed upon a civil service certified list within one year of taking this test must retake and successfully pass the examination before being hired. A person may retest on the same version of the POST examination once within a 12-month period, with a minimum required delay of 90 days before the retest. No delay in retesting is required when a person is given an alternate version of the POST examination.

e. The employing law enforcement agency or appropriate civil service commission retains the exclusive right to decide whether an individual shall be allowed to retest or take an alternate version of the POST examination as provided by these rules.

2.2(9) *Construction.* Nothing in these rules should be construed to preclude a Civil Service Commission or employing agency from requiring an applicant for a law enforcement position to take tests other than those mandated by these rules so long as the applicant in the final selection process has complied with these rules. These rules shall not be construed as altering or changing the current authority of a Civil Service Commission.

501—2.3(80B) Officers moving from agency to agency. A certified Iowa law enforcement officer who has previously met all the requirements of rule 2.1(80B) and who intends to move employment from one Iowa law enforcement agency to another Iowa law enforcement agency, or who intends to be employed as a regular officer by more than one Iowa law enforcement agency simultaneously, shall:

2.3(1) Undergo a psychological examination as provided in rule 2.2(80B) of this chapter, and

2.3(2) Be of good moral character as determined by a thorough background investigation by the hiring agency, including, but not limited to, a fingerprint search conducted by the Iowa division of criminal investigation and Federal Bureau of Investigation. If the results of the fingerprint file checks cannot reasonably be obtained prior to the time of appointment, the hiring shall be considered conditional until such time as the results are received and reviewed by the appointing agency.

2.3(3) Except as otherwise specified, the provisions of rule 2.1(80B) of this chapter do not need to be reverified upon the movement of employment from one Iowa law enforcement agency to another Iowa law enforcement agency or upon being employed by more than one Iowa law enforcement agency simultaneously, if the certified Iowa law enforcement officer met all of the requirements of rule 2.1(80B) when the officer was initially hired as an Iowa law enforcement officer and if, without a break of not more than 180 days from law enforcement service, the officer is hired by another Iowa law enforcement agency.

501—2.4(80B) Officers in agencies under intergovernmental agreements. The provisions of rule 2.1(80B) do not need to be reverified by officers when jurisdictions enter into an intergovernmental agreement under the provisions of Iowa Code chapter 28E for the sharing of law enforcement services by those jurisdictions and officers if the execution, filing and recording of the agreement conform to the requirements of Iowa law and a certified copy is provided to the director of the academy; however, this does not apply to the establishment of a unified law enforcement district as defined in Iowa Code section 28E.21, wherein a new legal entity or political subdivision is established.

501—2.5(80B) Higher standards not prohibited. While no person can be selected, hired or appointed as an Iowa law enforcement officer who does not meet minimum requirements, agencies are not limited or restricted in establishing additional standards.

These rules are intended to implement Iowa Code sections 80B.11and 80B.11B.

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◊Two ARCs

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INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

[Prior to 12/17/86, Revenue Department[730]]

Rules 701—10.20(421) to 701—10.111(422A) are excerpted from 701—Chs 12, 30, 44, 46, 52, 58, 63, 81, 86, 88, 89, 104, IAB 1/23/91

701—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

10.1(1) *"Department"* means the Iowa department of revenue and finance.

10.1(2) *"Director"* means the director of the department or authorized representative.

10.1(3) *"Taxes"* means all taxes and charges arising under Title X of the Iowa Code, which include but are not limited to individual income, withholding, corporate income, franchise, sales, use, hotel/motel, railroad fuel, equipment car, replacement tax, statewide property tax, motor vehicle fuel, inheritance, estate and generation skipping transfer taxes and the environmental protection charge imposed upon petroleum diminution due and payable to the state of Iowa.

701—10.2(421) Interest. Except where a different rate of interest is provided by Title X of the Iowa Code, the rate of interest on interest-bearing taxes and interest-bearing refunds arising under Title X is fixed for each calendar year by the director. In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute which has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7, subsection 2, from the date of payment of the refund, considering each fraction of a month as an entire month. Interest which is not judgment interest is not payable on sales and use tax, local option tax, and hotel and motel tax refunds. *Herman M. Brown v. Johnson,* 248 Iowa 1143, 82 N.W.2d 134 (1957); *United Telephone Co. v. Iowa Department of Revenue,* 365 N.W.2d 647 (Iowa 1985). However, interest which is not judgment interest accrues on such refunds on or after January 1, 1995, and is payable on sales and use tax, local option tax and hotel and motel tax refunds on or after January 1, 1995.

