

*State of Iowa*

# **Iowa Administrative Code Supplement**

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

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

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

# INSTRUCTIONS

FOR

Updating Iowa Administrative Code  
with Biweekly Supplement

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

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

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

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**UPDATING INSTRUCTIONS**  
**December 15, 1999, Biweekly Supplement**

[Previous Supplement dated 12/1/99]

## IOWA ADMINISTRATIVE CODE

	<b>Remove Old Pages*</b>	<b>Insert New Pages</b>
<b>Insurance Division[191]</b>	Analysis, p. 3, 4 (Do not remove p. 4a) Analysis, p. 11, 12 Ch 15, p. 9, 10 Ch 15, p. 17 Ch 50, p. 59, 60	Analysis, p. 3, 4  Analysis, p. 11, 12 Ch 15, p. 9—Ch 15, p. 10a Ch 15, p. 17 Ch 50, p. 59—Ch 50, p. 61
<b>Utilities Division[199]</b>	Analysis, p. 1, 2 Ch 1, p. 1, 2 Ch 1, p. 9, 10 Ch 3, p. 1—Ch 3, p. 4	Analysis, p. 1, 2 Ch 1, p. 1, 2 Ch 1, p. 9, 10 Ch 3, p. 1—Ch 3, p. 3
<b>Historical Division[223]</b>	Analysis, p. 3, 4 Ch 49, p. 3—Ch 49, p. 9	Analysis, p. 3, 4 Ch 49, p. 3—Ch 49, p. 10
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>	Ch 58, p. 1—Ch 58, p. 9 Ch 59, p. 3, 4 Ch 59, p. 7—Ch 59, p. 14	Ch 58, p. 1—Ch 58, p. 10 Ch 59, p. 3, 4 Ch 59, p. 7—Ch 59, p. 15
<b>Educational Examiners Board[282]</b>	Ch 21, p. 1	Ch 21, p. 1

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

	<b>Remove Old Pages*</b>	<b>Insert New Pages</b>	
<b>Professional Licensure Division[645]</b>	Ch 20, p. 13, 14 Ch 61, p. 1, 2 Ch 61, p. 5—Ch 62, p. 2	Ch 20, p. 13, 14 Ch 61, p. 1, 2 Ch 61, p. 5—Ch 62, p. 2	
<b>Pharmacy Examiners Board[657]</b>	Analysis, p. 1, 2 Ch 8, p. 7—Ch 8, p. 10 Ch 8, p. 17, 18 Ch 8, p. 21	Analysis, p. 1, 2 Ch 8, p. 7—Ch 8, p. 10 Ch 8, p. 17, 18 Ch 8, p. 21	
<b>REGENTS BOARD[681]</b>	Analysis, p. 1—Analysis, p. 4 Ch 11, p. 1—Ch 17, p. 7	Analysis, p. 1—Analysis, p. 4 Ch 11, p. 1—Ch 20, p. 14	
<b>REVENUE AND FINANCE DEPARTMENT[701]</b>	Analysis, p. 1, 2 Analysis, p. 15, 16 Ch 5, p. 1—Ch 6, p. 14 Ch 48, p. 1—Ch 48, p. 5 Ch 52, p. 1, 2 Ch 52, p. 7, 8 Ch 52, p. 25—Ch 53, p. 2 Ch 53, p. 19—Ch 54, p. 4 Ch 54, p. 19, 20	Analysis, p. 1, 2 Analysis, p. 15, 16 Ch 5, p. 1—Ch 6, p. 7 Ch 48, p. 1—Ch 48, p. 6 Ch 52, p. 1, 2 Ch 52, p. 7, 8 Ch 52, p. 25—Ch 53, p. 2a Ch 53, p. 19—Ch 54, p. 4 Ch 54, p. 19, 20	
<b>Index Volume</b>	“E” Tab, p. 1-14	“E” Tab, p. 1-14	

\*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.



## POLICYHOLDER PROXY SOLICITATION

- 7.11(523) Application
- 7.12(523) Conditions—revocation
- 7.13(523) Filing proxy
- 7.14(523) Solicitation by agents—use of funds

## CHAPTER 8

## BENEVOLENT ASSOCIATIONS

- 8.1 and 8.2 Reserved
- 8.3(512A) Organization
- 8.4(512A) Membership
- 8.5(512A) Fees, dues and assessments
- 8.6(512A) Reserve fund
- 8.7(512A) Certificates
- 8.8(512A) Beneficiaries
- 8.9(512A) Mergers
- 8.10(512A) Directors and officers
- 8.11(512A) Stockholders
- 8.12(512A) Bookkeeping and accounts

## CHAPTER 9

## REPORTING REQUIREMENTS ON LICENSES

- 9.1(272C) Definitions
- 9.2(272C) Insurer's duties
- 9.3(272C) Commissioner's duties

## INSURANCE AGENTS

## CHAPTER 10

## LICENSING OF INSURANCE PRODUCERS

- 10.1(522) Purpose and authority
- 10.2(522) Definitions
- 10.3(522) Requirement to hold a license
- 10.4(522) Licensing of resident producers
- 10.5(522) Licensing of nonresident producers
- 10.6(522) Issuance of license
- 10.7(522) License qualifications
- 10.8(522) License renewal
- 10.9(522) License reinstatement
- 10.10(522) Licensing after revocation or voluntary surrender of license
- 10.11(522) Exemptions from examination requirement
- 10.12(522) Letter of clearance
- 10.13(522) Letter of certification
- 10.14(522) Change in name or address
- 10.15(522) Reporting of actions
- 10.16(522) Commissions
- 10.17(522) Appointments
- 10.18(522) Appointment renewal
- 10.19(522) Licensing of an insurance agency

- 10.20(522) Violations and penalties
- 10.21(252J) Suspension for failure to pay child support
- 10.22(261) Suspension for failure to pay student loan
- 10.23(522) Administration of examinations
- 10.24(522) Forms
- 10.25(522) Fees

## CHAPTER 11

## CONTINUING EDUCATION FOR INSURANCE PRODUCERS

- 11.1(272C) Statutory authority—purpose—applicability
- 11.2(272C) Definitions
- 11.3(272C) Continuing education requirements for producers
- 11.4(272C) Proof of completion of continuing education
- 11.5(272C) Course approval
- 11.6(272C) Topic guidelines
- 11.7(272C) CE course renewal
- 11.8(272C) Appeals
- 11.9(272C) CE provider approval
- 11.10(272C) CE provider's responsibilities
- 11.11(272C) Prohibited conduct—CE providers
- 11.12(272C) Outside vendor
- 11.13(272C) CE course audits
- 11.14(272C) Fees and costs

## CHAPTER 12

## PORT OF ENTRY REQUIREMENTS

- 12.1(508,515) Purpose
- 12.2(508,515) Trust and other admission requirements
- 12.3(508,515) Examination and preferred supervision
- 12.4(508,515) Surplus required
- 12.5(508,515) Investments

## CHAPTER 13

## Reserved

## UNFAIR TRADE PRACTICES

## CHAPTER 14

## LIFE INSURANCE ILLUSTRATIONS MODEL REGULATION

- 14.1(507B) Purpose
- 14.2(507B) Authority
- 14.3(507B) Applicability and scope
- 14.4(507B) Definitions
- 14.5(507B) Policies to be illustrated
- 14.6(507B) General rules and prohibitions
- 14.7(507B) Standards for basic illustrations

- 14.8(507B) Standards for supplemental illustrations
- 14.9(507B) Delivery of illustration and record retention
- 14.10(507B) Annual report; notice to policyowners
- 14.11(507B) Annual certifications
- 14.12(507B) Penalties
- 14.13(507B) Separability
- 14.14(507B) Effective date

#### CHAPTER 15

##### UNFAIR TRADE PRACTICES

- 15.1(507B) Purpose
- 15.2(507B) Definitions
- 15.3(507B) Advertising
- 15.4(507B) Life insurance cost and benefit disclosure requirements
- 15.5(507B) Health insurance sales to persons 65 years of age or older
- 15.6(507B) Preneed funeral contracts or prearrangements
- 15.7(507B) Twisting prohibited
- 15.8(507B) Sales presentation guidelines
- 15.9(507B) Right to return a life insurance policy or annuity (free-look)
- 15.10(507B) Uninsured/underinsured automobile coverage—notice required
- 15.11(507B) Unfair discrimination
- 15.12(507B) Testing restrictions of insurance applications for the human immunodeficiency virus
- 15.13(507B) Records maintenance
- 15.14(507B) Enforcement section—cease and desist and penalty orders
- 15.15(507B) Use of aftermarket crash parts in automobile insurance policies—notice required

#### CHAPTER 16

##### REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

###### DIVISION I

- 16.1(507B) Purpose and authority
- 16.2(507B) Definition of replacement
- 16.3(507B) Other definitions
- 16.4(507B) Exemptions
- 16.5(507B) Duties of agents and brokers

- 16.6(507B) Duties of all insurers
- 16.7(507B) Duties of insurers that use agents or brokers
- 16.8(507B) Duties of insurers with respect to direct response sales
- 16.9(507B) Penalties
- 16.10(507B) Severability
- 16.11 to 16.20 Reserved

###### DIVISION II

(Effective July 1, 2000)

- 16.21(507B) Purpose
- 16.22(507B) Definitions
- 16.23(507B) Exemptions
- 16.24(507B) Duties of producers
- 16.25(507B) Duties of all insurers that use producers on or after January 1, 2001
- 16.26(507B) Duties of replacing insurers that use producers
- 16.27(507B) Duties of the existing insurer
- 16.28(507B) Duties of insurers with respect to direct-response solicitations
- 16.29(507B) Violations and penalties
- 16.30(507B) Severability

#### CHAPTER 17

##### LIFE AND HEALTH REINSURANCE AGREEMENTS

- 17.1(508) Authority and purpose
- 17.2(508) Scope
- 17.3(508) Accounting requirements
- 17.4(508) Written agreements
- 17.5(508) Existing agreements

#### CHAPTER 18

##### CEMETERIES

- 18.1(523I,566A) Perpetual care cemeteries
- 18.2(523I,566A) Administration
- 18.3(523I,566A) Public access to hearings
- 18.4 Reserved
- 18.5(523I,566A) Forms—content
- 18.6(523I,566A) Annual report by perpetual care cemeteries
- 18.7(523I,566A) Annual reports and perpetual care cemetery permits

- 50.45(502) Definition of offer  
 50.46(502) Institutional buyer exemption  
 50.47(502) National Securities Exchange—exemption  
 50.48(502) Multijurisdictional disclosure system  
 50.49 Reserved  
 50.50(502) Registration and renewals of open-end management investment companies, unit investment trusts and face amount certificate companies  
 50.51(502) Notice filings for offerings of investment company securities  
 50.52 and 50.53 Reserved  
 50.54(502) Rankings or ratings of direct participation programs  
 50.55 and 50.56 Reserved  
 50.57(502) NASAA guidelines  
 REAL ESTATE PROGRAM  
 50.58 to 50.78 Reserved  
 50.79(502) Act defined  
 50.80 Reserved  
 50.81(502) Brokerage services by national and state banks  
 50.82(502) Broker-dealers having contracts with national and state banks  
 50.83(502) Brokerage services by credit unions, savings banks and savings and loan institutions  
 50.84(502) Broker-dealers having contracts with credit unions, savings banks and savings institutions  
 50.85(502) Filing requirements for agricultural cooperative associations  
 50.86 to 50.89 Reserved  
 50.90(502) World class foreign issuer exemption  
 50.91(502) Solicitations of interest prior to the filing of the registration statement  
 50.92(502) Streamlined registration for certain equity securities  
 50.93(502) Manual or electronically available information exemption  
 50.94(502) Investment adviser applications and renewals  
 50.95(502) Investment adviser representative applications and renewals  
 50.96(502) Federal covered adviser notice, renewal and update filings  
 50.97(502) Updated filings and withdrawals  
 50.98 and 50.99 Reserved
- 50.100(502) Definition of investment adviser representative of a federal covered adviser  
 50.101(502) Investment adviser disclosure statement  
 50.102 Reserved  
 50.103(502) Cash solicitation  
 50.104(502) Unethical business practices of investment advisers, and investment adviser representatives, or fraudulent or deceptive conduct by federal covered advisers  
 50.105(502) Custody of client funds or securities  
 50.106(502) Minimum financial requirements for investment advisers  
 50.107(502) Bonding requirements for certain investment advisers  
 50.108(502) Record-keeping requirements for investment advisers  
 50.109(502) Examination requirements  
 50.110(502) Waivers
- CHAPTERS 51 to 53  
 Reserved
- CHAPTER 54  
 RESIDENTIAL SERVICE CONTRACTS
- 54.1(523C) Purpose  
 54.2(523C) Definitions  
 54.3(523C) Title  
 54.4(523C) Scope  
 54.5(523C) Application of insurance laws  
 54.6(523C) Exemptions  
 54.7 to 54.9 Reserved  
 54.10(523C) Administration  
 54.11(523C) Misrepresentations of government approval  
 54.12(523C) Public access to hearings  
 54.13(523C) Public access to records  
 54.14(523C) Procedure for public complaints  
 54.15(523C) Fees  
 54.16(523C) Forms  
 54.17 to 54.19 Reserved  
 54.20(523C) Service company licenses  
 54.21(523C) Suspension or revocation of license  
 54.22(523C) Licenses not transferable  
 54.23 to 54.29 Reserved  
 54.30(523C) Forms of contracts  
 54.31 to 54.39 Reserved  
 54.40(523C) Cessation of business—records  
 54.41(523C) Records  
 54.42(523C) Annual reports

- 54.43 to 54.49 Reserved
- 54.50(523C) Prohibited acts or practices
- 54.51(523C) Orders
- 54.52(523C) Investigations and subpoenas
- 54.53(523C) Audits

#### CHAPTER 55

##### IOWA BUSINESS OPPORTUNITY SALES ACT

- 55.1(523B) Definitions and interpretations
- 55.2(523B) Jurisdictional authority
- 55.3(523B) Registration application procedure
- 55.4(523B) Exemption application procedure
- 55.5(523B) Surety bond, trust account or letter of credit
- 55.6(523B) Orders
- 55.7(523B) Investigations and subpoenas
- 55.8(523B) Forms
- 55.9(523B) Fees

#### CHAPTER 56

##### WORKERS' COMPENSATION GROUP SELF-INSURANCE

- 56.1(87,505) General provisions
- 56.2(87,505) Definitions
- 56.3(87,505) Requirements for self-insurance
- 56.4 Reserved
- 56.5(87,505) Excess insurance
- 56.6(87,505) Rates and reporting of rates
- 56.7(87,505) Special provisions
- 56.8(87,505) Certificate of approval; termination
- 56.9(87,505) Examinations
- 56.10(87,505) Board of trustees—membership, powers, duties, and prohibitions
- 56.11(87,505) Association membership; termination; liability
- 56.12(87,505) Requirements of sales agents
- 56.13(87,505) Requirements for continued approval
- 56.14(87,505) Misrepresentation prohibited
- 56.15(87,505) Investments
- 56.16(87,505) Refunds
- 56.17(87,505) Premium payment; reserves
- 56.18(87,505) Deficits and insolvencies
- 56.19(87,505) Grounds for nonrenewal or revocation of a certificate of relief from insurance
- 56.20(87,505) Hearing and appeal
- 56.21(87,505) Existing approved self-insurers
- 56.22(87,505) Severability clause

#### CHAPTER 57

##### WORKERS' COMPENSATION SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

- 57.1(87,505) General provisions
- 57.2(87,505) Definitions
- 57.3(87,505) Requirements for self-insurance
- 57.4(87,505) Additional security requirements
- 57.5(87,505) Application for an individual self-insurer
- 57.6 Reserved
- 57.7(87,505) Excess insurance
- 57.8(87,505) Insolvency
- 57.9(87,505) Renewals
- 57.10(87,505) Periodic examination
- 57.11(87,505) Grounds for nonrenewal or revocation of a certificate of relief from insurance
- 57.12(87,505) Hearing and appeal
- 57.13(87,505) Existing approved self-insurers
- 57.14(87,505) Severability clause

#### CHAPTER 58

##### THIRD-PARTY ADMINISTRATORS

- 58.1(510) Purpose
- 58.2(510) Definitions
- 58.3(510) Application
- 58.4(510) Application by corporation, association or benefit society
- 58.5(510) Surety bond
- 58.6(510) Waiver procedure
- 58.7(510) Change of information
- 58.8(510) Inquiry by commissioner
- 58.9(510) Renewal procedure
- 58.10(510) Periodic examination
- 58.11(510) Grounds for denial, nonrenewal, suspension or revocation of certificate
- 58.12(510) Hearing and appeal
- 58.13(510) Severability clause

#### CHAPTERS 59 to 69

Reserved

#### MANAGED HEALTH CARE

#### CHAPTER 70

##### UTILIZATION REVIEW

- 70.1(505,514F) Purpose
- 70.2(505,514F) Definitions
- 70.3(505,514F) Application
- 70.4(505,514F) Standards
- 70.5(505,514F) Retroactive application
- 70.6(505,514F) Variances allowed
- 70.7(505,514F) Confidentiality

*e.* Prohibit insurers from applying suitability standards which include income as a factor in the sale of any life insurance or annuity products;

*f.* Prohibit insurers from establishing maximum or minimum amounts of insurance that will be issued to individuals so long as this is pursuant to a preexisting specialized marketing strategy which the insurer can demonstrate is related to the financial capacity of the insurer to write business or to bona fide transaction costs.

**15.11(4) *Domestic abuse.*** A contract shall not be denied to a person based solely on the fact such person has been or is believed to have been a victim of domestic abuse as defined in Iowa Code section 236.2.

**191—15.12(507B) Testing restrictions of insurance applications for the human immunodeficiency virus.**

**15.12(1) *Written release.*** No insurer shall obtain a test of any person in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the person to be tested provides a written release on a form which contains the following information:

*a.* A statement of the purpose, content, use, and meaning of the test.

*b.* A statement regarding disclosure of the test results including information explaining the effect of releasing the information to an insurer.

*c.* A statement of the purpose for which test results may be used.

**15.12(2) *Form.*** A preapproved form is provided in Appendix III. An insurer wishing to utilize a form which deviates from the language in the appendix to these rules shall submit the form to the insurance division for approval. Any form containing, but not limited to, the language in the appendix shall be deemed approved.

**191—15.13(507B) Records maintenance.**

**15.13(1) *Complaint and business records.***

*a.* An insurer shall maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner.

*b.* An insurer shall maintain a complete record of all the complaints received since the date of its last examination by the insurer's state of domicile or port-of-entry state. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. Appendix IV sets forth the minimum information required to be contained in the complaint record.

**15.13(2) *Insurer's control over advertisements.*** Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements which explain a particular policy. All such advertisements, whether written, created, designed or presented by the insurer or its appointed producer, shall be the responsibility of the insurer whose particular policies are so advertised. As part of this requirement, each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its policies, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to inspection by the insurance division. All such advertisements shall be maintained for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

**191—15.14(507B) Enforcement section—cease and desist and penalty orders.** If, after hearing, the commissioner finds that an insurer or producer has engaged in an unfair trade practice in violation of these rules or unfair competition or unfair and deceptive acts or practices in violation of Iowa Code chapter 507B, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer or producer charged with the violation a copy of the findings in an order requiring the insurer or producer to cease and desist from engaging in the act or practice. The commissioner also may order one or more of the following:

1. Payment of a monetary penalty of not more than \$1,000 for each violation, but not to exceed an aggregate penalty of \$10,000. If the insurer or producer knew or reasonably should have known that its actions were in violation of these rules, the penalty shall be not more than \$5,000 for each violation but not to exceed an aggregate penalty of \$50,000;
2. Suspension or revocation of the insurer's certificate of authority or the producer's license if the insurer or producer knew or reasonably should have known that it was in violation of this rule;
3. Full disclosure by the insurer of all terms and conditions of the policy to the policyowner;
4. Payment of the costs of the investigation and administrative expenses related to any violation.

**191—15.15(507B) Use of aftermarket crash parts in automobile insurance policies—notice required.**

**15.15(1) Contents of notice.** Any automobile insurance policy delivered in this state that pays benefits based on the cost of aftermarket crash parts as defined in Iowa Code chapter 537B or that requires the insured to pay the difference between the cost of original equipment manufacturer parts and the cost of aftermarket crash parts shall include a notice which contains and is limited to the following language:

NOTICE—PAYMENT FOR AFTERMARKET CRASH PARTS

Physical damage coverage under this policy includes payment for aftermarket crash parts. If you repair the vehicle using more expensive original equipment manufacturer (OEM) parts, you may pay the difference. Any warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle.

**15.15(2) Form of notice.** Notice may be provided on a separate form or may be printed prominently on the declaration page of the policy. The notice shall be provided in conjunction with all new policies issued. Notice may be provided at the time of application, but shall in no case be provided later than the time of delivery of the new policy. Insurers may inform applicants that the insurance division requires the notice in this rule.

These rules are intended to implement Iowa Code chapter 507B.

Appendix I  
LIFE INSURANCE COST AND  
BENEFIT DISCLOSURE

Definitions.

“Annual premium” for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

“Cash dividend” means dividends which can be applied toward payment of gross premiums which comply with the illustrated scale.

“Equivalent level annual dividend” is calculated by applying the following steps:

1. Accumulate the annual cash dividends at 5 percent interest compounded annually to the end of the tenth and twentieth policy years.

2. Divide each accumulation of paragraph “1” by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in paragraph “1” over the respective periods stipulated in paragraph “1.” If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

3. Divide the results of paragraph “2” by the number of thousands of the equivalent level death benefit to arrive at the equivalent level annual dividend.

“Equivalent level death benefit” of a policy or term life insurance rider is an amount calculated as follows:

1. Accumulate the guaranteed amount payable upon death, regardless of the cause of death other than suicide, or other specifically enumerated exclusions, at the beginning of each policy year for 10 and 20 years at 5 percent interest compounded annually to the end of the tenth and twentieth policy years respectively.

2. Divide each accumulation of paragraph “1” by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in paragraph “1” over the respective periods stipulated in paragraph “1.” If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

“Generic name” means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

“Life insurance net payment cost index.” The life insurance net payment cost index is calculated in the same manner as the comparable life insurance cost index except that the cash surrender value and any terminal dividend are set at zero.

“Life insurance surrender cost index.” The life insurance surrender cost index is calculated by applying the following steps:

1. Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.





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**50.108(9)** For purposes of this rule, “investment supervisory services” means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

**50.108(10)** For purposes of this rule, “discretionary power” shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

**50.108(11)** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

**50.108(12)** Every investment adviser that is registered or required to be registered in this state and that has the adviser’s principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with such state’s record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502.

### **191—50.109(502) Examination requirements.**

**50.109(1)** A person applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the administrator with proof that the person has obtained a passing score on one of the following examinations:

- a. The Uniform Investment Adviser Law Examination (Series 65 examination); or
- b. The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

**50.109(2)** Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on or after January 19, 2000, shall not be required to satisfy the examination requirements for continued registration, except that the administrator may require additional examinations for any individual found to have violated the uniform securities Act.

An individual who has not been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.

**50.109(3)** The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

- a. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
- b. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;
- c. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;
- d. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
- e. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
- f. Such other professional designation as the administrator may by order recognize.

This rule is intended to implement Iowa Code sections 502.302 and 502.305.

**191—50.110(502) Waivers.** The administrator may grant a waiver of a rule pertaining to examination requirements for investment advisers or investment adviser representatives.

**50.110(1)** No waiver shall be granted from a requirement imposed by statute. Any waiver must be consistent with statutory requirements.

- 50.110(2)** A waiver under this subrule may be granted only upon a showing of all the following:
- Because of special circumstances, applying the rule would impose an undue burden or extreme hardship on the requester;
  - Granting the waiver would not adversely affect the public interest and the protection of investors; and
  - Granting the waiver would provide substantially equal protection of public health and safety as would compliance with the rule.

**50.110(3)** A request for waiver shall be made at any time within 60 days of the initial application and shall include the following information:

- The name, address and telephone number of the person requesting the waiver;
- The specific rule from which a waiver is requested;
- The nature of the waiver requested;
- An explanation of all facts relevant to the waiver request, including all material facts necessary for the administrator to evaluate the criteria for granting a waiver as provided by subrule 50.110(2); and
- A description of any prior communication between the administrator and the requester regarding the proposed waiver.

**50.110(4)** The administrator shall rule upon all waiver requests and transmit the ruling to the requester. The ruling shall include the reason for granting or denying the request. The administrator's ruling shall constitute final agency action for the purposes of Iowa Code chapter 17A.

**50.110(5)** The administrator may impose reasonable conditions when granting a waiver to achieve the objectives of the particular rule being waived.

**50.110(6)** If at any time the administrator finds the facts as stated in the waiver request are not true, that material facts have been withheld, or that the requester has failed to comply with conditions set forth in the waiver, the administrator may cancel the waiver and seek additional sanctions against the issuer and agent as provided by this chapter and Iowa Code chapter 502.

**50.110(7)** Any request for an appeal from a decision granting, denying, or canceling a waiver shall comply with the procedures provided in Iowa Code chapter 17A. An appeal shall be made within 30 days after the administrator's ruling in response to the waiver requested.

**50.110(8)** All final rulings in response to waiver requests shall be indexed and available to members of the public at the administrator's office.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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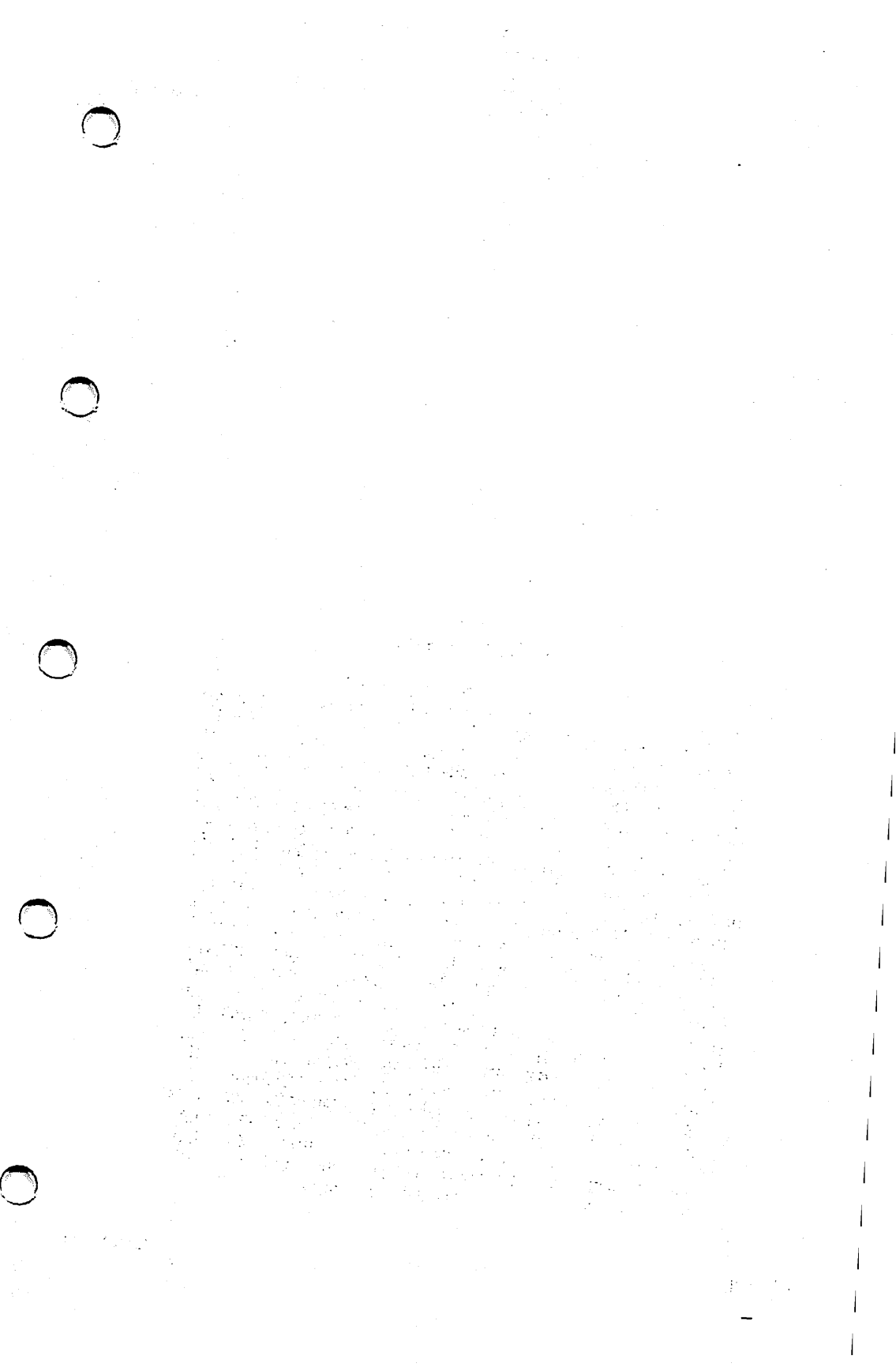
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CHAPTERS 51 to 53

Reserved



## 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 1

#### ORGANIZATION AND OPERATION

- 1.1(17A,474) Purpose
- 1.2(17A,474) Scope of rules
- 1.3(17A,474) Waiver of any rule
- 1.4(17A,474) Duties of the board
- 1.5(17A,474) Organization
- 1.6(68B) Consent for the sale of goods and services
- 1.7 Reserved
- 1.8(17A,474) Matters applicable to all proceedings
- 1.9(22) Public information and inspection of records

### CHAPTER 2

#### FORMS

- 2.1(17A,474) Forms—general
- 2.2(17A,474) Specific forms
- 2.3 Reserved
- 2.4(17A,474) Forms

### CHAPTER 3

#### RULE MAKING

- 3.1(17A,474) Purpose and scope
- 3.2(17A,474) Notice of inquiry
- 3.3(17A,474) Petition for adoption of rules
- 3.4(17A,474) Commencement of proceedings
- 3.5(17A,474) Written statements of position
- 3.6(17A,474) Counterstatements of position
- 3.7(17A,474) Requests for oral presentation
- 3.8(17A,474) Rule-making oral presentation
- 3.9(17A,474) Rule-making decisions
- 3.10(17A,474) Regulatory analysis
- 3.11(17A,474) Review of rules

### CHAPTER 4

#### DECLARATORY ORDERS

- 4.1(17A) Petition for declaratory order
- 4.2(17A) Notice of petition
- 4.3(17A) Intervention
- 4.4(17A) Briefs
- 4.5(17A) Inquiries
- 4.6(17A) Service and filing of petitions and other papers
- 4.7(17A) Agency consideration

- 4.8(17A) Action on petition
- 4.9(17A) Refusal to issue order
- 4.10(17A) Contents of declaratory order—effective date
- 4.11(17A) Copies of orders
- 4.12(17A) Effect of a declaratory order

### CHAPTER 5

#### PROCEDURE FOR DETERMINING THE COMPETITIVENESS OF A COMMUNICATIONS SERVICE OR FACILITY

- 5.1(476) Purpose
- 5.2(476) Petition
- 5.3(476) Docketing
- 5.4(476) Statement of position
- 5.5(476) Oral presentation
- 5.6(476) Decision
- 5.7(476) Extent of deregulation
- 5.8(476) Hearing and order

### CHAPTER 6

#### COMPLAINT PROCEDURES

- 6.1(476) Inquiry
- 6.2(476) Complaint
- 6.3(476) Processing the complaint
- 6.4(476) Proposed resolution
- 6.5(476) Initiating formal complaint proceedings
- 6.6(476) Applicable procedures
- 6.7(476) Record
- 6.8(476) Special procedures for complaints alleging unauthorized changes in telecommunications services

### CHAPTER 7

#### PRACTICE AND PROCEDURE

- 7.1(476) General information
- 7.2(476) Matters applicable to all proceedings
- 7.3(476) Rate case expense
- 7.4(476) Applications and petitions
- 7.5(476) Answers
- 7.6(476) Notice
- 7.7(476) Investigation and hearings

- 7.8(476) Appeals to board from decision of administrative law judge
- 7.9(476) Rehearings
- 7.10(476) Prehearing procedure
- 7.11(476) Consideration of current information in rate regulatory proceedings
- 7.12(476) Discontinuance of service incident to utility property transfer
- 7.13(476) Rate regulation election—electric cooperative corporations and associations

**CHAPTER 8**

**CIVIL PENALTIES**

- 8.1(476) Civil penalty for willful violation
- 8.2(476) Procedure
- 8.3(476) Penalties assessed
- 8.4(476) Payment of penalty
- 8.5(476) Rate-regulated utilities

**CHAPTER 9**

**PROTECTION OF UNDERGROUND IMPROVEMENTS AND SOIL CONSERVATION STRUCTURES AND RESTORATION OF AGRICULTURAL LANDS AFTER PIPELINE CONSTRUCTION**

- 9.1(479) General information
- 9.2(479) Protection of underground improvements
- 9.3(479) Protection of soil conservation practices and structures
- 9.4(479) Restoration of agricultural lands
- 9.5(479,479A) Separate agreements

**CHAPTER 10  
INTRASTATE GAS AND HAZARDOUS LIQUID PIPELINES AND UNDERGROUND GAS STORAGE**

- 10.1(479) Definitions
- 10.2(479) Petition for permit
- 10.3(479) Informational meetings
- 10.4(479) Notice of hearing
- 10.5(479) Objections
- 10.6(479) Hearing
- 10.7(479) Pipeline permit
- 10.8(479) Renewal permits
- 10.9(479) Amendment of permits
- 10.10(479) Fees and expenses
- 10.11(479) Inspections
- 10.12(479) Standards for construction, operation and maintenance
- 10.13 Reserved
- 10.14(479) Crossings of highways, railroads, and rivers
- 10.15 Reserved
- 10.16(479) When a permit is required
- 10.17(479) Accidents and incidents
- 10.18(479) Reportable changes to pipelines under permit
- 10.19(479) Sale or transfer of permit
- 10.20(479) Amendments to rules

**CHAPTER 11**

**ELECTRIC LINES**

- 11.1(478) General information
- 11.2(478) Form of petition for franchise, extension, or amendment
- 11.3(478) Additional filing instructions
- 11.4(478) Informational meetings
- 11.5(478) Notices
- 11.6(478) Common and joint use
- 11.7(478) Termination of franchise petition proceedings



CHAPTER 1  
ORGANIZATION AND OPERATION  
[Prior to 10/8/86, Commerce Commission[250]]

**199—1.1(17A,474) Purpose.** This chapter describes the organization and operation of the Iowa utilities board (hereinafter referred to as board) including the offices where, and the means by which any interested person may obtain information and make submittals or requests.

**199—1.2(17A,474) Scope of rules.** Promulgated under Iowa Code chapters 17A and 474, these rules shall apply to all matters before the Iowa utilities board. No rule shall in any way relieve a utility or other person from any duty under the laws of this state.

**199—1.3(17A,474) Waiver of any rule.** The board may, on its own motion or at the request of any person, waive any of its rules for good cause shown, unless otherwise provided by law.

**199—1.4(17A,474) Duties of the board.** The utilities board regulates electric, gas, telephone, telegraph, and water utilities; and pipelines and underground gas storage. The board regulates the rates and services of public utilities pursuant to Iowa Code chapter 476; certification of electric power generators pursuant to chapter 476A; construction and safety of electric transmission lines pursuant to chapter 478; and the construction and operation of pipelines and underground gas or hazardous liquid storage pursuant to chapters 479, 479A and 479B.

**199—1.5(17A,474) Organization.** The utilities division consists of the three-member board, the office of the executive secretary, which heads the technical and administrative staff, and the office of general counsel.

**1.5(1) *The board.*** The three-member board is the policy-making body for the utilities division. The chairperson serves as the administrator of the utilities division. As administrator, the chairperson is responsible for all administrative functions and decisions.

**1.5(2) *General counsel.*** The duties of the general counsel are prescribed by Iowa Code section 474.10. The general counsel acts as attorney for and legal advisor of the board and its staff and represents the board in all actions instituted in a state or federal court challenging the validity of any rule, regulation or order of the board.

**1.5(3) *The office of the executive secretary.*** The executive secretary is appointed by the board and is its chief operating officer and responsible for all technical staff. The executive secretary is also the custodian of the board seal and all board records. The executive secretary, deputy executive secretary, or secretary's designee is responsible for attesting to the signatures of the board members and placing the seal on original board orders. The executive secretary, deputy executive secretary, or the secretary's designee is responsible for certifying official copies of board documents. The executive secretary shall also be responsible for establishing procedures for the examination of board records by the general public pursuant to the provisions of Iowa Code section 22.11 and for providing for the enforcement of those procedures.

a. The deputy executive secretary assists the executive secretary in carrying out responsibilities and is responsible for preparing the agency budget and managing the records center, technical library, and receptionist area.

b. The customer service section serves as the agency's information contact and provides customer assistance and education for both the staff and the public. The section assists customers and competitors in resolving disputes with service providers. The section monitors customer service policies and practices, provides information to the public, and advises the board on customer service quality and issues of public concern.

c. The energy section is responsible for providing the board with recommendations for appropriate actions on energy matters. The section monitors activities of gas, electric, and water service providers. It also provides analysis and recommendations on tariff filings, rate proceedings, annual fuel purchase reviews, service territory disputes, and restructuring issues. The section advises the board on issues before the Federal Energy Regulatory Commission (FERC) and U.S. Department of Energy (DOE).

d. The information technology section is responsible for the development of electronic support and technology training for the division. This includes the development of a management information system and other database applications for the division. It also maintains the board's local area network system and provides all computer and technical support services and systems for the processing of information and records, including website development and maintenance, and monitoring incoming electronic messages and requests for information.

e. The policy development section provides professional and technical support to the industry sections and the board in the areas of policy development and research. In cases before the board, the section is responsible for the review and analysis of cost of capital, cost of service, and rate design. The section is responsible for performing analysis of competitive and restructuring issues, utility management performance, least cost alternatives, energy efficiency activities, and other public policy matters.

f. The safety and engineering section is responsible for the regulation of gas and electric providers and pipeline and electric transmission and distribution companies as it relates to safety, construction, and operation and maintenance of facilities. The section reviews and processes all petitions for electric transmission line franchises under Iowa Code chapter 478 and for pipeline permits under Iowa Code chapters 479 and 479B. It also acts as an agent for the federal Department of Transportation in pipeline safety matters.

g. The telecommunications section is responsible for providing the board with recommendations for appropriate actions on telecommunications matters. The section monitors activities of telecommunications service providers. It also provides analysis and recommendations of telecommunications providers' filings, rate proceedings, and advises the board on ratemaking and restructuring issues. The section advises the board on issues before the Federal Communications Commission (FCC).