10.2(1) *Calendar year 1982.* The rate of interest upon all unpaid taxes which are due as of January 1, 1982, will be 17 percent per annum (1.4% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after, January 1, 1982. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1982. This interest rate of 17 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1982.

EXAMPLES:

1. The taxpayer, X corporation, owes corporate income taxes assessed to it for the year 1975. The assessment was made by the department in 1977. On January 1, 1982, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of 9 percent per annum (0.75% per month) through December 31, 1981. Commencing on January 1, 1982, the rate of interest on the unpaid tax will thereafter accrue at the rate of 17 percent per annum for 1982 (1.4% per month). If the tax liability is not paid in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

2. The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, 1979, through December 31, 1982. The assessment is made on March 1, 1983. For the tax periods in which the tax became due prior to January 1, 1982, the interest rate on such unpaid sales taxes accrued at 9 percent per annum (0.75% per month). Commencing on January 1, 1982, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of 17 percent per annum. Those portions of the tax assessed first becoming delinquent in 1982 will bear interest at the rate of 17 percent per annum (1.4% per month). In the event that any portion of the tax assessed remains unpaid on January 1, 1983, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

3. The taxpayer, Z, files a refund claim for 1978 individual income taxes in March 1982. The refund claim is allowed in May 1982, and is paid. Z is entitled to receive interest at the rate of 9 percent per annum (0.75% per month) upon the refunded tax accruing through December 31, 1981, and is entitled to interest at the rate of 17 percent per annum (1.4% per month) upon such tax from January 1, 1982, until the refund is paid.

4. A's 1981 individual income tax liability becomes delinquent on May 1, 1982. A owes interest, commencing on May 1, 1982, at the rate of 17 percent per annum (1.4% per month). In the event that A does not pay the liability in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

5. Decedent died December 15, 1976. The inheritance tax was due 12 months after death, or December 15, 1977. Prior to the due date, the estate was granted an extension of time, until September 1, 1978, to file the return and pay the tax due. The tax, however, was paid March 15, 1982. Interest accrues on the unpaid tax during the period of the extension of time (December 15, 1977, to September 1, 1978) at the rate of 6 percent per annum. Interest accrues on the delinquent tax from September 1, 1978, through December 31, 1981, at the rate of 8 percent per annum. Interest accrues on the delinquent tax from January 1, 1982, to the date of payment on March 15, 1982, at the rate of 17 percent per annum.

6. B files a refund for sales taxes paid for the periods January 1, 1979, through December 31, 1982, in March 1983. The refund is allowed in May 1983. Since no interest is payable on sales tax refunds, B is not entitled to any interest. *Herman M. Brown Co. v. Johnson,* 248 Iowa 1143 (1957). However, interest accrues and is payable on and after January 1, 1995.

The examples set forth in these rules are not meant to be all-inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

10.2(2) *Calendar year 1983.* The rate of interest upon all unpaid taxes which are due as of January 1, 1983, will be 14 percent per annum (1.2% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after January 1, 1983. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1983. This interest rate of 14 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1983.

10.2(3) *Calendar year 1984.* The rate of interest upon all unpaid taxes which are due as of January 1, 1984, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1984. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1984. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1984.

KNOW ALL PERSONS BY THESE PRESENTS:

That we ____(taxpayer)____ as principal, and ____(surety)____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue and Finance for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue and Finance, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, 19 ____.

_____
Principal

_____
Surety

_____
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
ss.
COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____ Surety (type name)	$ _____	$ _____
_____ Surety (type name)	$ _____	$ _____

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, 19 ____.

(Seal)

_____
Notary Public in and
for the State of Iowa

701—10.125(422,453B) Duration of the bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.126(422,453B) Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the director when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying protest.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

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*Inadvertently omitted IAC 12/20/95; inserted 2/14/96.