#### **199—1.6(68B) Consent for the sale of goods and services.**

**1.6(1) General prohibition.** An official or employee shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the board without obtaining written consent as provided in this rule.

**1.9(9) Procedures by which the subject of a confidential record may have a copy released to a named third party.** Upon a request which complies with the following procedures, the board will disclose a confidential record to its subject or to a named third party designated by the subject. Positive identification is required of all individuals making such a request.

*a. In-person requests.* Subjects of a confidential record who request that information be given to a named third party will be asked for positive means of identification. If an individual cannot provide suitable identification, the request will be denied.

Subjects of a confidential record who request that information be given to a named third party will be asked to sign a release form before the records are disclosed.

*b. Written request.* All requests by a subject of a confidential board record for release of the information to a named third party sent by mail shall be signed by the requester and shall include the requester's current address and telephone number (if any). If positive identification cannot be made on the basis of the information submitted along with the information contained in the record, the request will be denied.

Subjects of a confidential record who request by mail that information be given to a named third party will be asked to sign a release form before the records are disclosed.

*c. Denial of access to the record.* If positive identification cannot be made on the basis of the information submitted, and if data in the record is so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom the record pertains, the board may deny access to the record pending the production of additional evidence of identity.

**1.9(10) Procedure by which the subject of a board record may have additions, dissents or objections entered into the record.** An individual may request an addition, dissent or an objection be entered into a board record which contains personally identifiable data pertaining to that individual. The request shall be acted on within a reasonable time.

*a. Content of request.* The request must be in writing and addressed to the executive secretary of the board. The request should contain the following information:

- (1) A reasonable description of the pertinent record.
- (2) Verification of identity.
- (3) The requested addition, dissent or objection.
- (4) The reason for the requested addition, dissent or objection to the record.

*b. Denial of request.* If the request is denied, the requester will be notified in writing of the refusal and will be advised that the requester may seek board review of the denial within ten working days after issuance of the denial.

**1.9(11) Advice and assistance.** Individuals who have questions regarding the procedures contained in these rules may contact the executive secretary of the board at the following address: Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319.

**1.9(12) Data processing system.** The board does not currently have a data processing system which matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

These rules are intended to implement Iowa Code sections 17A.3, 68B.4, 474.1, 474.5, 474.10, 476.1, 476.2, 476.31 and 546.7.

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CHAPTER 3  
RULE MAKING

[Prior to 10/8/86, Commerce Commission[250]]

**199—3.1(17A,474) Purpose and scope.**

3.1(1) *In general.* These rules shall govern the practice and procedure in all rule-making proceedings of the Iowa utilities board (board).

3.1(2) *Rules of construction.* If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

3.1(3) *Waiver.* The board may waive the application of any of these rules pursuant to 199 IAC 1.3(17A,474).

3.1(4) *Forms and filing requirements.* All rule-making filings shall substantially comply with the forms prescribed in 199 IAC 2.2(17A,474). All filings shall include an original and ten copies.

**199—3.2(17A,474) Notice of inquiry.** In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rule making by the board by causing notice of the subject matter to be published in the Iowa Administrative Bulletin, indicating where, when, and how persons may comment.

**199—3.3(17A,474) Petition for adoption of rules.** Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

**199—3.4(17A,474) Commencement of proceedings.**

3.4(1) *Commenced by order.* Rule-making proceedings shall be commenced only upon written order of the board. The board may commence a rule-making proceeding by order upon its own motion or upon the filing of a petition for rule making by any interested person.

3.4(2) *Board action on petition.* Within 60 days after the filing of a petition for rule making, the board shall either deny the petition by written order on the merits, stating the reasons therefor, commence by written order a rule-making proceeding, or adopt by written order a rule pursuant to Iowa Code section 17A.4(2).

3.4(3) *Notice of rule making.* Upon the commencement by written order of a rule-making proceeding, the board shall cause the required notice of the proceeding to be published in the Iowa Administrative Bulletin.

3.4(4) *Fiscal impact statement.* Pursuant to Iowa Code section 25B.6, a proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services, shall be accompanied by a fiscal impact statement outlining the costs associated with the proposed rule. If the board determines at the time it adopts a rule that the earlier fiscal impact statement contains errors or that a fiscal impact statement should have been prepared but was not, the board will issue a corrected or delayed fiscal impact statement.

**199—3.5(17A,474) Written statements of position.**

3.5(1) *Persons.* Any interested person may file a written statement of position containing data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of a rule.

3.5(2) *Service.* Written statements of position shall be served by the author upon the petitioner, if any, and consumer advocate at the time of filing.

**199—3.6(17A,474) Counterstatements of position.**

**3.6(1) *Petitioner.*** The petitioner, if any, may file a counterstatement of position with the board in response to written statements of position.

**3.6(2) *Filing.*** Counterstatements of position, if any, shall be filed with the board prior to the oral presentation or, if no oral presentation is scheduled, not later than 15 calendar days after the petitioner's receipt of the written statement of position to which the petitioner is responding.

**3.6(3) *Service.*** Counterstatements of position shall be served by the petitioner at the time of filing upon the authors of written statements of position to which the petitioner is responding and to consumer advocate.

**199—3.7(17A,474) Requests for oral presentation.** If an oral presentation is not scheduled by the board on its own motion, any interested person may file a request for an oral presentation.

**3.7(1) *Filing.*** The time period, as directed by the board, for filing of requests for oral presentation shall be not less than 20 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin.

**3.7(2) *Action on proper request.*** Within 15 calendar days of the filing of a request for oral presentation, the board shall determine if the request is in accordance with Iowa Code section 17A.4. If the board determines that the request complies with section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than ten calendar days after the publication of the notice. The board shall serve a similar notice on the party requesting oral presentation, on any other persons filing written comments, and on the petitioner, if any.

**3.7(3) *Action on improper request.*** If the board determines that a request for oral presentation does not comply with Iowa Code section 17A.4, it may by written order deny such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule an oral presentation.

**199—3.8(17A,474) Rule-making oral presentation.**

**3.8(1) *Written appearance.*** Any interested person may participate in rule-making oral presentations in person or by counsel. A written appearance may be filed not less than five calendar days prior to oral presentation.

**3.8(2) *Oral presentations.*** Participants in rule-making oral presentations may submit exhibits and present oral statements of position which may include data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of the rule. Participants shall not be required to take an oath and shall not be subject to cross-examination. The board may, in its discretion, permit the questioning of participants by any interested person, but no participant shall be required to answer any question.

**3.8(3) *Rebuttal and limitations.*** The board may, in its discretion, permit rebuttal statements of position and request the filing of written statements of position subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

**199—3.9(17A,474) Rule-making decisions.**

**3.9(1) *Adoption, amendment, or repeal.*** The board shall by written order adopt, amend, or repeal the rule pursuant to the rule-making proceeding, or dismiss the proceeding in accordance with Iowa Code section 17A.4. The written order shall include a preamble to the adopted rules explaining the principal reasons for the action taken and, if applicable, a brief explanation of any decision not to permit waiver of the adopted rules. The board may, by order, specify the effective date of the adoption, amendment, or repeal of the rule.

**3.9(2) Variance between adopted rule and proposed rule.** The board may adopt a rule that differs from the rule proposed in the Notice of Intended Action in the following situations:

- 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 the Notice;
- b. The differences are a logical outgrowth of the contents of the Notice and the comments submitted in response thereto;
- c. The Notice indicated that the outcome of the rule making could be the rule in question;
- d. The differences are so insubstantial as to make additional notice and comment proceedings unnecessary; or
- e. As otherwise permitted by law.

**3.9(3) Statements.** Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person pursuant to Iowa Code section 17A.4(1)“b,” the board shall, within 35 days of the request, issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board’s decision.

**199—3.10(17A,474) Regulatory analysis.**

**3.10(1) Regulatory analysis.** The board shall issue a regulatory analysis of a proposed rule, or of a rule adopted without prior notice and opportunity for public participation, when required by 1998 Iowa Acts, chapter 1202, section 10.

**3.10(2) Request for regulatory analysis.** A request for a regulatory analysis shall be in writing and shall specify the proposed rule or adopted rule for which the analysis is requested.

**3.10(3) Schedule extended.** Upon receipt of a timely written request for a regulatory analysis of a proposed rule, the time periods for filing written comments and for requesting an oral proceeding are extended to a date 20 days after publication of a concise summary of the regulatory analysis in the Iowa Administrative Bulletin. Any oral proceeding that may already have been scheduled will be rescheduled by the board to a date at least 20 days after publication of the summary.

**199—3.11(17A,474) Review of rules.** Pursuant to Iowa Code section 17A.7, upon receipt from the administrative rules coordinator of a request for formal review of a specified rule, the board will determine whether the rule has been reviewed within the preceding five years. If such a review was conducted, the board will report that fact to the administrative rules coordinator. If no such review has been conducted, the board will consider whether the rule should be repealed or amended or a new rule adopted in its place. The board will prepare a written report summarizing its findings, supporting reasons, and proposed course of action. Copies of the report will be sent to the administrative rules review committee and the administrative rules coordinator, and will be made available for public inspection.

These rules are intended to implement Iowa Code section 476.2.

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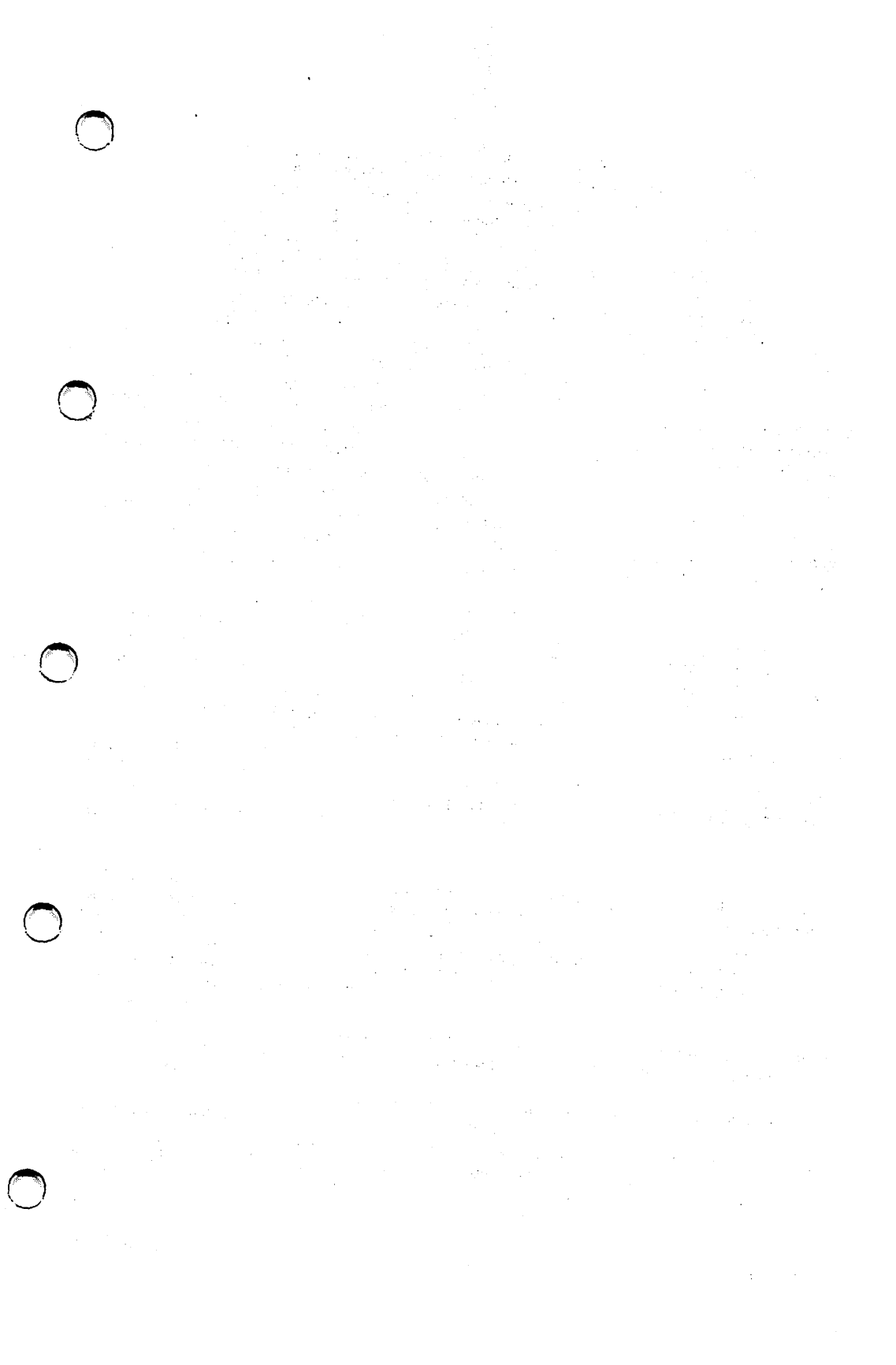
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**CHAPTER 37**

**INVESTMENT TAX CREDIT PROGRAM**

- 37.1(303) Purpose
- 37.2(303) Regulations
- 37.3(303) Eligibility
- 37.4(303) Certification of historic structures
- 37.5(303) Review and evaluation
- 37.6(303) Certification of completion of work

**CHAPTER 38**

**NATIONAL REGISTER OF HISTORIC PLACES**

- 38.1(303) Purpose
- 38.2(303) Regulations
- 38.3(303) Nomination procedure
- 38.4(303) Review of nominations
- 38.5(303) Delisting of properties

**CHAPTER 39**

**EDUCATION PROGRAM**

- 39.1(303) Purpose
- 39.2(303) Regulations
- 39.3(303) Procedure

**CHAPTER 40**

**PRESERVATION PARTNERSHIP PROGRAM**

- 40.1(303) Purpose
- 40.2(303) Regulations
- 40.3(303) Application procedure and selection

**CHAPTER 41**

**SURVEY AND REGISTRATION OF CULTURAL RESOURCES PROGRAM**

- 41.1(303) Purpose
- 41.2(303) Regulations
- 41.3(303) Survey selection
- 41.4(303) Survey funding
- 41.5(303) Conduct of surveys
- 41.6(303) Availability of survey information
- 41.7(303) Confidentiality of archaeological site information

**CHAPTER 42**

**REVIEW AND COMPLIANCE PROGRAM**

- 42.1(303) Purpose
- 42.2(303) Regulations
- 42.3(303) Procedures

**CHAPTER 43**

**TECHNICAL ASSISTANCE PROGRAM**

- 43.1(303) Purpose
- 43.2(303) Regulations
- 43.3(303) Services

**CHAPTER 44**

**STATE REGISTER OF HISTORIC PLACES PROGRAM**

- 44.1(303) Purpose
- 44.2(303) Regulations and procedures

**CHAPTER 45**

**COMPREHENSIVE PRESERVATION PLANNING PROGRAM**

Reserved

**CHAPTER 46**

**MAIN STREET LINKED INVESTMENTS LOAN PROGRAM**

- 46.1(12) Program administered

**CHAPTER 47**

**HISTORIC PROPERTY REHABILITATION TAX EXEMPTION**

- 47.1(303) Purpose
- 47.2(303) Definitions
- 47.3(303) Program administration
- 47.4(303) Eligibility
- 47.5(303) Application for exemption procedure
- 47.6(303) Review and approval standards for applications for certification
- 47.7(303) Appeals

**CHAPTER 48**  
**Reserved**

**TITLE VI**

***GRANT PROGRAMS***

**CHAPTER 49**  
**HISTORICAL RESOURCE**  
**DEVELOPMENT PROGRAM**

- 49.1(303) Purpose
- 49.2(303) Definitions
  - GRANT PROGRAM**
- 49.3(303) Eligible projects
- 49.4(303) Other eligibility issues
- 49.5(303) Annual application procedure
- 49.6(303) Annual application review and selection
- 49.7(303) Grant administration
- 49.8(303) Appeals
- 49.9(303) One-room schoolhouse grant program
  - LOAN PROGRAM**
  - Reserved

**CHAPTER 50**  
**HISTORIC SITE PRESERVATION**  
**GRANT PROGRAM**

- 50.1(303) Purpose
- 50.2(303) Definitions
- 50.3(303) Application procedures
- 50.4(303) Project review and selection
- 50.5(303) Application rating system
- 50.6(303) Grant administration
- 50.7(303) Informal appeals

*b. Museum.* Project applications in this category may include, but are not limited to, acquisition, preservation, conservation, and interpretation of artifact collections; cataloging; exhibitions; treatment of collections necessary to accomplish any of the foregoing tasks; public education, staff training or consultation related to museum activities; and equipment and facilities necessary for any of the foregoing tasks.

*c. Documentary collections.* Project applications in this category may include, but are not limited to, acquisition, preservation, conservation, and interpretation of documentary collections; treatment of collections necessary to accomplish any of the foregoing tasks; cataloging; public education, staff training or consultation related to documentary collections; and equipment and facilities necessary for any of the foregoing tasks.

**49.3(2) Project standards.**

*a. Historic preservation.* All project applications under this category shall demonstrate to the panel knowledge of, intention to, and ability to adhere to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (notice published by the Department of the Interior, National Park Service, Federal Register, Volume 48, No. 190, Thursday, September 29, 1983) and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1990), published by the National Park Service.

*b. Museum.* All project applications under this category shall demonstrate the commitment and ability of the applicant to provide care for their collections on a long-term basis. Applicants shall demonstrate knowledge of and intention to adhere to applicable national standards or to follow technical guidelines generally accepted by the museum profession. The review panel members will use their judgment to determine that the applicant has knowledge of and a commitment to meet acceptable standards for collections management and care.

*c. Documentary collections.*

(1) All project applications under this category shall demonstrate the commitment and ability of the applicant to provide care for their collections on a long-term basis. All project applications under this category shall demonstrate to the panel knowledge of and intention to adhere to national standards, where they apply, or otherwise follow technical guidelines generally accepted by the library, archives, and conservation communities.