69.16(2) The central location where the records are kept is within the state unless:

a. The licensee agrees to bring the records back into the state when requested to do so by the department for purposes of audit, or

b. The licensee agrees to pay the cost (as defined in rule 701—67.4(452A)) of an out-of-state audit.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.74(2).

All rules in 701—Chapters 67 and 68 apply if not specifically stated in this chapter.

The rules in 701—Chapters 67, 68, and 69 are effective for periods beginning on or after January 1, 1996.

See 701—Chapters 63, 64 and 65 for rules in effect on or prior to December 31, 1995.

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TITLE IX
PROPERTY

CHAPTER 70
REPLACEMENT TAX AND STATEWIDE PROPERTY TAX

DIVISION I
REPLACEMENT TAX

701—70.1(437A) Who must file return. Each taxpayer, as defined in Iowa Code section 437A.3(26), shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code sections 437A.8(1)*"a"* through *"e"* and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity subject to the replacement tax during the tax year, the return must contain a statement to that effect.

701—70.2(437A) Time and place for filing return. The return must be filed with the director on or before February 28 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before February 28 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is $300 or less is not required to file a return. Such taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue and Finance, Attention: Property Tax Section, Hoover State Office Building, Des Moines, Iowa 50319.

701—70.3(437A) Form for filing. Returns must be made by taxpayers on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. All information shall be supplied and each direction complied with in the same manner as if the forms were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making the replacement tax return.

Returns received which are not completed, but merely state "see schedule attached," "no tax due," or some other conclusionary statement are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return's being filed after the due date.

701—70.4(437A) Payment of tax. Payment of tax shall not accompany the filing of the replacement tax return with the director. Payment of tax shall never be made to the director or the state of Iowa. Payment of the proper amount of tax due shall be made to the appropriate county treasurer upon notification by the county treasurer to the taxpayer of the taxpayer's replacement tax obligation.

701—70.5(437A) Statute of limitations.

70.5(1) The director has three years after a return is filed to determine the tax due if the return is found to be incorrect and to give notice to the taxpayer of the determination. This three-year statute of limitations does not apply in the instances specified in 70.5(2).

70.5(2) If a taxpayer files a false or fraudulent return with the intent to evade any tax, the correct amount of tax due may be determined by the director at any time after the return has been filed.

70.5(3) If a taxpayer fails to file a return, the three-year period of limitations does not begin to run until the return is filed with the director.

70.5(4) Waiver of statute of limitations. The department and the taxpayer may extend the three-year period of limitations provided in 70.5(1) above by signing a waiver agreement form provided by the department. The agreement shall designate the period of extension and the tax year for which the extension applies. The agreement shall provide that the taxpayer may file a claim for refund of replacement tax at any time prior to the expiration of the agreement.

701—70.6(437A) Billings.

70.6(1) *Notice of adjustments.*

a. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that items subject to tax may not have been listed or included as taxable, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct. A copy of such notice shall also be sent to the appropriate county treasurer.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the person wishes to contest the matter, the person should file a timely claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if timely payment is not made). If no payment has been made, the person may discuss with the agent, auditor, clerk, or employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Department of Revenue and Finance, Property Tax Section, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the person's position may be required.

c. Power of agent, auditor, or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk, or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

70.6(2) *Notice of assessment.* If, after following the procedure outlined in 70.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct to the appropriate county treasurer, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer with a copy sent to the appropriate county treasurer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.41(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) to the appropriate county treasurer and file a refund claim with the director within the applicable period provided in Iowa Code section 437A.14(1)*"b"* for filing such claims.

70.6(3) *Supplemental assessments and refund adjustments.* The director may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the director shall notify the appropriate county treasurer. Such resolution shall preclude the director and the taxpayer from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax year unless there is a showing of mathematical or clerical error or showing of fraud or misrepresentation.

701—70.7(437A) Refunds.

70.7(1) A claim for refund of replacement tax may be made on a form obtainable from the department. All claims for refund should be filed with the director, and not with the county treasurer. In the case of a refund claim filed by an agent or representative of the taxpayer, a power of attorney must accompany the claim. All claims for refund must be in writing.

70.7(2) A taxpayer shall not offset a refund or overpayment of tax for one tax year as a prior payment of tax of a subsequent tax year on the tax return of a subsequent year unless the provisions of Iowa Code section 437A.8(7) are applicable.

70.7(3) Refunds—statute of limitations. The statute of limitations with respect to which refunds or credits may be claimed are:

a. The later of three years after the due date of the tax payment upon which the refund or credit is claimed; or one year after which such payment was actually made.

b. Ninety days after the due date of the tax payment upon which refund or credit is claimed if the tax is alleged to be unconstitutional.

70.7(4) No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid to the appropriate county treasurer under written protest which specifies the particulars of the alleged unconstitutionality.

70.7(5) The taxpayer responsible for paying the tax, or the taxpayer's successors, are the only persons eligible to file claims for refund or credit of the tax with the director and are the only persons eligible to receive such refunds or credits.

70.7(6) The director will promptly notify the appropriate county treasurer of the acceptance or denial of any refund claim or credit. The county treasurer shall pay the refund claim or portion thereof accepted by the director.

70.7(7) A taxpayer has 60 days from the date of the notice of denial of a refund or credit, in whole or in part, to file a protest according to the provisions of rule 701—7.41(17A).

701—70.8(437A) Abatement of tax. The provisions of rules 701—7.31(421) and 7.38(421,17A) are applicable to replacement tax. In the event that the taxpayer files a request for abatement with the director, the appropriate county treasurer shall be notified. The director's decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

701—70.9(437A) Taxpayers required to keep records.

70.9(1) Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the number of taxable kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year. Such records shall also include those for calendar year 1998.

b. Records associated with the number of taxable kilowatt-hours of electricity consumed within each electric competitive service area during the tax year where the delivery of such electricity is not subject to the replacement delivery tax.

c. Records associated with the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

d. Records associated with the number of taxable kilowatt-hours of electricity generated within the state of Iowa during the tax year. Such records shall also include those for calendar year 1998.

e. Records associated with taxable pole miles of transmission lines owned or leased by the taxpayer for each of the line voltage tiers subject to tax imposed in Iowa Code section 437A.7. Such records shall also include those for calendar year 1998.

f. Records associated with the excess property tax liability of each generation and transmission electric cooperative assigned to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such records shall include those for calendar year 1998. "Excess property tax liability" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under Iowa Code sections 437A.6 and 437A.7 for calendar year 1998.

g. Records associated with the number of taxable therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year. Such records shall also include those for calendar year 1998.

h. Records associated with the number of taxable therms of natural gas consumed within each natural gas competitive service area during the tax year where the delivery of such natural gas is not subject to the replacement delivery tax.

i. Records associated with the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

j. Records associated with the taxpayer's calculation of the tentative replacement taxes due for the tax year and required to be shown on the tax return.

k. Records associated with increases or decreases in the tentative replacement tax required to be shown to be due where the electric and natural gas delivery tax rates are subject to recalculation under the provisions of Iowa Code section 437A.8(7).

l. Records associated with the kilowatt-hours of electricity and the therms of natural gas entitled to be exempted from the taxes imposed by Iowa Code sections 437A.4 to 437A.7 by the enumerated exemptions therein.

m. Records associated with kilowatt-hours of electricity and therms of natural gas delivered in a manner set forth in Iowa Code sections 437A.4(7) and 437A.5(6).

n. All work papers associated with any of the records described in this rule.

o. Records pertaining to any additions or deletions of property described as exempt from local property tax in Iowa Code section 437A.16.

p. Records associated with allocation of property described in paragraph *"o"* above among local taxing districts.

70.9(2) The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the replacement taxes are reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

701—70.10(437A) Credentials. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

701—70.11(437A) Audit of records. The director or the director's authorized representative shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a tax return filed, of information presented, or for estimating the tax liability of a taxpayer. When a taxpayer fails or refuses to produce the records for examination upon request, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the director deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to the replacement tax.

701—70.12(437A) Collections. Neither the director nor the department is empowered to receive any payment of replacement tax. Therefore, taxpayers should never pay any replacement tax to the director or the state of Iowa. All payments of replacement tax are to be made to the appropriate county treasurer.