(2) All microfilming project applications under this category shall produce first and second generation masters on silver halide film meeting ANSI PH 1.41 (preferred) or ANSI PH 1.28. Production procedures are to be guided by ANSI/AIIM MS 23 or other relevant standards, such as ANSI/AIIM MS 5 for microfiche. Storage for first generation camera masters must be in accordance with ANSI PH 1.43. Film enclosures must adhere to ANSI PH 1.53.

*d. Museum or documentary collections.* All proposed projects in the museum or documentary collections categories which propose work on real property listed on the National Register of Historic Places shall adhere to the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1990), published by the National Park Service. Project applications which propose work on real property which is 50 years old or older but is not yet listed on or determined eligible for the National Register of Historic Places are strongly encouraged to adhere to the Secretary of the Interior's Standards for Rehabilitation.

**223—49.4(303) Other eligibility issues.**

49.4(1) Participation in the grant program is open to any government, state agencies, nonprofit corporations, private corporations and businesses, individuals, governments and traditional tribal societies of recognized resident American Indian tribes in Iowa.

49.4(2) Applications by cooperating individual and coapplicants shall be acceptable.

49.4(3) All projects shall involve historical resources. Acquisition of an Iowa historical resource for the purpose of returning it to Iowa is an eligible activity. An applicant may be nonresident if the resource is located within the state.

49.4(4) All government, nonprofit corporation, or Indian tribe applicants shall demonstrate that the historical resource is accessible to the public no less than an average of 16 hours per week or provide a statement concerning actions to be taken in the forthcoming 36 months to provide this minimal accessibility of the funded project to the public, unless access is restricted by specific federal or state code. Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

49.4(5) All private corporations, businesses, and individual applicants shall demonstrate that the historical resources which benefit from being acquired, developed or preserved, or the portions of the historical resource so benefited, shall be accessible to the public no less than an average of 96 hours per year or provide a statement concerning actions to be taken in the forthcoming 36 months to provide this minimal accessibility of the funded project to the public, unless access is restricted by specific federal or state code. Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

49.4(6) The applicant shall choose the category for the application from among historic preservation, museum or documentary collections, in accordance with 49.3(1) and 49.3(2).

49.4(7) An applicant or coapplicant may not submit more than one application in any single category in any grant cycle.

49.4(8) An applicant or coapplicant shall not apply or use any program funds for the purpose of regranting.

49.4(9) In the event the applicant is not the owner of the real property identified in the application, the application shall include the owner as a coapplicant.

49.4(10) Applicants funded in two consecutive fiscal years in the same grant category are not eligible to receive funding in the same grant category during the next fiscal year.

**223—49.5(303) Annual application procedure.**

49.5(1) *Procedure.* All applications shall be submitted on current REAP/HRDP forms obtained from the REAP/HRDP Coordinator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290, telephone (515)242-6194.

49.5(2) *Required information.* All applications shall provide the required information. As a minimum, all applications shall contain the following information:

- a. Name, address, and telephone number of the applicant(s);
- b. Funding category of project;
- c. For acquisition, development or preservation of real property in the historic preservation category, provide documentation indicating the property is listed on the National Register of Historic Places or, for archaeological sites only, that the property is listed on or eligible for the National Register of Historic Places;
- d. Letter from National Park Service, or the state historic preservation officer, approving Certified Local Government status, if appropriate;

- e. Description and explanation of the project;
- f. Plan of work for the project;
- g. Detailed budget for the project;
- h. Relationship of the proposed project to the long-term objectives of the applicant; and
- i. Applications shall be signed on the assurances page by the legally authorized representative.

**49.5(3) Annual deadlines.**

- a. Applicants shall submit the original application and ten copies to the REAP/HRDP coordinator.
- b. Applications shall have a United States Postal Service postmark dated on or before January 15, or be delivered to the REAP/HRDP office during regular business hours, no later than January 15.

**49.5(4) Ineligible applications.** Applications shall be declared ineligible for the following reasons:

- a. If the applicant has not used the current year's forms;
- b. If the applicant has not filed the application in accordance with 49.5(3);
- c. If the applicant has not completed all questions on the application form;
- d. If the applicant has not attached all required attachments to the application;
- e. If the applicant has not budgeted the required match (cash and in-kind) to support the requested grant amount;
- f. If the applicant's legally authorized representative has not signed the application's assurance page;
- g. If the applicant has not filed the required number of copies;
- h. If the project is ineligible per 49.3; or
- i. If the applicant is ineligible per 49.4(303).

**223—49.6(303) Annual application review and selection.**

**49.6(1) Procedure.**

a. Each application shall be reviewed by the REAP/HRDP coordinator for eligibility. The REAP/HRDP steering committee shall determine ineligible applications.

b. All eligible applications shall be reviewed by an appropriate review panel. Three review panels—historic preservation, museum, and documentary collections—shall exist for this purpose. Members of review panels shall individually critique and collectively review the applications and make funding recommendations to the state historical society board of trustees.

c. The state historical society board of trustees shall review and make funding recommendations to the administrator of the society no later than June 1 of each year.

d. The administrator shall award funding and provide notification to recipients no later than June 15 of each year.

**49.6(2) Selection criteria.** Projects shall be evaluated on the basis of the following equally weighted criteria:

- a. Significance of the historical resource as it relates to the proposed project;
- b. Significance or contribution of the project to enhance the preservation, conservation or interpretation of Iowa's historical resources;
- c. Knowledge and understanding of accepted professional standards as they relate to the proposed project;
- d. Degree of threat to the resource;
- e. Degree to which the goals and objectives of the project enhance the applicant's long-range plan;
- f. Degree to which the project supports the economic, educational and cultural health of the local area, region or state;
- g. Degree of cooperation between organizations or individuals within a local area, region, or the state as evidenced by but not limited to the number of volunteers, cash match and in-kind match; and

*h.* Degree to which the budget is reasonable, appropriate to the project, complete and mathematically correct.

**49.6(3) Emergency applications.**

*a.* Purpose. If a historical resource is threatened with an emergency as defined by 49.2(303), an emergency application to evaluate conditions, stabilize, rehabilitate, restore or recover the resource may be filed with the REAP/HRDP Coordinator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290, telephone (515)242-6194.

*b.* Eligibility. Participation in the REAP/HRDP emergency grant program is open to all eligible projects and applicants for regular REAP/HRDP grants as identified in 49.3(303) and 49.4(303).

*c.* Procedure. REAP/HRDP emergency grant applications may be obtained from the REAP/HRDP Coordinator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290, (515)242-6194.

(1) The annual application procedure as defined in 49.5, excluding 49.5(3) (application deadlines), shall apply to REAP/HRDP emergency grant application.

(2) An original and five copies of the application shall be submitted to the REAP/HRDP coordinator.

(3) Emergency grant applications may be submitted at any time, using the current year's regular application form.

(4) Emergency grant applicants shall identify the emergency which threatens the historical resource, shall address the immediacy of the emergency, and shall identify steps and funding required to stabilize the resource until a rehabilitation, restoration or recovery plan for the resource can be implemented. The identification of these issues shall be presented in a cover letter which becomes an integral part of the emergency grant application.

(5) The applicant shall, in the application, include workplans and budgets appropriate to preserve, rehabilitate or fully restore the resource.

*d.* Review.

(1) Determination of the existence of an emergency shall be made by the administrator upon recommendation of the REAP/HRDP steering committee. It is the responsibility of the applicant to convince the REAP/HRDP steering committee that an emergency, as defined, exists.

(2) If an emergency is determined to exist, the REAP/HRDP steering committee shall review the emergency grant application. The review criteria for emergency applications shall remain the same as those used in the regular grant round as defined in 49.6(2) with special emphasis on the degree and immediacy of threat to the resource.

(3) Following a check for eligibility by the REAP/HRDP coordinator and within 15 days after receipt of the application, the application shall be sent with a recommendation from the REAP/HRDP steering committee to the administrator. Within 30 days, the administrator shall respond to the applicant.

*e.* Limitations. Emergency funding shall be limited to no more than \$15,000 per application and no more than \$15,000 per applicant in a 12-month period. This limitation shall not affect funds acquired by other than state appropriations.

**223—49.7(303) Grant administration.****49.7(1) Financial management.****a. Awards.**

(1) No more than \$100,000 or 20 percent of the annual allocation, whichever is more, shall be awarded in any grant cycle to grantees within any single county. No more than \$100,000 or 10 percent of the annual allocation, whichever is more, shall be awarded in any single fiscal year to a single grantee.

(2) Grant awards may be made on the basis of full or partial funding as recommended by the review panel and the board of trustees and determined by the administrator.

(3) No applicant may receive more than two grant awards in a given grant cycle for all categories of grants.

(4) Final decisions concerning these award limitations shall be made by the board of trustees upon the recommendation of the REAP/HRDP steering committee.

**b. Contracts.**

(1) Upon certification of the grant award by the administrator, the society shall, within 60 days, provide a contract to the grantee. This contract shall state the terms and conditions of the grant as well as the amount of the award. The grantee shall enter into a contract within 90 days following certification of the grant award. Failure of the grantee to meet this deadline shall result in termination of the grant offer.

(2) Contracts for partially funded projects shall be based on a revised scope of work and budget submitted by the applicant within 30 days following certification of the grant award. This revised scope of work and budget shall be limited to those items included in the original workplan and budget.

(3) The applicant may be required to submit proof of nonprofit status, proof of ownership of the historical resource(s) in the grant application or evidence of agreement between the owner(s) of personal property and the applicant before a contract will be written.

(4) All contracts shall be approved by the administrator, or designee, and the legally authorized representative of the grantee. The legally authorized representative of the grantee shall be clearly identified and shall be the only contact with the society on financial matters concerning the grant.

(5) All subcontracts for services and products shall give preference to Iowa vendors. If Iowa vendors are unavailable or deemed by the grantee and society to be unable to meet the requirements of the project or acceptable professional standards, vendors from other states may be used.

(6) All grantees shall award subcontracts on the basis of a competitive bid. If only a single vendor exists, the society shall be so notified.

(7) All contracts shall be completed within 30 months from the date of the signature by the administrator, or designee, of the society.

(8) All contracts for acquisition and development of real property by individuals and private corporations and businesses shall require that ownership be retained by the grantee for 60 months after approval of final disbursement request. In the event of a change of ownership within 24 months, the entire amount of the grant shall be returned to the society. In the event of a change of ownership within 25 to 60 months, 50 percent of the grant shall be returned to the society. In the event the grantee is a governmental unit or nonprofit organization, the sale of property is exempt from payback provisions when the sale places the property on tax rolls. In the event of the death of an individual owner this provision shall not apply.

(9) Salaries of the applicant or applicant's employees are allowable up to 50 percent of the minimum required cash match. Documentation shall be provided to indicate the salary rate and amount of time devoted to the project. Verification of the salary match shall be provided during the life of the contract. Paid staff time shall not be used as in-kind match.

(10) Indirect expenses (overhead) shall not be used as cash match, in-kind match, or grant expense.

(11) Grant awards to combined public, private, and individual applicants shall receive the least favorable match ratio as provided by Iowa Code section 303.16(6).

(12) All grant contracts involving real property shall be signed by the grant recipient and the property owner, if other than the grant recipient.

(13) All projects involving personal property shall demonstrate a legal relationship to the property appropriate to the project as determined by the review panel.

(14) Cash and in-kind match and grant expenditures shall only be spent during the contract period.

(15) Costs of producing any required reports and products are an eligible grant expense.

(16) The costs of writing and copying of grant applications for this program and lobbying expenses shall not be eligible grant expenses.

(17) FICA and unemployment taxes are eligible grant expenses under this contract.

(18) The cost of hiring professional consultants to provide needed technical guidance during project implementation shall be included as a part of each grant application and contract.

*c. Payments.*

(1) Disbursement of grant funds shall be made on a schedule as determined in the contract. Documentation of all grant expenditures, including cash and in-kind match, shall be submitted and approved before disbursement of grant funds can be made.

(2) Twenty percent of every grant shall be withheld until the REAP/HRDP coordinator verifies that the project is complete and all conditions of the contract have been met. Final payment shall be made within 90 days of completion of all conditions of the contract.

*d. Record-keeping and retention requirements.*

(1) Financial records (original invoices and canceled checks), supporting documents, statistical records, and all other records pertinent to the program shall be retained by the grantee. All records shall be retained for three years beyond the grant or longer if any litigation is begun or if a claim is initiated involving the grant covered by the record. In these instances, the records shall be retained until the litigation or claim has been resolved.

(2) Representatives of the society and the state auditor's office shall have access to all books, accounts, documents, records, or other property belonging to or in use by the grantee pertaining to the receipt of funds under this program.

*e. Audits.* The recipient of any grant of \$25,000 or more in any single grant cycle or \$100,000 or more over any two-year period shall have conducted an on-site financial compliance audit. This audit shall not be an eligible grant expense. A copy of the audit report shall be forwarded to the REAP/HRDP office within 90 days of audit report.

**49.7(2) Reporting requirements.**

*a.* The grantee shall provide reports, as outlined in the contract, concerning the progress of the project on forms provided by the society.

*b.* The grantee shall provide a final project report upon completion of the project, as outlined in the contract, on forms provided by the society.

*c.* The society may perform any reviews or field inspections it deems necessary to ensure program compliance, including reviews of grantee reports. When problems of compliance are noted, the society may require corrective actions to be taken.

*d.* The society may, for cause, find that a grantee is not in compliance with the requirements of this program or the terms of the contract. At the society's discretion, remedies for noncompliance may include penalties or the return of program funds. Reasons for a finding of noncompliance include, but are not limited to: the grantee's using program funds for activities not described in its application or permitted under this program; the grantee's failure to complete approved activities in a timely manner; the grantee's failure to comply with any applicable professional standards, state rules or federal regulations; the lack of a continuing capacity of the grantee to carry out the approved program in a timely manner; or violation of the terms of the contract.



e. All grantees shall provide a written procedure stating the means by which the project shall be made available to the public.

f. All grantees shall submit documentation of the issuance of funding acknowledgments to local legislators and press releases to local media, describing projects or programs funded with REAP/HRDP funds, specifically to include the following credit line: "This project was partially supported by a Resource Enhancement and Protection (REAP)/Historical Resource Development Program (HRDP) grant from the State Historical Society of Iowa." Permanent signage will be provided by the state to each grantee. All signs shall be displayed in a public area for a time period of no less than 36 months from contract end date.

### 223—49.8(303) Appeals.

49.8(1) Applicants or grantees may appeal a decision of the society on any of the following bases.

- a. Action was outside the statutory authority;
- b. Decision was influenced by a conflict of interest;
- c. Action violated state law, administrative rules, or policy;
- d. Insufficient public notice was given; and
- e. Alteration of the review and certification processes was detrimental to the applicant.

49.8(2) Appeals in writing may be directed to the director of the department within 30 days of the final certification or the incident. All appeals shall be directed to the Director, Department of Cultural Affairs, Capitol Complex, Des Moines, Iowa 50319, telephone (515)281-7471.

49.8(3) All appeals shall contain:

- a. Facts of the case;
- b. Argument in favor of the appeal; and
- c. Remedy sought.

49.8(4) The director of the department of cultural affairs shall consider and rule on the appeal after receiving all documentation from the appellant, and shall notify the appellant in writing of the decision within 30 days. The decision of the director of the department of cultural affairs shall be final except as provided in Iowa Code sections 17A.19 and 17A.20.

### 223—49.9(303) One-room schoolhouse grant program.

49.9(1) *Purpose.* This program will provide up to \$25,000 per year for the preservation of one-room and two-room buildings once used as country schools in Iowa.

49.9(2) *Eligible applicants.* Participation in the grant program is open to any government or non-profit organization and to traditional tribal societies of recognized resident American Indian tribes in Iowa.

49.9(3) *Application deadline.* Applicants shall submit an original application and ten copies to the REAP/HRDP coordinator. All applications must have a United States Postal Service postmark dated on or before January 15 or be delivered to the REAP/HRDP office during regular business hours on or before January 15.

49.9(4) *Annual application review and selection.* Each application will be reviewed by the program coordinator for eligibility. All eligible applications will be reviewed by an appropriate review panel existing within the HRDP grant program, based upon the activities outlined in the application. The documentary collections, museum or historic preservation review panel will individually read and score and collectively review the applications and make funding recommendations to the state historical society board of trustees. The board of trustees shall review and make funding recommendations no later than June 1 of each year. The administrator will make awards final no later than June 15 of each year.

**49.9(5) Selection criteria.** Projects shall be evaluated on the basis of the following equally weighted criteria:

- a. Planned educational activities within a country school.
- b. Use as a facility to interpret the history of country schools.
- c. Plans for the preservation and maintenance of a country school.
- d. Plans for incorporating curriculum development and teacher activities with area school systems.
- e. Degree to which the budget is reasonable and appropriate to the project and meets a match requirement of dollar-for-dollar basis, of which at least one-half of the match must be in cash.

**49.9(6) Financial management.**

- a. No more than \$5,000 may be awarded to any one applicant in each year.
- b. No applicant may be awarded more than one grant per year.

**49.9(7) Contracts.** Upon certification of the grant award, the society shall, within 30 days, provide a contract to the grantee. The contract shall state the terms and conditions of the grant as well as the amount of the award and required match. The grantee must be ready to accept the terms of the contract within 60 days of the grant award. Failure to meet the deadline may result in termination of the grant award.

These rules are intended to implement Iowa Code sections 303.1A, 303.2, 303.16 and 455A.15 to 455A.20.

LOAN PROGRAM  
Reserved

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CHAPTER 58  
NEW JOBS AND INCOME PROGRAM

[Prior to 7/19/95, see 261—Ch 62]

**261—58.1(15) Purpose.** The purpose of the new jobs and income program is to encourage relationships between state government and business by supporting mutual development objectives. The program is designed to encourage sustained profitability for eligible businesses that invest and operate in the state in return for the desired state outcomes of new jobs and higher income.

**261—58.2(15) Definitions.**

*“Board”* means the Iowa department of economic development board.

*“Community”* means a city, county, or an entity established pursuant to Iowa Code chapter 28E that is a certified participant under Iowa Code section 15.308 (community builder program) or has established a comprehensive plan approved by the department.

*“Contractor”* or *“subcontractor”* means a person who contracts with the eligible business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development area, of the eligible business or a supporting business.

*“Department”* means the Iowa department of economic development.

*“Director”* means the director of the Iowa department of economic development.

*“DRF”* means the Iowa department of revenue and finance.

*“Economic development area”* means a site or sites designated by the department of economic development for the purpose of attracting an eligible business and supporting businesses to locate facilities within the state.

*“Full-time”* or *“full-time equivalent job”* means the equivalent of employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year.

*“Full-time positions”* means new full-time hourly nonmanagement production jobs with a starting wage of at least \$11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce or 130 percent of the average county wage in the county in which the community is located, whichever is higher.

*“Group of businesses”* means two or more businesses that each provide a necessary component in the completion of an overall project.

*“Program”* means the new jobs and income program.

*“Project completion”* means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the economic development area is at least 50 percent of the initial design capacity of the operation of the facility. The eligible business shall inform the department of revenue and finance in writing, on forms approved by the department of revenue and finance, within two weeks of project completion.

*“Supporting business”* means a business under contract with the eligible business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the economic development area, and the revenue from fulfilling the contract with the eligible business shall constitute at least 75 percent of the revenue generated by the business from all activities undertaken from the facility within the economic development area.

**261—58.3(15) Agreement prerequisites.** Before the department and a business enter into an agreement for program benefits, the following steps must be completed:

**58.3(1)** The business submits an application in compliance with the provisions of these rules.

**58.3(2)** The department determines that the business or group of businesses has met the threshold requirements for program participation.

**58.3(3)** The board approves the application and authorizes the department to execute an agreement with the business or group of businesses.

**261—58.4(15) Program benefits.** The following benefits are available to an eligible business:

**58.4(1) *New jobs supplemental credit.*** A supplemental new jobs credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E.

**58.4(2) *Value-added property tax exemption.*** A value-added property tax exemption of all or a portion of the actual value added by improvements to real property directly related to new jobs created by the location or expansion of the business and used in the operation of the business. For purposes of this subrule “improvements” includes new construction and rehabilitation of and additions to existing structures. The exemption may be allowed by a community for a period of up to 20 years beginning the year the improvements are first assessed for taxation in that community. The community shall provide to the department a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the exemption authorized. The community shall provide the assessor with a copy of the resolution establishing the exemption.

**58.4(3) *Investment tax credit and insurance premium tax credit.***

**a. *Investment tax credit.*** A business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

**b. *Insurance premium tax credit.*** If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

**c. *Eligible capital expenditures.*** For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the program are the costs of machinery and equipment as defined in Iowa Code section 427A.1(1) “e” and “j” purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the business and which receives a partial property tax exemption for the actual value added as described in Iowa Code section 15.332.

*d. Real property.* For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the purchase price of real property and any buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes, or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the income tax liability of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- (1) One hundred percent of the tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- (2) Eighty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- (3) Sixty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- (4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- (5) Twenty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

**58.4(4) Property tax exemption.** An exemption from taxation for machinery, equipment, and computers for a period of up to 20 years. A business may claim as exempt from taxation all or a portion of the value of the property directly related to new jobs created by the location or expansion of a business under the program and used by the business. Property eligible for this exemption shall be acquired or initially leased by the business or relocated by the business to the facility from a facility outside the state of Iowa. Property "directly related" includes the property the new employees will operate, repair, or maintain.

**58.4(5) Research activities credit.** A corporate tax credit for increasing research activities in this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be "participating in the program" for a period of ten years from the application approval date. This credit equals 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

**58.4(6) Refund of sales, service and use taxes paid to contractors or subcontractors.**

*a.* An eligible business or supporting business may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

*b.* Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors the eligible business or supporting business must, within six months after project completion, make an application to the Iowa department of revenue and finance.

**58.4(7) Sales and use tax exemption.** An eligible business may claim an exemption from sales and use taxation property as defined under Iowa Code section 422.45, subsection 27, and also as defined under Iowa Code section 15.334. This effectively eliminates the sales and use taxes on industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes.

**58.4(8) Exemption from land ownership restrictions for nonresident aliens.**

a. An eligible business, if owned by nonresident aliens, may acquire and own up to 1,000 acres of land in the economic development area provided the eligible business is not actively engaged in farming within the economic development area. An eligible, nonresident alien-owned business may also lease up to an additional 280 acres of land in the economic development area. An eligible business owned by nonresident aliens may be allowed, before an application is submitted, to take out a purchase option on up to 1,000 acres the business intends to acquire and may be allowed to take out a lease option on up to an additional 280 acres. The purchase and lease options may be no longer than six months in duration, and the option acquired shall be contingent upon department approval of the business's NJIP application. The eligible business may receive one year or more one-year extensions of the five-year time limit for complying with requirements for the development of agricultural land as stated in Iowa Code section 567.4. Each extension must be approved by the community prior to approval by the department. The eligible business, if owned by nonresident aliens, must comply with all other provisions of Iowa Code chapter 567 which govern land ownership by nonresident aliens, provided they do not conflict with Iowa Code section 15.331B.

b. "Actively engaged in farming" means any of the following:

(1) Inspecting agricultural production activities within the economic development area periodically and furnishing at least half value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in management decisions substantially contributing to or affecting the success of the farm operations within the economic development area.

(3) Performing physical work which significantly contributes to crop or livestock production.

c. The nonresident alien owner is not considered to be actively engaged in farming if the nonresident alien owner cash rents the land to others for farming purposes.

d. An eligible business, if owned by nonresident aliens, may only receive the land ownership exemptions under this subrule provided the business has received final approval of a New Jobs and Income Program application before July 1, 2002.

e. The department will monitor the activities of eligible businesses owned by nonresident aliens that receive this exemption from land ownership restrictions. The department will submit a report to the general assembly by December 15 of each year.

**261—58.5(15) Limitation on incentives.** An eligible business may receive other applicable federal, state, and local incentives and credits in addition to those provided under this program. However, a business which participates in this program shall not receive funds for the same project from the community economic development account under the community economic betterment program described in 261—Chapter 22.

**261—58.6(15) Application.** To request participation in the program, a business shall submit application to the department. A business may submit an application individually or as a part of a group of businesses. Requests for an application should be directed to the Iowa Department of Economic Development, Division of Business Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

**261—58.7(15) Eligibility requirements.** Retail business shall not be eligible to receive benefits under this program. To be eligible for program participation a business shall meet all of the threshold requirements of subrule 58.7(1) and at least three of the elements listed in subrule 58.7(2). If an application is submitted by a group of businesses, the group must meet the \$10 million capital investment requirement and the job creation requirement of at least 75 full-time positions. Each business within the group shall individually meet the other eligibility criteria.

**58.7(1) Mandatory six elements.** A business shall meet all of the following requirements in order to be eligible for program benefits:

*a.* The community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. If community approval is by resolution rather than ordinance and the business is requesting the exemption from land ownership restrictions for nonresident aliens under subrule 58.4(8), the community shall submit documentation that the public was afforded an opportunity to comment on the business's application and land ownership exemption request.

*b.* The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

*c.* The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment occurred.

*d.* The business shall agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least \$11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce or 130 percent of the average wage in the county in which the community is located, whichever is higher. The business shall compute its median wage for all new full-time employees to include compensation in the form of hourly wages, salaries, bonuses, commissions and overtime pay.

*e.* The business will make a capital investment of at least \$10 million indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce. If the business is occupying a vacant building suitable for industrial use, the fair market value of the building shall be counted toward the capital investment threshold.

*f.* The business shall agree to create at least 50, or the group of businesses at least 75, full-time positions at a facility located in Iowa or expanded under the program for a specified period which will be negotiated with the department and the community, but which shall be a minimum of five years. The jobs must be created within five years of the application approval date and the jobs must be maintained for a period of at least five years from the date the business first meets its job creation obligation.

**58.7(2) Additional required elements.** To be eligible for incentives under the program, a business or group of businesses shall do at least three of the following:

*a.* Offer a pension or profit-sharing plan to full-time employees.

*b.* Produce or manufacture high value-added goods or services or be in one of the following industries:

- (1) Value-added agricultural products.
- (2) Insurance and financial services.
- (3) Plastics.
- (4) Metals.
- (5) Printing paper or packaging products.

- (6) Drugs and pharmaceuticals.
- (7) Software development.
- (8) Instruments and measuring devices and medical instruments.
- (9) Recycling and waste management.
- (10) Telecommunications.

- c. Make day care services available to its employees.
- d. Invest annually no less than 1 percent of pretax profits from the facility located to Iowa or expanded under the program in research and development in Iowa.
- e. Invest annually no less than 1 percent of pretax profits from the facility located to Iowa or expanded under the program in worker training and skills enhancement.
- f. Have an active productivity and safety improvement program involving the management and worker participation and cooperation with benchmarks for gauging compliance.
- g. Occupy an existing facility at least one of the buildings of which shall be vacant and shall contain at least 20,000 square feet.

**58.7(3) Further evaluation factors.** After a business has certified compliance with the threshold requirements of subrules 58.7(1) and 58.7(2), the board will consider a variety of additional factors in determining the eligibility of a business to participate in the program including, but not limited to, the following:

- a. The quality of jobs to be created. The department shall place greater emphasis on those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have related factors which could be considered to be higher in quality than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area will be considered as providing the lowest quality of jobs and will be given the lowest consideration in determining program eligibility.
- b. The impact of the proposed project on other businesses in competition with the business being considered for program participation. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for program incentives. The department shall also make a good faith effort to determine the probability that the proposed financial assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking program benefits, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.
- c. The impact to the state of the proposed project. In measuring the economic impact the department shall place greater emphasis on projects which have greater consistency with the state strategic plan than other projects. Greater consistency may include any or all of the following:
  - (1) A business with a greater percentage of sales out of state or of import substitution.
  - (2) A business with a higher proportion of in-state suppliers.
  - (3) A project which would provide greater diversification of the state economy.
  - (4) A business with fewer in-state competitors.
  - (5) A potential for future job growth.
  - (6) A project which is not a retail operation.
- d. If the business has, within three years of application for program participation, acquired or merged with an Iowa corporation or company, whether the business has made a good faith effort to hire the workers of the acquired or merged company.
- e. Whether a business provides a preference for hiring residents of the state or of the economic development area, except for out-of-state employees offered a transfer to Iowa or to the economic development area.
- f. Whether all known required environmental permits have been issued and regulations met.



**58.7(4) Waiver of program qualification requirements.** A community may request a waiver of the capital investment requirement listed in paragraph 58.7(1)"e." The community may also ask for a waiver of the requirement for the number of jobs to be created listed in paragraph 58.7(1)"f." The department may grant a waiver to the community for either or both of these requirements only when good cause is shown.

a. For any community requesting a waiver of these requirements, in order to remain eligible for participation in the program the eligible business shall, as a minimum, agree to the following:

(1) The business will make a minimum capital investment of at least \$3 million.

(2) The business shall agree to create a minimum of at least 15 full-time positions at a facility located or expanded in Iowa.

(3) Businesses that meet the minimum amounts listed above must also agree to a capital expenditure/job creation formula of at least \$200,000 in capital expenditures for every job created.

(4) The department may grant a waiver from the capital expenditures/job creation requirement listed above where it can be demonstrated the business otherwise far exceeds the requirements for eligibility in the program. Such waivers from the capital expenditures/job creation formula may include, but are not limited to, instances where the wages to be paid are far in excess of what is required; where the project can be demonstrated to have an extremely high positive multiplier effect on other Iowa businesses; or for other reasons where it can be demonstrated the project will bring substantial economic benefits to the state.

b. As used in this subrule, "good cause shown" includes but is not limited to:

(1) A demonstrated lack of growth in the community which may include population loss within the community or area or average per capita income levels or growth in per capita income levels that are below the statewide average.

(2) A community that has a higher than statewide average percentage of people that are considered to be living in poverty.

(3) A community whose unemployment rate is higher than the statewide average.

(4) When the project may provide a unique opportunity to use existing unutilized or underutilized facilities in the community such as the purchase or lease of any existing building.

(5) An immediate threat to the community's workforce such as when there is the possibility a business is downsizing or closing and the business will eliminate a significant number of full-time jobs or when the community can document the loss of a significant number of jobs in the community within the two years prior to the application date.

(6) When the proposed project will have a significant multiplier effect on other Iowa businesses that will cause those other businesses to increase their employment or investment in Iowa.

(7) Other factors, not listed here, may be considered by the board in deciding whether to grant a waiver.

c. Rescinded IAB 12/15/99, effective 1/19/00.

**261—58.8(15) Ineligibility.** If the department finds that a business has a record of violations of the law over a three-year period that tends to show a consistent pattern, the business shall not qualify for benefits under this program. The time period that will be reviewed for violations of a federal or state environmental protection statute, regulation or rule is the previous five years as required by Iowa Code section 15A.1(3)"a." Violations of law include, but are not limited to, environmental and worker safety statutes, rules, and regulations. A business shall not be ineligible for program participation if the department finds that the violations did not seriously affect the public health or safety, or the environment, or if they did, that there were mitigating circumstances.

**261—58.9(15) Application contents.** The application to request program benefits shall include, but not be limited to, the following:

**58.9(1)** A description of the proposed project.

**58.9(2)** Documentation that the business meets each of the threshold requirements of subrule 58.7(1) or meets the waiver requirements of subrule 58.7(4) including a copy of the ordinance or resolution of the community approving the start-up, location, or expansion of the business.

**58.9(3)** A description of how the business will meet the requirements of subrule 58.7(2).

**58.9(4)** A description of the quality of jobs to be created which includes information on wage scale, turnover rate, type of job (e.g., full-time, part-time, career-type), health benefits, and other factors impacting the quality of the jobs.

**58.9(5)** An identification of the business's competitors.

**58.9(6)** A description of the impact to the state of the proposed project in terms of consistency with the state strategic plan, diversification of the economy, and job growth potential.

**58.9(7)** An indication of whether within the three years prior to application the business has acquired or merged with an Iowa corporation or company. If yes, a description of the good faith efforts made to hire the workers of the acquired or merged company.

**58.9(8)** An indication of whether the business provides a preference for hiring residents of the state or of the economic development area.

**58.9(9)** A statement that all known environmental permits have been issued and regulations met or a time frame within which the permits will be issued and the regulations will be satisfied.

**58.9(10)** A description of any violations of law in the preceding three years including, but not limited to, environmental and worker safety statutes, rules and regulations. The description must include violations of a federal or state environmental protection statute, regulation or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the business shall provide an explanation of any mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation(s), any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation(s).

**58.9(11)** A certification by the business that the information provided in the application is true and accurate to the best of its knowledge.

**58.9(12)** A release of information to permit the department to reasonably evaluate the business's application.

**58.9(13)** A description of the site that is proposed to become an economic development area. This description must, at a minimum, include a legal description of the site and a detailed map showing the boundaries of the proposed economic development area.

**261—58.10(15) Department and board action.** The division of business development will review all completed applications to determine compliance with the threshold requirements of subrules 58.7(1) and 58.7(2). The division will prepare a report for the board which includes a summary of the application. The board will review applications from eligible businesses meeting the threshold requirements and consider the additional factors listed in subrule 58.7(3) in making its final decision. The board may approve, deny or defer a request for program participation. If an application is approved, the board shall authorize the department to enter into an agreement with the eligible business, or group of businesses, for program benefits. The department will provide DRF and the assessor with notice of the board's approval of an application and a copy of the agreement executed between the department and the business.

**261—58.11(15) Agreement.** The department shall prepare an agreement which includes, but is not limited to, a description of the project to be completed by the business, the number of jobs to be created, length of the project period, the program benefits available, and the repayment requirements of the business in the event the business does not fulfill its obligations. The department shall consult with the community during negotiations relating to the agreement.

**261—58.12(15) Valuation of incentives.** Rescinded IAB 7/17/96, effective 7/1/96.

**261—58.13(15) Compliance monitoring; notice of noncompliance and penalties.**

**58.13(1) Compliance monitoring.** The department will conduct an annual review of the business, or group of businesses, to monitor compliance with the agreement executed under this program.

**58.13(2) Notice of noncompliance.** The department will notify the community and DRF of a business's or group of businesses' unremedied noncompliance under the agreement.

**58.13(3) Authority to recover.** Following notice of noncompliance from the department, the taxing authority of the community shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business or group of businesses. DRF shall have the authority to recover the value of state taxes or incentives provided under the program. The value of state incentives provided under the program includes applicable interest and penalties.

**58.13(4) False report of taxes paid.** A contractor or subcontractor to an eligible business who willfully makes a false report to the eligible business under the sales and use tax refund provisions of subrule 58.4(6) is guilty of a simple misdemeanor and in addition is liable for the payments of the tax and any applicable penalty and interest.

**261—58.14(15) Repayment.**

**58.14(1) Failure to meet requirements.** If a business or group of businesses fails to meet any of its requirements under the agreement, the business or group of businesses shall repay to the local taxing authority and DRF the total value of the incentives received. The community or DRF may exercise forbearance in connection with collection of the amounts owed to the community or DRF and elect to grant the business or group of businesses a one-year period to meet its requirements under the agreement.

**58.14(2) Failure to meet job creation requirements.**

*a. Repayment of property tax exemption.* If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 58.7(1), paragraph "f," it shall pay a percentage of the value of the incentive received for exemption from taxation for machinery, equipment and computers.

*b. Repayment of investment tax credit.* If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 58.7(1), paragraph "f," and did not receive the exemption from taxation for machinery, equipment and computers incentive, it shall repay a percentage of the value of the exemption received.

*c. Calculation of repayment percentage.* Repayment of the property tax exemption or the investment tax credit shall be calculated as follows:

(1) Fifty percent or less of job creation. If the business or group of businesses has met 50 percent or less of the requirement, the business or group of businesses shall pay the same percentage in benefits as the business or group of businesses failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business or group of businesses has met more than 50 percent but not more than 75 percent of the requirement, the business or group of businesses shall pay one-half of the percentage in benefits as the business or group of businesses failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business or group of businesses has met more than 75 percent but not more than 90 percent of the requirement, the business or group of businesses shall pay one-quarter of the percentage in benefits as the business or group of businesses failed to create in jobs.

**58.14(3) *Failure to meet other requirements.*** If the business or group of businesses fails to meet the wage requirement of subrule 58.7(1), paragraph “d,” or any of the three criteria selected under subrule 58.7(2) in any one year, it must meet that requirement in the following year or forfeit the incentives for that year in which the business was not in compliance.

These rules are intended to implement Iowa Code chapter 15 as amended by 1999 Iowa Acts, chapter 172, section 1.

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**59.3(3) Designation procedures.**

*a. Request with supporting documentation.* All requests for designation shall include the following:

(1) Documentation that meets the distress criteria of Iowa Code Supplement section 15E.194.

(2) A legal description of the proposed enterprise zone area and a detailed map showing the boundaries of the proposed enterprise zone.

(3) Certification that the enterprise zone to be designated is within the overall limitation that may not exceed in the aggregate 1 percent of the county area and that the boundaries of the area to be designated are under the jurisdiction of the city or county requesting the designation. If the proposed county enterprise zone contains a city whose boundaries extend into an adjacent county, documentation of the resolution of the board of supervisors of the adjacent county approving the establishment of the zone and a copy of an executed 28E agreement must be submitted to the department as part of the request for zone certification.

(4) Resolution of the city council or board of supervisors, as appropriate, requesting designation of the enterprise zone(s). Included within this resolution may be a statement of the schedule of value-added property tax exemptions that will be offered to all eligible businesses that may locate or expand within the proposed enterprise zone. If a property tax exemption is made applicable only to a portion of the property within the enterprise zone, the designation request submitted to the department must include a description of the uniform criteria which further some planning objective that has been established by the city or county enterprise zone commission and approved by the eligible city or county. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or "brownfields" remediation.