701—70.13(437A) Information confidential. Iowa Code subsections 437A.14(2) and (3) apply generally to the director, deputies, auditors, and present or former officers and employees of the department. Disclosure of the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information is prohibited. Other persons having acquired this confidential information will be bound by the same rules of secrecy under these Iowa Code provisions as any member of the department and will be subject to the same penalties for violations as provided by law.

DIVISION II
STATEWIDE PROPERTY TAX

701—70.14(437A) Who must file return. Each taxpayer shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code section 437A.21 and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity for which the taxpayer's property was subject to the statewide property tax during the tax year, the return must contain a statement to that effect.

701—70.15(437A) Time and place for filing return. The return must be filed with the director on or before February 28 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before February 28 following the tax year is untimely.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue and Finance, Attention: Property Tax Section, Hoover State Office Building, Des Moines, Iowa 50319.

701—70.16(437A) Form for filing. Replacement tax rule 70.3(437A) is incorporated herein by reference.

701—70.17(437A) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to Treasurer, State of Iowa. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

701—70.18(437A) Statute of limitations. Replacement tax rule 70.5(437A) is incorporated herein by reference.

701—70.19(437A) Billings.

70.19(1) *Notice of adjustments.* Replacement tax subrule 70.6(1) is incorporated herein by reference.

70.19(2) *Notice of assessment.* If, after following the procedure outlined in 70.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct to the director, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.41(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) to the director and file a refund claim with the director within the applicable period provided in Iowa Code sections 437A.22 and 437A.14(1)*"b"* for filing such claims.

70.19(3) *Supplemental assessments.* Replacement tax subrule 70.6(3) is incorporated by reference.

701—70.20(437A) Refunds. Replacement tax subrules 70.7(1) to 70.7(3), 70.7(5) and 70.7(7) are incorporated herein by reference.

No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid under written protest which specifies the particulars of the alleged unconstitutionality.

701—70.21(437A) Abatement of tax. The provisions of rules 701—7.31(421) and 7.38(421,17A) are applicable to the statewide property tax.

701—70.22(437A) Taxpayers required to keep records.

70.22(1) Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the assessed value and base year assessed value of property subject to the statewide property tax.

b. Records associated with the computation of the statewide property tax required to be shown due on the tax return.

c. Records associated with the book value of the local amount of any major addition by local taxing district.

d. Records associated with the book value of the statewide amount of any major addition.

e. Records associated with the book value of any building in Iowa at acquisition cost of more than $10 million which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year.

f. Records associated with the book value of any electric power generating plant in Iowa at acquisition cost of more than $10 million which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year.

g. Records associated with the book value of all other taxpayer property subject to the statewide property tax.

h. Records associated with the book value of any major addition, by situs, eligible for the urban revitalization exemption provided for in Iowa Code chapter 404.

i. All work papers associated with any of the records described in this rule.

j. Records associated with allocation of property subject to statewide property tax among local taxing districts.

70.22(2) The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the statewide property tax is reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

701—70.23(437A) Credentials. Replacement tax rule 70.10(437A) is incorporated herein by reference.

701—70.24(437A) Audit of records. Replacement tax rule 70.11(437A) is incorporated herein by reference.

These rules are intended to implement Iowa Code chapter 437A.

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CHAPTER 71
ASSESSMENT PRACTICES AND EQUALIZATION
[Prior to 12/17/86, Revenue Department[730]]

701—71.1(405,427A,428,441) Classification of real estate.

71.1(1) *Responsibility of assessors.* All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue and finance pursuant to Iowa Code section 441.45. See rule 71.8(428,441).

71.1(2) *Responsibility of boards of review, county auditors, and county treasurers.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

71.1(3) *Agricultural real estate.* Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

71.1(4) *Residential real estate.* Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, condominiums, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, condominiums not used as commercial ventures, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate. Effective January 1, 2000, property shall be classified as residential real estate if a majority of the condominiums are or will be used for residential purposes and have been sold, are available for sale, or are being rented, but the primary intent of the owner is to sell the units. For example, a building containing 25 condominiums of which 22 have been sold, are available for sale, or are being rented, but the primary intent of the owner is to sell the units, shall be classified as residential real estate. If more than one building is included in the horizontal property regime, the number of condominiums shall be combined to determine the majority use.

71.1(5) *Commercial real estate.* Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, condominiums, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)*"j,"* except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate, as shall condominiums not used as commercial ventures. Effective January 1, 2000, property shall be classified as commercial real estate if a majority of the condominiums are being used as a business or used for residential purposes and not sold, not available for sale, or are rented and the primary intent of the owner is to continue renting rather than sell the units. For example, a building containing 25 condominiums of which 22 are being used as businesses or used for residential purposes and not sold, not available for sale, or are rented and the primary intent of the owner is to continue renting rather than sell the units, is to be classified as commercial real estate. If more than one building is included in the horizontal property regime, the number of condominiums shall be combined to determine the majority use.

71.1(6) *Industrial real estate.*

a. Land and buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(6)*"a"*(1). Property in which the performance of these activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises' primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises' primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo,* 230 Iowa 750, 298 N.W. 654 (1941).

Similarly, a facility which has as its primary use the mixing and blending of products to manufacture feed would be assessed as industrial real estate even though a portion of the facility is used solely for the storage of grain, if the use for storage is merely incidental to the property's primary use as a manufacturing establishment. Conversely, a facility used primarily for the storage of grain would be assessed as commercial real estate even though a part of the facility is used to manufacture feed. In the latter situation, the industrial use of the property — the manufacture of feed — is merely incidental to the property's primary use for commercial purposes — the storage of grain.

BABIES
See BIRTH; CHILDREN; HOSPITALS: Nurseries; HOSPITALS: Obstetrics

BAIL
Enforcement businesses, licensure **661**—ch 2

BANKRUPTCY
Depositories, hunting/fishing license **571**—15.2(5)*c*
Driver license suspensions **761**—640.5(2)*c*
Farmer/creditor mediation program **61**—17.17
Hotels/motels **701**—104.5
Leasing companies **701**—18.36(4) p. 29
Liquor licensees **185**—4.19
Motor vehicles
  Accidents, liability **761**—640.4(5)*h*, 640.5(2)*c*
  Titles **761**—400.4(6)
Radioactive materials licensees **641**—39.4(32)*e,f*
Suppliers, state colleges **681**—8.1(1)*d*
Taxes
  Collection, fiduciaries **701**—13.13
  Distressed sales **701**—39.6
  Exemption, lessors **701**—18.36(4) p. 29
  Filing, returns **701**—12.7, 104.5
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Underground storage tanks, owner/operator **567**—136.19, 136.23
Unemployment contributions, successors **871**—23.28(7)*d*

BANKS AND BANKING
See also LOANS; SAVINGS AND LOAN ASSOCIATIONS
Advertising **187**—10.6
Articles of incorporation **187**—1.4, 2.1(5), 2.7
Bonds
  Investments **25**—2.9, 2.11, 2.12
  Revenue **265**—ch 4
  Surety **187**—2.11
Branch offices/facilities **187**—2.4, 2.5, 2.13

BARBERS

*Rules 645—chs 6–17 apply to all professional licensure boards

*Rules **645**—chs 6–17 apply to all professional licensure boards

BIDS AND BIDDING

BILLS OF sale (cont'd)
Vehicle registration/ownership

Temporary use **761**—400.19
Trailers **761**—400.4(3)*d*

BINGO
See GAMBLING

BIRDS
See also HUNTING
Disease control **21**—64.1, 65.1(1); **571**—112.11
Endangered species **571**—ch 77
Exhibition, veterinary inspection certificate **21**—64.34
Importation **21**—65.1(1)
Nests, salvage permit **571**—111.3
Pet shops **21**—ch 67
Stamps, waterfowl **571**—ch 9, 92.2
Taxation, domesticated fowl **701**—17.9(2)