This schedule of value-added property tax exemptions may be approved at the time of zone designation request, but must be approved by the city council or board of supervisors, as appropriate, before the establishment of the local enterprise zone commission. This schedule of value-added property tax exemptions may also include the other property tax exemptions or other property tax related incentives that may be used in conjunction with the enterprise zone such as property tax exemptions that may exist in Urban Revitalization Areas or Tax Increment Financing (TIF) districts that may exist within Urban Renewal Areas. Property tax exemptions authorized under Iowa Code chapter 427B may not be used, as stated in Iowa Code section 427B.6, in conjunction with property tax exemptions authorized by city council or county board of supervisors within the local enterprise zone. The city or county shall forward a copy of the official resolution listing the property tax exemption schedule(s) to the department and to the local assessor.

*b. Board review.* The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

*c. Notice of board action.* The department will provide notice to a city or county of the board's certification, denial, or deferral of the city's or county's request for designation of an area as an enterprise zone. If an area is certified by the board as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

*d. Amendments and decertification.* A certified enterprise zone may be amended or decertified upon application of the city or county originally applying for the zone designation. However, an amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certified by the board. After July 1, 2000, the statutory deadline for cities and counties to request zone certification, an amendment shall not add area to a certified enterprise zone. An amendment or decertification request shall include, but is not limited to, the following information: reason(s) for the amendment or decertification and confirmation that the amended zone meets the requirements of the Act and these rules. The board will review the request and may approve, deny, or defer the proposed amendment or decertification.

**261—59.4(15E) Enterprise zone commission.** Following notice of enterprise zone certification by the board, the applicant city or county shall establish an enterprise zone commission. The commission shall review applications from eligible businesses and eligible housing businesses located in the zone and forward approved applications to the department for final review and approval.

**59.4(1) Commission composition.**

*a. County enterprise zone commission.* A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses (including eligible housing businesses) located or requesting to locate within a certified enterprise zone. The enterprise zone commission shall consist of nine members. Five of these members shall be comprised of:

- (1) One representative of the county board of supervisors,
- (2) One member with economic development expertise selected by the department,
- (3) One representative of the county zoning board,
- (4) One member of the local community college board of directors, and
- (5) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The five members identified above shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. If the enterprise zone is located in a county that does not have a county zoning board, the representatives identified in 59.4(1)“a”(1), (2), (4), and (5) shall select an individual with zoning expertise to serve as a member of the commission.

*b. City enterprise zone commission.* A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. A city with a population of 24,000 or more which designates an enterprise zone pursuant to Iowa Code Supplement section 15E.194, subsection 2, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance. The commission shall consist of nine members. Six of these members shall consist of:

- (1) One representative of an international labor organization,
- (2) One member with economic development expertise chosen by the department of economic development,
- (3) One representative of the city council,
- (4) One member of the local community college board of directors,
- (5) One member of the city planning and zoning commission, and
- (6) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The six members identified above shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission.

**59.6(3) Benefits.** The following incentives and assistance are available to an eligible business within a certified enterprise zone only when the average wage of all the new project jobs meets the minimum wage requirements of 59.6(1)“d”:

*a. New jobs supplemental credit; alternative credit for housing assistance programs.*

(1) An approved business shall receive a new jobs supplemental credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business, as provided in Iowa Code section 15.331. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Additional new jobs created by the project, beyond those that were agreed to in the original agreement as described in 261—59.12(15E), are eligible for the additional 1½ percent withholding credit as long as those additional jobs meet the local enterprise zone wage eligibility criteria and are an integral part or a continuation of the new location or expansion. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E. Businesses eligible for the new jobs training program are those businesses engaged in interstate commerce or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but exclude retail, health or professional services.

(2) As an alternative to the credit described in subparagraph (1) above, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in Iowa Code section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to 1½ percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to Iowa Code section 422.16. If the amount of the withholding by the employer is less than 1½ percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(3) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to Iowa Code Supplement section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue and finance to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The agreement shall require that the down payment assistance or rental assistance provided for employees in new jobs be repaid, in whole or in part, in the event an employee is no longer employed by the business or defaults under the agreement between the business and an employee. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified. The employer shall certify to the department of revenue and finance that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

The business shall enter into an agreement with each employee receiving down payment or rental assistance. The agreements shall include terms and conditions of the receipt of the assistance and repayment provisions should the employee no longer work for the business or default under the terms of the agreement.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in Iowa Code section 422.16.

(5) The 1½ percent supplemental credit authorized under this rule may be apportioned between the 260E training programs described in subparagraph (1) and the down payment or rental assistance program described in subparagraph (2).

*b. Value-added property tax exemption.*

(1) The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code section 15E.196 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

(2) If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county zone commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or "brownfields" remediation.

(3) The exemption may be allowed for a period not to exceed ten years beginning the year value added by improvements to real estate is first assessed for taxation in an enterprise zone.

*c. Investment tax credit and insurance premium tax credit.*

(1) Investment tax credit. A business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.



(2) Insurance premium tax credit. The insurance premium tax credit benefit is available for a business that submits an application for enterprise zone participation on or after July 1, 1999. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15E.196 as amended by 1999 Iowa Acts, chapter 172, section 2. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

(3) Eligible capital expenditures. For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the enterprise zone program are the costs of machinery and equipment used in the operation of the eligible business and the cost of improvements to real property which is used in the operation of the business and which receives a partial property tax exemption for the value added as described in Iowa Code section 15.332.

(4) Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the purchase price of real property and any buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes, or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the income tax liability of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

1. One hundred percent of the tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
2. Eighty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
3. Sixty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
4. Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
5. Twenty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

*d. Research activities credit.* A business is eligible to claim a research activities credit as provided in Iowa Code section 15.335. This benefit is a corporate tax credit for increasing research activities in this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be “participating in the program” for a period of ten years from the date the business’s application was approved by the department. This credit equals 6½ percent of the state’s apportioned share of the qualifying expenditures for increasing research activities. The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

*e. Refund of sales, service and use taxes paid to contractors or subcontractors.* A business is eligible for a refund of sales, service and use taxes paid to contractors and subcontractors as authorized in Iowa Code section 15.331A.

(1) An eligible business may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the enterprise zone.

(2) Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, within six months after project completion, make an application to DRF. For new manufacturing facilities, "project completion" means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the enterprise zone is at least 50 percent of the initial design capacity of the facility. For existing facilities, "project completion" means the date of completion of all improvements included in the enterprise zone project.

**59.6(4) Duration of benefits.** An enterprise zone designation shall remain in effect for ten years following the date of certification. Any state or local incentives or assistance that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration of the zone designation.

**59.6(5) Application review and submittal.** Eligible businesses shall first submit applications for enterprise zone program benefits to the local enterprise zone commission. Commission-approved applications shall be forwarded to the department for final review and approval.

#### **261—59.7(15E) Alternative eligible business.**

**59.7(1) Requirements.** A business which is not located in an enterprise zone is eligible to receive incentives and assistance under the enterprise zone program if the business meets all of the following criteria:

*a. No closure or reduction.* The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in a location which qualifies the business under this rule. This requirement does not prohibit a business from expanding its operation in a location which qualifies the business under this rule if existing operations of a similar nature in the state are not closed or substantially reduced.

*b. No retail.* The business is not a retail business or a business whose entrance is limited by a cover charge or membership requirement.

*c. Employee benefits.* The business provides all full-time employees with the option of choosing one of the following:

(1) The business pays 80 percent of both of the following:

1. The cost of a standard medical insurance plan, and
2. The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1) above.

*d. Job creation.* The business expansion or location must result in at least ten full-time project jobs and those project jobs must be maintained for at least ten years. The business shall create these jobs within three years of the effective date of the business's agreement with the department and the city or county, as appropriate. The business shall include in its strategic plan the time line for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives and assistance will cease immediately.

*e. Capital investment.* The business makes a capital investment of at least \$500,000. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000, as determined by the city, shall be counted toward the capital investment requirement. An existing business that has been operating for at least five years is exempt from the capital investment requirement of this paragraph of up to \$250,000 of the fair market value, as established by an appraisal, of the building and land. The capital investment amount stated in the business's application must be completed within three years of the effective date of the agreement described in rule 59.12(15E).

*f. City population limits.* The business must be or plan to be located in a city with a population between 8,000 and 24,000 as determined by population estimates by the United States Bureau of the Census for the year 1995.

*g. Proximity to enterprise zone.* The business must currently be or plan to be located in a city which is not more than 35 miles from an existing enterprise zone in this state or an equivalent zone in an adjacent state.

*h. NJIP (new jobs and income program) wage levels.* The business shall comply with the wage requirements of Iowa Code section 15.329(1)"d." This section of the Iowa Code requires the business to agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least \$11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce or 130 percent of the average wage in the county in which the community is located, whichever is higher.

*i. Distress criteria.* The business must currently be or plan to be located in an area that meets two of the criteria listed below:

- (1) The area has a per capita income of \$9,600 or less based on the 1990 census.
- (2) The area has a family poverty rate of 12 percent or higher based on the 1990 census.
- (3) Ten percent or more of the housing units in the area are vacant.

(4) The valuations of each class of property in the designated area are 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

- (5) The area is a blighted area, as defined in Iowa Code section 403.17.

*j. City approval.* The business must receive approval by ordinance or resolution from the city in which the project is located.

**59.7(2) Benefits.** A business that qualifies under the "alternative eligible business" category is eligible to receive the following benefits:

- a.* A new jobs supplemental credit as described in paragraph 59.6(3)"a."
- b.* A value-added property tax exemption as described in paragraph 59.6(3)"b."
- c.* An investment tax credit as detailed in paragraph 59.6(3)"c."
- d.* A research activities credit as outlined in paragraph 59.6(3)"d."
- e.* A sales, service, and use tax refund credit as described in paragraph 59.6(3)"e."

The duration of these benefits shall be the same as set forth in subrule 59.6(4).

**59.7(3) Application submittal and review.** After approval of a project by ordinance or resolution, the city shall submit an application directly to the department.

**261—59.8(15E) Eligible housing business.** An eligible housing business includes a housing developer or housing contractor.

**59.8(1) Requirements.** A housing business shall satisfy all of the following as conditions to receiving the benefits described in this rule.

- a.* The housing business must build or rehabilitate either:

(1) A minimum of four single-family homes with a value, after completion of the building or rehabilitation, not exceeding \$120,000 for each home located in that part of a city or county in which there is a designated enterprise zone, or

(2) One multiple dwelling unit building containing three or more individual dwelling units with a total value per unit, after completion of the building or rehabilitation, not exceeding \$120,000 located in that part of a city or county in which there is a designated enterprise zone.

b. The single-family homes and dwelling units which are rehabilitated or constructed by the housing business shall be modest homes or units, but shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States Department of Housing and Urban Development's housing quality standards and local safety standards.

c. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties in rule 261—59.13(15E).

d. An eligible housing business shall provide the enterprise zone commission with all of the following information:

(1) The long-term plan for the proposed housing development project, including labor and infrastructure needs.

(2) Information dealing with the benefits the proposed housing development project will bring to the area.

(3) Examples of why the proposed development project should be considered a good housing development project.

(4) An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violations have occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

**59.8(2) Benefits.** A business that qualifies under the "eligible housing business" category is eligible to receive the following benefits for a period of ten years:

a. *Income tax credit.* An eligible housing business may claim an income tax credit up to a maximum of 10 percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro-rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust.

b. *Sales, service, and use tax refund.* An approved housing business shall receive a sales, service, and use tax refund as described in paragraph 59.6(3)"e."

**59.8(3) Application submittal and review.** An eligible housing business shall first submit an application to the commission for approval. The commission shall forward applications that it has approved to receive benefits and assistance to the department for final review and approval.

**261—59.9(15E) Commission review of businesses' applications.**

**59.9(1) Additional commission eligibility requirements.** Under the Act, a commission is authorized to adopt additional eligibility requirements related to compensation and benefits that businesses within a zone must meet in order to qualify for benefits. Additional local requirements that may be considered could include, but are not limited to, the types of industries or businesses the commission wishes to receive enterprise zone benefits; requirements that preference in hiring be given to individuals who live within the enterprise zone; higher wage eligibility threshold requirements than would otherwise be required; higher job creation eligibility threshold requirements than would otherwise be required; the level of benefits required; local competition issues; or any other criteria the commission deems appropriate. If a commission elects to adopt more stringent requirements than those contained in the Act and these rules for a business to be eligible for incentives and assistance, these requirements shall be submitted to the department.

**59.9(2) Application.** The department will develop a standardized application that it will make available for use by a business applying for benefits and assistance as an eligible business, an alternative eligible business, or an eligible housing business. The commission may add any additional information to the application that it deems appropriate for a business to qualify as an eligible business or an eligible housing business. If the commission determines that a business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

**261—59.10(15E) Other commission responsibilities.**

**59.10(1) Commissions have the authority to adopt a requirement that preference in hiring be given to individuals who live within the enterprise zone.** If it does so, the commission shall work with the local workforce development center to determine the labor availability in the area.

**59.10(2) Commissions shall examine and evaluate building codes and zoning in enterprise zones and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.**

**261—59.11(15E) Department action on eligible applications.** The department may approve, deny, or defer applications from qualified businesses. In reviewing applications for incentives and assistance under the Act, the department will consider the following:

**59.11(1) Compliance with the requirements of the Act and administrative rules.** Each application will be reviewed to determine if it meets the requirements of the Act and these rules. Specific criteria to be reviewed include, but are not limited to: medical and dental insurance coverage; wage levels; number of jobs to be created; and capital investment level.

**59.11(2) Competition.** The department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives and assistance under this program, to ensure an overall economic gain to the state.

**59.11(3) Displacement of workers.** The department will make a good-faith effort to determine the probability that the proposed incentives will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

**59.11(4) *Violations of law.*** The department will review each application to determine if the business has a record of violations of law. If the department finds that an eligible business, alternative eligible business, or an eligible housing business has a record of violations of the law including, but not limited to, environmental and worker safety statutes, rules, and regulations over a period of time that tends to show a consistent pattern, the business shall not qualify for incentives or assistance under 1998 Iowa Acts, House Files 2164 and 2538 or Iowa Code Supplement section 15E.196, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if they did that there were mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation.

**59.11(5) *Commission's recommendations and additional criteria.*** For each application from a business, the department will review the local analysis (including any additional local criteria) and recommendation of the enterprise zone commission in the zone where the business is located, or plans to locate.

**59.11(6) *Other relevant information.*** The department may also review an application using factors it reviews in other department-administered financial assistance programs which are intended to assess the quality of the jobs pledged.

**261—59.12(15E) *Agreement.*** The department and the city or county, as applicable, shall enter into agreement with the business. The term of the agreement shall be ten years from the agreement effective date plus any additional time necessary for the business to satisfy the job maintenance requirement. This three-party agreement shall include, but is not limited to, provisions governing the number of jobs to be created, representations by the business that it will pay the wage and benefit levels pledged and meet the other requirements of the Act as described in the approved application, reporting requirements such as an annual certification by the business that it is in compliance with the Act, and the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of the Act and these rules. In addition, the agreement will specify that a business that fails to maintain the requirements of the Act and these rules shall not receive incentives or assistance for each year during which the business is not in compliance.

**261—59.13(15E) *Compliance; repayment requirements; recovery of value of incentives.***

**59.13(1) *Annual certification.*** A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department its compliance with the requirements of the Act and these rules.

**59.13(2) *Repayment.*** If a business has received incentives or assistance under 1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.196 and fails to meet and maintain any one of the requirements of the Act or these rules to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

**59.13(3) *Calculation of repayment due.*** If a business fails in any year to meet any one of the requirements of the Act or these rules to be an eligible business, it is subject to repayment of all or a portion of the amount of incentives received.

**a. *Failure to meet/maintain requirements.*** If a business fails in any year to meet or maintain any one of the requirements of the Act or these rules, except its job creation requirement which shall be calculated as outlined in paragraph "b" below, the business shall repay the value of the incentives received for each year during which it was not in compliance.

b. *Job creation shortfall.* If a business does not meet its job creation requirement, repayment shall be calculated as follows:

(1) If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

**59.13(4) DRF; county/city recovery.** Once it has been established, through the business’s annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and finance and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under 1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.196. The value of state incentives provided under 1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.196 includes applicable interest and penalties.

These rules are intended to implement Iowa Code sections 15E.191 through 15E.195, section 15E.196 as amended by 1999 Iowa Acts, chapter 172, section 2, and section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1.

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CHAPTER 21\*  
BEHIND-THE-WHEEL DRIVING INSTRUCTOR AUTHORIZATION

**282—21.1(78GA,SF203) Requirements.** Applicants for the behind-the-wheel driving instructor authorization shall meet the following requirements:

**21.1(1)** Hold a current Iowa teacher or administrator license which authorizes service at the elementary or secondary level.

**21.1(2)** Successfully complete a behind-the-wheel driving instructor course approved by the department of transportation. At a minimum, classroom instruction shall include at least 12 clock hours of observed behind-the-wheel instruction and 24 clock hours of classroom instruction to include psychology of the young driver, behind-the-wheel teaching techniques, ethical teaching practices, and route selection.

**282—21.2(78GA,SF203) Validity.** The behind-the-wheel driving instructor authorization shall be valid for one calendar year, and it shall expire one year after issue date. The fee for the issuance of the behind-the-wheel driving instructor authorization shall be \$10.

**282—21.3(78GA,SF203) Approval of courses.** Each institution of higher education, private college or university, community college or area education agency wishing to offer the behind-the-wheel driving instructor authorization must submit course descriptions to the department of transportation for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the department of transportation and the board of educational examiners.

**282—21.4(78GA,SF203) Application process.** Any person interested in the behind-the-wheel driving instructor authorization shall submit records of completion of a department of transportation-approved program to the board of educational examiners for an evaluation of completion of coursework, validity of teacher or administrator license, and all other requirements.

Application materials are available from the board of educational examiners, the department of transportation or from institutions or agencies offering department of transportation-approved courses.

**282—21.5(78GA,SF203) Renewal.** The behind-the-wheel driving instructor authorization may be renewed upon application, \$10 renewal fee and verification of successful completion of:

**21.5(1)** Providing behind-the-wheel instruction for a minimum of 12 clock hours during the previous school year; and

**21.5(2)** Successful participation in at least one department of transportation-sponsored or department of transportation-approved behind-the-wheel instructor refresher course.

**282—21.6(78GA,SF203) Revocation and suspension.** Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the behind-the-wheel driving instructor authorization.

These rules are intended to implement Iowa Code chapter 272 and Iowa Code section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11.

[Filed 9/17/99, Notice 6/30/99—published 10/6/99, effective 11/10/99\*]



- 20.214(8) License for new barbershop is \$30.
  - 20.214(9) Biennial renewal of barbershop license is \$60. Penalty for late renewal is \$10, in addition to renewal fee if not postmarked by the July 1 expiration date.
  - 20.214(10) Transfer of barbershop or barber school license is \$25.
  - 20.214(11) An original barber assistant license is \$25.
  - 20.214(12) Renewal of barber assistant license is \$5.
  - 20.214(13) Temporary permit to practice barbering is \$10.
  - 20.214(14) Verified statement that a licensee is licensed in this state is \$10.
  - 20.214(15) Duplicate license is \$10.
  - 20.214(16) A demonstrator's permit is \$35 for the first day and \$10 for each day thereafter that the permit is valid.
- This rule is intended to implement Iowa Code section 147.80.