BIRTH
Adolescent parenting **441**—ch 163
Adoptions, *see ADOPTION*
Centers **441**—77.27, 78.30, 79.1(2); **481**—50.3(3), 50.8(4), ch 52
Certificates
Amendments **641**—96.4, ch 102
Cancellation **641**—99.10, 104.2
Confidential **641**—96.6(4), 103.1(4), 104.1(3)
Copies **641**—96.2, 96.4, ch 100, 103.1(4), 104.1(3)
Corrections **641**—ch 102
Definitions **641**—96.1
Delayed registration **641**—99.1–99.11
Fees **641**—ch 95, 96.4
Forms **641**—98.1, 99.11, 100.1, 100.2
Legitimation **641**—96.6, 100.2, 100.4
Name change **641**—102.7–102.10
Parents **641**—99.1, 99.4, 99.5, 99.7, 100.4, 100.6, 102.1(1)
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BOILERS

BROKERS (cont'd)

Savings and loan associations **191**—50.83, 50.84
Securities **187**—2.15; **191**—ch 50, *see also SECURITIES*
Taxation **701**—30.1(1), 52.1(3)*w*

BRUCELLOSIS
Branding **21**—64.52(2,3), 64.54, 66.4(9)
Cattle **21**—64.49–64.58, 64.63, 64.64, 65.5, 66.7
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Eradication fund **21**—64.68
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Indemnity **21**—64.56(2), 64.57(9)
Markets
  Classification **21**—66.5, 66.6
  Fees **21**—66.4(9)
  Release **21**—66.10
  Sale sequence **21**—66.9
Movement, livestock **21**—65.5, 66.11
Quarantine **21**—64.34(1), 64.43(1), 64.51, 64.67, 65.5(3), 65.6(4)
Reactors **21**—64.51(2), 64.52(3), 64.53, 64.54, 64.56, 64.67, 66.6(4), 66.9(5)
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BUILDINGS
See also FIRE AND FIRE PROTECTION; HEALTH CARE FACILITIES; HOMES, HOUSING; HOSPITALS
Access
  Handicapped, *see Building Code below; HEALTH CARE FACILITIES: Disabilities; HOSPITALS: Building Requirements*
  Highway **761**—112.5

BUILDINGS (cont'd)

Building code

Occupancy requirements **661**—16.123(3), 16.130(4,13,14), 16.140(1)*c*, 16.801(2), 16.802(2)

One/two-family dwellings **661**—16.121(1,2), 16.500, 16.801(13)

Parking/loading zones, disabled **661**—16.704(5), ch 18

Permits **661**—16.123(3), 16.130(12), 16.610(20,30)

Plans/specifications **661**—16.131, 16.802(5)

Plumbing, uniform code **481**—61.11(4); **641**—17.1(5), ch 25; **661**—16.120(5), 16.130(5), 16.131(1), 16.140(1)*d*, 16.400, 16.401, 16.705(8,9), 16.706(1)*c,d*

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Temporary structures **661**—16.130(8)

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Demolition

Permits **661**—16.130(12)

Taxation **701**—18.6(4)

Energy use

Audits, public/private institutions **565**—chs 7, 8

Code, nonresidential/residential high-rise **661**—16.802

Conservation

Architects/engineers **661**—16.801(5), 16.802(5)

Compliance, utility service prerequisites **199**—19.9(5), 20.12

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Evacuation, care facilities **481**—57.25(2), 58.28(2), 59.33(2), 62.19(8), 63.23(2)

Fire safety standards **661**—ch 5, *see also Building Code above; FIRE AND FIRE PROTECTION; HOSPITALS*

Flood protection **567**—71.7, 72.5

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Transportation facilities, intermodal **761**—ch 201

BUNGEE JUMPING
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BUREAU OF CRIMINAL IDENTIFICATION
Criminalistics laboratory **661**—1.2(6), ch 12
Detectives, licensing **661**—2.4
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BURIAL
See also CEMETERIES; DEATH; FUNERALS
Ancient remains, reburial **685**—6.2(2), ch 11
Benefits, supplementary assistance **441**—ch 56
Disinterment **641**—101.7; **645**—100.8
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  Disinterment **641**—101.7
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BUSES
Baggage, X-ray inspection **641**—45.1(2)
Beverage sales, deposits **567**—107.8(1)
Chartered, fuel tax exemption **701**—64.3"5"
Churches **761**—400.42
Fuel **701**—18.38, 63.25(3), 64.3"5," 64.22, 65.15
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Marking **761**—524.12
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Records/reports **281**—5.14(3,4), 5.15(13); **761**—921.7, 921.9
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