645—20.215 to 20.299 Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

645—20.300(28A) **Conduct of persons attending meetings.** Rescinded IAB 6/16/99, effective 7/21/99.

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\*See Public Health Department[641], IAB

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**CHAPTER 61**  
**LICENSURE OF SALONS AND SCHOOLS OF COSMETOLOGY**  
**ARTS AND SCIENCES**

[Prior to 7/29/87, Health Department[470] Ch 149]  
[Prior to 12/23/92, see 645—Chapter 60]

**645—61.1(157) Salon licensing.**

**61.1(1)** An application for a salon license shall be made in writing to the Board of Cosmetology Arts and Sciences Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Application forms shall be obtained from the board. The following information shall be required on these forms:

- a.* A floor plan of proposed salon showing all entrances and exits, reception, styling, cleaning and toilet areas.
- b.* If the salon area is in a facility where other businesses are located, the salon relationship to the other businesses must be shown on the floor plan. (See 645—subrule 63.3(2))
- c.* If the salon is located in a residence, its relationship to the residence must be indicated. (See subrule 645—63.3(1))
- d.* If a salon is located in a rural area, the applicant must provide directions to the salon.
- e.* If a salon is to be located in a facility such as an office building, complex or hotel, the exact address shall include the floor number, suite or room number.
- f.* The application for a salon license shall be submitted to the department at least 30 days prior to the anticipated opening day.

**61.1(2)** The application shall be accompanied by the license fee prescribed in 645—subrule 62.1(8).

**61.1(3)** Business may commence at the salon following receipt of written approval of the board and receipt of license.

**61.1(4)** Every salon shall adhere to the sanitary rules established in 645—Chapter 63.

**61.1(5)** Every salon shall have a sign visible outside the entrance designating the place of business.

**61.1(6)** The original license shall be issued for that location only.

*a.* Any change of location shall necessitate an application for a new license and the fee required by 645—subrule 62.1(8).

*b.* A change of address without change of actual location shall not be construed as a new site.

*c.* A change in salon name shall be reported within 30 days of the change, accompanied by the fee required by 645—subrule 62.1(20).

*d.* A change of ownership of a salon shall necessitate an application for a new license and the fee required by 645—subrule 62.1(8).

*e.* Upon discontinuance of a salon, the salon license shall be submitted to the board office within 30 days.

*f.* A salon license shall be renewed on a biennial basis.

**645—61.2(157) School of cosmetology arts and sciences—licensing.** The board shall grant approval for the issuance of an original school of cosmetology arts and sciences license to be issued by the department when the conditions set out below have been fully met. The annual renewal of a school of cosmetology arts and sciences license shall be recommended by the board to the department when there is full compliance with this chapter and 645—Chapter 63.

**61.2(1)** An application shall be in writing and submitted to the Board of Cosmetology Arts and Sciences Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The applicant shall submit the following information with the application:

- a.* The exact location of the proposed school of cosmetology arts and sciences including the exact location(s) of the salon(s) which will be utilized for the school's mentoring program;
- b.* A complete plan of the physical facilities to be utilized and as applied to areas relative to classroom and clinic space and mentoring program;
- c.* Submit proof of research and a survey completed to substantiate the need for a school of cosmetology arts and sciences; and
- d.* A list of the names of licensed instructors for the proposed school. The number of instructors submitted must meet the requirement outlined in Iowa Code section 157.8 except for instruction for the mentoring program.

**61.2(2)** The school of cosmetology arts and sciences owner will be requested to appear before the board for an interview regarding the school of cosmetology arts and sciences.

**61.2(3)** No student shall be accepted until the above requirements are met and approval granted and the board has received the original license fee as outlined in 645—subrule 62.1(4).

**61.2(4)** The original license shall be granted for that location(s) identified in the school's application.

- a.* A change of location shall necessitate an application for a new license and the fee required by 645—subrule 62.1(5).
- b.* A change of address without change of actual location shall not be construed as a new site.
- c.* A change of ownership of a school of cosmetology arts and sciences shall necessitate an application for a new license and the fee required by 645—subrule 62.1(5). A change in ownership shall be defined as any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

**61.2(5)** A school of cosmetology arts and sciences, before being issued a license, shall meet the following physical requirements:

- a.* A minimum floor space of 3000 square feet in any school premises and, when the enrollment in a school exceeds 30 students, additional floor space of 30 square feet for each additional student over 30 will be required to adequately take care of that student;
- b.* Each licensed school shall be limited to providing one clinic floor where the paying public will receive services; said clinic floor shall be confined to the premises occupied by the school;
- c.* A school room shall be large enough and be so equipped as to provide for practical work, lectures and demonstration purposes. A room or rooms separate from the clinic floor must be provided for such a purpose;
- d.* A dispensary shall be equipped with lavatory and adequate closed storage for keeping sanitized articles. Chemicals and lotions shall be stored in the dispensary. A wet sterilizer and any other sanitation items that are required under 645—Chapter 63 shall be in place in the dispensary;
- e.* Two toilets shall be equipped with lavatories, soap and towel dispensers;
- f.* A laundry room shall be separated from the clinic area by a full wall or partition;
- g.* Locker facilities for each student shall be provided;
- h.* Closed cabinets or separate room for extra supplies;
- i.* Waste containers on the clinic floor shall be covered or may be open containers that are emptied each day; and
- j.* An administrative office.

**61.6(2) Student hours.** A school of cosmetology arts and sciences shall have a written, published attendance policy.

a. When determining student hours, a school may define its attendance requirements to include 100 percent attendance for the course length or may allow excused absences for not more than 10 percent of the course length for satisfactory completion;

- (1) Student attendance policies shall be applied uniformly and fairly;
- (2) Attendance policies give appropriate credit for all hours earned;
- (3) All retake tests, redo projects and makeup work shall be completed without benefit of additional hours earned and shall be at the school's discretion to schedule time for same;
- (4) Hours shall not be added to or deducted from hours earned as a penalty;
- (5) A student shall not receive credit for participating in demonstrations of cosmetology arts and sciences for the sole purpose of recruiting students;

(6) The school must maintain attendance records for each student to verify that the minimum attendance standard set forth by the school is being met.

b. Accelerated learning. A school of cosmetology arts and sciences may adopt a policy which would allow for accelerated learning procedures. Such a policy may include acceptance of life experience, prior knowledge learned and test-out procedures. Hours granted for accelerated learning may not exceed 15 percent of hours for entire course of study.

(1) A student upon completion of all entrance requirements may elect to sit for one or more academic written tests which would allow for the evaluation of knowledge about subject matter gained from life experience or prior learning experience;

The school may accept and grant hours for prior or concurrent education, life experience and test-out results, at the time of enrollment, not to exceed 15 percent of the total course requirement.

(2) While a student in a cosmetology arts and sciences course of study, a student may be allowed to test out of a certain subject matter by sitting for final examinations covering the basic knowledge gained by a student who attends class sessions, or the school may accept and grant hours for prior or concurrent education and life experience. This would allow the student to demonstrate understanding of, and proficiency in, the subject matter gained either from self-study or advanced understanding of the subject.

1. A student who wishes to receive test-out credit, or be granted hours for prior or concurrent education or life experience, of academic or practical skills subject matter shall have maintained the academic grades and attendance policy standards set forth by the school;

2. A student may be allowed to receive test-out credit, or be granted hours for prior or concurrent education or life experience, of academic or practical skills subject matter not to exceed 15 percent of hours for entire course of study;

3. A school may have a policy which limits the number of times a student is allowed to sit for a test-out of any subject;

4. A school may be responsible for setting a schedule for administering test-out examinations.

(3) Test-out credit for hours shall be accumulated in the student's file and applied to the total hours earned.

(4) The school shall have a written, published policy which clearly outlines the criteria for acceptance and granting of hours for test-out credit and hours granted for prior or concurrent education and life experience.

61.6(3) To be considered a graduate, a student must have completed the course scheduled for completion and met the minimum attendance standard of the established course of study and all other academic and evaluation factors established by the school. Therefore, in addition to completion of required hours, the student must have satisfactorily completed the practical and theoretical curriculum requirements set forth by the school.

61.6(4) Students shall not be allowed to work on the public until such time as they have completed 10 percent of the course of study.

61.6(5) All work done by students on the public shall be under the supervision of an instructor at all times, except in a mentoring program where the student(s) shall be under the guidance of a mentor.

61.6(6) Examinations.

a. Students shall be given a final examination upon completion of at least 1800 hours of training for cosmetology, upon completion of the course of study for electrology, esthetics, manicuring, and nail technology.

b. Upon passage of the final examination and completion of the entire course of study including all project sheets, students shall be issued a certificate of completion of hours required for course of study.

61.6(7) No student shall be called from theory class to work on the public.

61.6(8) Upon successfully passing the school examination and receiving the certificate of completion of hours the student may, pending taking the state board examination, begin the instructor training course. Student instructors shall not be in charge of classes without direct supervision by a licensed instructor.

61.6(9) Anyone taking the instructor's course shall adhere to rule 61.4(157).

61.6(10) All licensed schools of cosmetology arts and sciences shall prominently display in the entrance room a sign indicating that all service is performed exclusively by students.

61.6(11) An applicant for a cosmetology arts and sciences license shall be a high school graduate or shall have passed the general education development tests.

61.6(12) Individual student hours shall be kept on file at the school until the license is issued.

61.6(13) Students may participate in a mentoring program for no more than 5 percent of the total course hours.

These rules are intended to implement Iowa Code sections 157.10, 157.11, and 714.25.

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## CHAPTER 62

## FEES

[Prior to 7/29/87, Health Department[470] Ch 149]  
 [Prior to 12/23/92, see 645—60.14(157) for Fees]

**645—62.1(147,157) All fees are nonrefundable.**

**62.1(1)** License to practice cosmetology arts and sciences issued upon the basis of examination by the board is \$70. (Includes cosmetology, electrology, esthetics and nail technology licenses.)

**62.1(2)** License to practice cosmetology arts and sciences for out-of-state applicants by reciprocal agreement or examination is \$70.

**62.1(3)** Renewal for a biennial period of license to practice cosmetology arts and sciences is \$25.

**62.1(4)** Examination fee for reexamination for any portion of the examination is \$50.

**62.1(5)** License to conduct a school teaching cosmetology arts and sciences is \$505.

**62.1(6)** Renewal of a license or change of location of a school teaching cosmetology arts and sciences is \$205 annually.

**62.1(7)** License to instruct in a school teaching cosmetology arts and sciences is \$70.

**62.1(8)** Renewal for a biennial period of instructor's license is \$30.

**62.1(9)** License to establish a salon is \$35.

**62.1(10)** Renewal of a salon license is \$70 biennially.

**62.1(11)** License to practice manicuring is \$50.

**62.1(12)** Renewal for a biennial period of license to practice manicuring is \$25.

**62.1(13)** Fee for a certified statement of licensure in this state is \$10.

**62.1(14)** A temporary permit to practice cosmetology (must be filed with application for examination) is \$10.

**62.1(15)** A temporary permit for demonstrators is \$35 for the first day and \$10 for each day thereafter that the permit is valid.

**62.1(16)** Fee for a duplicate license is \$10.

**62.1(17)** Delinquent penalty for nonpayment of renewal fee within 30 days after due date is \$20.

**62.1(18)** Penalty fee for lapsed license is \$30 per year.

**62.1(19)** Penalty fee for failure to complete required continuing education within the compliance period is \$50. This penalty fee is paid before the license may be renewed.

**62.1(20)** Fee for a name change of salon is \$15. Fee for change of location of an existing salon is \$35.

**62.1(21)** Fee for reinstatement of an inactive (exempt) license is \$50.

**62.1(22)** Examination fee for Iowa Law Examination for applicants reinstating inactive or lapsed license is \$20.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 157.

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## PHARMACY EXAMINERS BOARD[657]

[Prior to 2/10/88, see Pharmacy Examiners, Board of [620], renamed Pharmacy Examiners Board[657] under the "umbrella" of Public Health Department by 1986 Iowa Acts, ch 1245]

### CHAPTER 1

#### PURPOSE AND ORGANIZATION

- 1.1(17A) Description and organization
- 1.2(17A,124,124A,124B,126,147,155A,205) Disciplinary action
- 1.3(17A,124,126,147,155A,205,272C) Waivers or variances from rules

### CHAPTER 2

#### LICENSURE

- 2.1(147) Licensure examination dates
- 2.2(147) Examination fee
- 2.3(147) Notarized statement
- 2.4(147) Reexamination applications and fees
- 2.5(147) Records preserved
- 2.6(147) Date of notice
- 2.7(155A) Internship requirements
- 2.8(155A) College graduate certification
- 2.9(155A) Application for examination—requirements
- 2.10(155A) Examination subjects
- 2.11(155A) Transfer of exam scores
- 2.12(155A) Foreign pharmacy graduates

### CHAPTER 3

#### LICENSE FEES, RENEWAL DATES, FEES FOR DUPLICATE LICENSES AND CERTIFICATION OF EXAMINATION SCORES

- 3.1(147,155A) Renewal date and fee—late application
- 3.2(155A) Fees
- 3.3(147) Certification of examination scores
- 3.4(155A) Pharmacy license—general provisions
- 3.5(155A) Wholesale drug license—renewal and fees
- 3.6(124,147,155A) Returned check fee

### CHAPTER 4

#### PHARMACIST-INTERN REGISTRATION AND MINIMUM STANDARDS FOR EVALUATING PRACTICAL EXPERIENCE

- 4.1(155A) Definitions
- 4.2(155A) Goal and objectives of internship
- 4.3(155A) 1500-hour requirements
- 4.4(155A) Iowa colleges of pharmacy clinical internship programs
- 4.5(155A) Requirements for internships obtained under other state programs
- 4.6(155A) Registration and reporting
- 4.7(155A) Foreign pharmacy graduates
- 4.8(155A) Fees
- 4.9(155A) Preceptor requirements
- 4.10(155A) Denial of pharmacist-intern registration
- 4.11(155A) Discipline of pharmacist-interns

### CHAPTER 5

#### LICENSURE BY RECIPROCITY

- 5.1(147) Reciprocity fee
- 5.2(147) Necessary credentials
- 5.3(147) Fiscal licensure
- 5.4(147) Eligibility for reciprocity

### CHAPTER 6

#### GENERAL PHARMACY LICENSES

- 6.1(155A) Applicability
- 6.2(155A) Personnel
- 6.3(155A) Reference library
- 6.4(155A) Prescription department equipment
- 6.5(155A) Environment
- 6.6(155A) Security
- 6.7(155A) Procurement and storage of drugs
- 6.8(155A) Records
- 6.9(126) Return of drugs and appliances
- 6.10(155A) Training and utilization of pharmacy technicians

CHAPTER 7  
HOSPITAL PHARMACY LICENSES

- 7.1(155A) General requirements
- 7.2(155A) Sanitation
- 7.3(155A) Reference library
- 7.4(155A) Space and equipment requirements
- 7.5(124,155A) Security
- 7.6(155A) Pharmacist in charge
- 7.7(155A) Training and utilization of pharmacy technicians
- 7.8(124,126,155A) Drug distribution and control
- 7.9(124,155A) Drug information
- 7.10(124,155A) Ensuring rational drug therapy
- 7.11(126,155A) Unit dose dispensing systems
- 7.12(124,126,155A) Drugs dispensed to patients as a result of an emergency room visit
- 7.13(124,155A) Records

CHAPTER 8  
MINIMUM STANDARDS FOR THE  
PRACTICE OF PHARMACY

- 8.1(155A) Authorized person
- 8.2(124,155A) Prescription information and transfer
- 8.3(126) Prepackaging

- 8.4(155A) Pharmacist identification and notification
- 8.5(147,155A) Unethical conduct or practice
- 8.6(155A,126) Advertising
- 8.7(272C) Continuing education requirements as a condition for license renewal
- 8.8(155A) Prescription pickup locations
- 8.9 Reserved
- 8.10(155A) Legal status of prescriptions
- 8.11(155A,124) Pharmacy and prescription records
- 8.12(124,155A) Delivery of drugs and devices
- 8.13(126,155A) Patient med paks
- 8.14(155A) Prescription label requirements
- 8.15(155A) Records
- 8.16 and 8.17 Reserved
- 8.18(155A) Patient records
- 8.19(155A) Prospective drug review
- 8.20(155A) Patient counseling
- 8.21(155A) Skin puncture for patient training
- 8.22(155A) Blood pressure measurement
- 8.23 to 8.29 Reserved
- 8.30(126,155A) Sterile products
- 8.31(124,155A) Home health agency/hospice emergency drugs
- 8.32(124,155A) Emergency/first dose drug supply

CHAPTER 9  
Reserved

**8.7(9) *Physical disability or illness.*** The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements for physical disability or illness may be granted by the board for any period of time not to exceed one renewal period. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such method as may be prescribed by the board.

**8.7(10) *New license holders registered by reciprocity.*** After the initial license is issued, the new license holder by reciprocity will be required to obtain 30 contact hours (3.0 CEU) of CE credits prior to the first renewal period.

This rule is intended to implement Iowa Code sections 147.10, 272C.2 and 272C.6.

**657—8.8(155A) Prescription pickup locations.** A licensed pharmacist shall not participate in any arrangement or agreement whereby prescriptions may be left at, picked up from, accepted by, or delivered to any place of business not licensed as a pharmacy. This shall apply to the prescription order blank and to the completed prescription medication container. Provided, however, that nothing in this rule shall prohibit a licensed pharmacist or a licensed pharmacy, by means of its employee or by use of a common carrier, from picking up prescriptions or delivering prescriptions at the office or home of the prescriber, at the residence of the patient, or at the hospital or medical care facility in which a patient is confined.

This rule is intended to implement Iowa Code sections 155A.13 and 155A.15.

**657—8.9(155A,126) Unit dose dispensing systems.** Rescinded IAB 5/19/99, effective 6/23/99.

**657—8.10(155A) Legal status of prescriptions.** Prescriptions issued in accordance with the provisions of Iowa Code section 155A.27 shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, the prescription loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the prescription and any remaining refills. Provided, however, that the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

**657—8.11(155A,124) Pharmacy and prescription records.** All records shall comply with all applicable state and federal laws and regulations.

This rule is intended to implement Iowa Code sections 124.301, 124.306, 124.307, 124.308, and 155A.27.

**657—8.12(124,155A) Delivery of drugs and devices.** Every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with 657—subrule 6.7(2).

This rule is intended to implement Iowa Code sections 124.306 and 155A.15.

**657—8.13(126,155A) Patient med paks.** In lieu of dispensing prescribed drug products in conventional prescription containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med pak) pursuant to the requirements of this rule.

**8.13(1) Definition.** A patient med pak is a customized patient medication package prepared for a specific noninstitutionalized patient which comprises a series of immediate containers containing prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents. A patient med pak may also be prepared for a specific institutionalized patient when the prescriber's orders specifically indicate that the resident is capable of self-administering the medication contained therein.

**8.13(2) General procedures.** The following shall apply when patient med paks are employed:

a. The pharmacist shall be responsible for determining the classification, as directed by USP General Chapter entitled <671> Containers – Permeation, for containers used by the pharmacy to repackage nonsterile drugs into patient med paks.

b. Packaging for all nonsterile solid oral dosage forms stored and dispensed in patient med paks shall:

(1) Preserve and protect the identity and integrity of the drug from the point of packaging to the point of administration, and

(2) Be clean and free of extraneous matter when the drugs are placed into the package.

c. Drugs dispensed to patients in patient med paks may not be returned to the pharmacy stock and reissued except to the same patient as provided in subrule 8.13(4).

d. There is no special exemption for patient med paks from the requirements of the Poison Prevention Packaging Act. Thus, the patient med pak, if it does not meet child-resistant standards, shall be placed in an outer package that does comply, or the necessary consent of the purchaser or physician to dispense in a container not intended to be child-resistant, shall be obtained.

**8.13(3) Re-use of patient med pak containers.** Notwithstanding requirements that all prescription medications be dispensed in a new container conforming with standards established in the official compendia, a pharmacist may dispense and refill a prescription for nonliquid oral products in a clean patient med pak provided:

a. A patient med pak is reused only for the same patient; and

b. No more than a one-month supply is dispensed at one time.

**8.30(13) Quality assurance.** A pharmacy shall have a documented, ongoing quality assurance control program to monitor personnel performance, equipment, and facilities which includes the following as a minimum:

- a. Certification of all clean rooms and laminar airflow hoods by an independent contractor for operational efficiency at least annually with records of certification to be maintained for two years.
- b. Written procedures requiring sampling if microbial contamination is suspected.
- c. End-product testing, including tests for particulate matter and testing for pyrogens, which is documented prior to the release of the product from quarantine if batch preparation of sterile products is performed using nonsterile chemicals.
- d. Written justification of the chosen expiration dates for compounded products.
- e. Documentation of quality assurance audits at planned intervals based upon the needs of individual patients, including infection control and sterile technique audits.
- f. Documentation that infusion devices being provided by the pharmacy for the administration of sterile products have received biomedical maintenance to provide for proper care, cleaning, and operation of the equipment.

This rule is intended to implement Iowa Code sections 126.10, 155A.2, 155A.4(2)“f,” 155A.13, 155A.13A, and 155A.28.

**657—8.31(124,155A) Home health agency/hospice emergency drugs.** Recognizing the emergency and unanticipated need for certain legend drugs to be available to qualified individuals authorized to administer drugs and employed by a home health agency or hospice, an Iowa-licensed pharmacy may provide certain medications pursuant to this rule. The emergency drug supply may be carried by such qualified individual. An inpatient hospice facility may have an emergency drug supply provided by an Iowa-licensed pharmacy which supply may be maintained within the facility pursuant to 657—8.32(124,155A).

**8.31(1) Contract.** A written contract shall exist between the home health agency or hospice and the pharmacist in charge of the Iowa-licensed pharmacy. This contract shall be available for review by the board or its authorized agent upon request.

**8.31(2) Ownership retained.** The legend drugs included in this emergency supply shall remain the property of and under the responsibility of the Iowa-licensed provider pharmacy.

- a. The pharmacist shall ensure that each portable container of emergency drugs is sealed in such a manner that a tamperproof seal must be broken to gain access to the drugs.
- b. Each portable container of emergency drugs shall be labeled on the outside of the container with a list of the contents and the earliest expiration date.

**8.31(3) Removal of medication.** All medications shall be administered only on prior prescribers' order or by protocol approved by the agency's medical director or appropriate committee. Medications administered from the emergency supply shall be replaced by submitting a prescription or medication order for the used item to the provider pharmacy within a reasonable time of administration.

**8.31(4) Records.** All records of medication administered from the emergency supply shall be maintained as required by law.

**8.31(5) Medications included.** The following emergency medications may be supplied by the pharmacy in sufficient but limited quantities. This list may be expanded only upon approval of the Iowa board of pharmacy examiners.

- a. Heparin flush—pediatric (one strength);
- b. Heparin flush—adult (one strength);
- c. Sodium chloride for injection—small volume;
- d. Epinephrine injection;
- e. Diphenhydramine injection;

- f. Corticosteroid injection;
- g. Narcotic antagonist;
- h. Urokinase for catheter care;
- i. H<sub>2</sub> antagonist injection;
- j. Nitroglycerin sublingual tablets;
- k. Antinauseant agent.
- l. Oral nonnarcotic analgesic;
- m. Injectable nonnarcotic analgesic
- n. Oral narcotic analgesic;
- o. Oral antianxiety agent;
- p. Injectable antianxiety agent; and
- q. Oral sublingual anticholinergic agent.

If a container of an injectable product is opened and partially used, any unused portion shall immediately be discarded and appropriately documented.

**8.31(6) Policies and procedures.** The pharmacist in charge of the provider pharmacy and the home health agency or hospice shall develop policies and procedures to address storage conditions and security for medications and kit maintenance. Outdated, expired drugs shall be properly disposed of by the pharmacy.

**8.31(7) Responsibility for compliance.** The provider pharmacy is responsible to ensure compliance with this rule and any abuse or misuse of the intent of this rule shall be immediately reported to the board.

This rule is intended to implement Iowa Code sections 155A.13, 155A.15, and 155A.21.

**657—8.32(124,155A) Emergency/first dose drug supply.** In any facility which does not have an institutional pharmacy, drugs may be supplied for use by authorized personnel in one or more emergency/first dose drug supply containers located at such facility, provided that the emergency/first dose drug supply meets the requirements of this rule.

**8.32(1) Emergency/first dose drug supplies.** Only those emergency/first dose drugs determined by the provider pharmacist, as defined in subrule 8.32(2), the consultant pharmacist, the director of nursing of the facility, and the medical director of the facility, or their respective designees, as necessary for prompt use in patient care, may be made available in the emergency/first dose drug supply. Careful patient planning should be a cooperative effort between the pharmacy and the facility to make medications available, and this supply should only be used for emergency or unanticipated needs. The drugs in the emergency/first dose drug supply are the responsibility of the pharmacy and, therefore, shall not be used or altered in any way except as provided in this rule.

**8.32(2) Provider pharmacy/pharmacist.** All contents of the emergency/first dose drug supply will be provided by one pharmacy designated by the facility. This pharmacy shall be properly registered with the federal Drug Enforcement Administration (DEA) and the board and shall be currently licensed by the board.

**8.32(3) Medications included.** The provider pharmacist, as defined in subrule 8.32(2), the consultant pharmacist, the director of nursing of the facility, and the medical director of the facility, or their respective designees, shall jointly determine and prepare a list of medications, by identity and quantity, to be included in the emergency/first dose drug supply. Such list of medications shall be reviewed periodically per policy.



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## CHAPTER 9 DISCIPLINE

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**REGENTS BOARD[681]**

[Prior to 4/20/88, Regents, Board of [720]]

**CHAPTER 1****ADMISSION RULES COMMON TO  
THE THREE STATE UNIVERSITIES**

- 1.1(262) Admission of undergraduate students directly from high school
- 1.2(262) Admission of undergraduate students by transfer from other colleges
- 1.3(262) Transfer credit practices
- 1.4(262) Classification of residents and nonresidents for admission, tuition, and fee purposes
- 1.5(262) Registration and transcripts—general
- 1.6(262) College-bound program

**CHAPTER 2****SUPPLEMENTAL SPECIFIC RULES  
FOR EACH INSTITUTION****UNIVERSITY OF IOWA**

- 2.1(262) Formal application for admission
- 2.2 Reserved
- 2.3(262) College of business administration
- 2.4(262) College of dentistry
- 2.5(262) College of engineering
- 2.6(262) Graduate college
- 2.7(262) College of law
- 2.8(262) College of medicine
- 2.9(262) College of nursing
- 2.10(262) College of pharmacy
- 2.11(262) College of liberal arts
- 2.12(262) College of education
- 2.13 to 2.24 Reserved

**IOWA STATE UNIVERSITY OF SCIENCE  
AND TECHNOLOGY**

- 2.25(262) Undergraduate students
- 2.26(262) College of veterinary medicine
- 2.27(262) Graduate college
- 2.28 to 2.34 Reserved

**UNIVERSITY OF NORTHERN IOWA**

- 2.35(262) Admission policies for undergraduate students
- 2.36 Reserved
- 2.37(262) Teaching curricula
- 2.38(262) Admission requirements for graduate students

**CHAPTER 3****PERSONNEL ADMINISTRATION****ORGANIZATION AND ADMINISTRATION**

- 3.1(19A) Creation and purpose
- 3.2(19A) Covered employees
- 3.3(19A) Administration
- 3.4 to 3.13 Reserved

**DEFINITIONS**

- 3.14(19A) Definitions
- 3.15 to 3.24 Reserved

**CLASSIFICATION**

- 3.25(19A) Preparation and maintenance of the classification plan
- 3.26(19A) Administration of the classification plan
- 3.27 to 3.36 Reserved

**COMPENSATION PLAN**

- 3.37(19A) Preparation, content and adoption of the pay plan
- 3.38(19A) Review and revision of the pay plan
- 3.39(19A) Administration of the pay plan
- 3.40 to 3.49 Reserved

**APPLICATION AND EXAMINATION**

- 3.50(19A) Applications
- 3.51(19A) Examinations
- 3.52(19A) Character of examinations
- 3.53(19A) Announcement of examinations
- 3.54(19A) Eligibility to compete in examinations
- 3.55(19A) Rejection or disqualification of applicants
- 3.56(19A) Administering the examination program
- 3.57 to 3.66 Reserved

**CERTIFICATION AND SELECTION**

- 3.67(19A) Eligibility lists
- 3.68(19A) Personnel requisitions
- 3.69(19A) Certification from eligibility lists
- 3.70(19A) Selection of employees
- 3.71 to 3.80 Reserved

**APPOINTMENTS AND PROBATION**

- 3.81(19A) Appointments
- 3.82(19A) Temporary appointments
- 3.83(19A) Emergency appointments
- 3.84(19A) Trainee, apprentice, or career development appointment
- 3.85(19A) Project appointment
- 3.86(19A) Provisional appointments
- 3.87(19A) Permanent appointments
- 3.88(19A) Work test appointments
- 3.89(19A) Reinstatement
- 3.90(19A) Probationary period
- 3.91 to 3.100 Reserved

**PROMOTIONS, DEMOTIONS, TRANSFERS AND TERMINATIONS**

- 3.101(19A) Promotions
- 3.102(19A) Transfers
- 3.103(19A) Demotion (voluntary)
- 3.104(19A) Terminations
- 3.105 to 3.114 Reserved

**DISCIPLINARY ACTIONS**

- 3.115(19A) Causes for disciplinary action
- 3.116(19A) Disciplinary actions
- 3.117 to 3.126 Reserved

**GRIEVANCES AND APPEALS**

- 3.127(19A) Reviews of position classification
- 3.128(19A) Appeals on application, examination and certification procedures
- 3.129(19A) Grievances
- 3.130 to 3.139 Reserved

**VACATIONS AND LEAVES OF ABSENCE**

- 3.140(19A) Attendance
- 3.141(19A) Vacations
- 3.142(19A) Holidays
- 3.143(19A) Medically related disability leave
- 3.144(19A) Military leave
- 3.145(19A) Family leave
- 3.146(19A) Court and jury service
- 3.147(19A) Voting leave
- 3.148(19A) Emergency and funeral leave
- 3.149(19A) Leave of absence without pay
- 3.150(19A) Election leave
- 3.151(19A) Disaster service volunteer leave

**CHAPTER 4  
TRAFFIC AND PARKING AT  
UNIVERSITIES**

**UNIVERSITY OF IOWA**

- 4.1(262) Purpose
- 4.2(262) Definitions
- 4.3(262) General traffic
- 4.4(262) Registration
- 4.5(262) Parking facilities
- 4.6(262) Parking privileges
- 4.7(262) Violations
- 4.8(262) Administration of rules
- 4.9 to 4.24 Reserved

**IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY**

- 4.25(262) Purpose
- 4.26(262) Definitions
- 4.27(262) General traffic
- 4.28(262) Registration
- 4.29(262) Parking facilities
- 4.30(262) Parking privileges
- 4.31(262) Violations
- 4.32(262) Administration of rules
- 4.33 to 4.65 Reserved

**UNIVERSITY OF NORTHERN IOWA**

- 4.66(262) Purpose
- 4.67(262) Definitions
- 4.68(262) Registration
- 4.69(262) Parking facilities
- 4.70(262) Parking privileges
- 4.71(262) Violations
- 4.72(262) Effect of rules
- 4.73(262) Administration of rules

**CHAPTER 5  
STATE HYGIENIC LABORATORY**

**GENERAL REGULATIONS**

- 5.1(263) Scope of services
- 5.2(263) Specimens examined
- 5.3(263) Charges

**CHAPTER 6  
UNIVERSITY OF IOWA HOSPITALS**

**ADMISSION OF PATIENTS**

- 6.1(255) Indigent patients
- 6.2(255) Excess quota patients
- 6.3(255) Clinical pay patients
- 6.4(255) County clinical pay patients
- 6.5(255) Private patients
- 6.6(255) State institution patients
- 6.7(255) Veterans
- 6.8(255) University students

**CHAPTER 7****EQUAL EMPLOYMENT OPPORTUNITY,  
AFFIRMATIVE ACTION, AND TARGETED  
SMALL BUSINESS**

- 7.1(262) Equal opportunity policy
- 7.2(262) Equal employment opportunity
- 7.3(262) Employment services
- 7.4(262) State educational, counseling,  
and training programs
- 7.5(262) State services and facilities
- 7.6(262) Contract compliance
- 7.7(73GA,ch315) Targeted small business

**CHAPTER 8  
PURCHASING**

- 8.1(262) Procurement policy
- 8.2(262) Special considerations
- 8.3(262) Purchase of equipment funded by  
academic revenue bond  
proceeds
- 8.4(262) Insurance purchases
- 8.5(262) Purchase of coal
- 8.6(262) Capital procedures
- 8.7(262) Insurance deductions
- 8.8(262) Selection of financial advisors
- 8.9(68B,262) Prohibited interest in public  
contracts

**CHAPTER 9  
POLICIES, PRACTICES AND  
PROCEDURES**

- 9.1(262) Uniform rules of personal  
conduct
- 9.2(262) Transfers
- 9.3(262) Regents approved judicial system
- 9.4(23A) Policy on competition with  
private enterprise
- 9.5(262) Policy on telecommunications
- 9.6(262) Notification to students on  
increases in tuition, fees, or  
charges
- 9.7(262) Distribution of docket  
information

**CHAPTER 10  
RECORDS MANAGEMENT**

- 10.1(304) Records management
- 10.2(304) Records system
- 10.3(304) Public inspection

**CHAPTER 11****BOARD OF REGENTS ORGANIZATION  
AND GENERAL RULES**

- 11.1(262) Organization

**CHAPTER 12****UNIVERSITY OF IOWA ORGANIZATION  
AND GENERAL RULES**

- 12.1(262) Organization
- 12.2 to 12.5 Reserved
- 12.6(262) Forms
- 12.7(262) General rules
- 12.8(262) Contracting authority
- 12.9(262) Merit system employee  
grievances
- 12.10(262) Grievance procedure
- 12.11(262) Appeals

**CHAPTER 13****IOWA STATE UNIVERSITY OF SCIENCE  
AND TECHNOLOGY ORGANIZATION  
AND GENERAL RULES**

- 13.1(262) Organization
- 13.2 to 13.5 Reserved
- 13.6(262) Forms
- 13.7(262) General rules
- 13.8(262) Contracting authority

**CHAPTER 14****THE UNIVERSITY OF NORTHERN IOWA  
ORGANIZATION AND GENERAL RULES**

- 14.1(262) Organization
- 14.2(262) General rules

**CHAPTER 15****IOWA BRAILLE AND  
SIGHT SAVING SCHOOL****ORGANIZATION AND GENERAL RULES**

- 15.1(262) Organization
- 15.2 to 15.5 Reserved
- 15.6(262) Forms
- 15.7(262) Contracting authority
- 15.8(262) General rules
- 15.9(262) Transportation reimbursement
- 15.10(262) Admission requirements

**CHAPTER 16****IOWA SCHOOL FOR THE DEAF  
ORGANIZATION AND GENERAL RULES**

- 16.1(262) Organization
- 16.2 to 16.5 Reserved
- 16.6(262) Forms
- 16.7(262) Contracting authority
- 16.8(262) Transportation
- 16.9(262) General rules

**CHAPTER 17  
PUBLIC RECORDS AND  
FAIR INFORMATION PRACTICES**  
(Uniform Rules)

- 17.1(22) Definitions
- 17.3(22) Requests for access to records
- 17.6(22) Procedure by which a subject may have additions, dissents, or objections entered into the record
- 17.7(22) Consent to disclosure by the subject of a confidential record
- 17.9(22) Disclosures without consent of the subject
- 17.10(22) Routine use
- 17.11(22) Consensual disclosure of confidential records
- 17.12(22) Release to subject
- 17.13(22) Availability of records
- 17.14(22) Personally identifiable information
- 17.15(22) Other groups of records
- 17.16(22) Applicability

**CHAPTER 18  
DECLARATORY ORDERS**

- 18.1(17A) Petition for declaratory order
- 18.2(17A) Assignment to regent institution
- 18.3(17A) Notice of petition
- 18.4(17A) Intervention
- 18.5(17A) Briefs
- 18.6(17A) Inquiries
- 18.7(17A) Service and filing of petitions and other papers
- 18.8(17A) Action on petition
- 18.9(17A) Refusal to issue order
- 18.10(17A) Contents of declaratory order—effective date
- 18.11(17A) Copies of orders
- 18.12(17A) Effect of a declaratory order

**CHAPTER 19  
PROCEDURE FOR RULE MAKING**

- 19.1(17A) Applicability
- 19.2(17A) Advice on possible rules before notice of proposed rule adoption
- 19.3(17A) Public rule-making docket
- 19.4(17A) Notice of proposed rule making
- 19.5(17A) Public participation
- 19.6(17A) Regulatory analysis
- 19.7(17A,25B) Fiscal impact statement
- 19.8(17A) Time and manner of rule adoption

- 19.9(17A) Variance between adopted rule and published notice of proposed rule adoption
- 19.10(17A) Exemptions from public rule-making procedures
- 19.11(17A) Concise statement of reasons
- 19.12(17A) Contents, style, and form of rule
- 19.13(17A) Board of regents rule-making record
- 19.14(17A) Filing of rules
- 19.15(17A) Effectiveness of rules prior to publication
- 19.16(17A) General statements of policy
- 19.17(17A) Review of rules by board of regents
- 19.18(17A) Waiver or variance from rule

**CHAPTER 20  
CONTESTED CASES**

- 20.1(17A) Scope and applicability
- 20.2(17A) Definitions
- 20.3(17A) Time requirements
- 20.4(17A) Requests for contested case proceeding
- 20.5(17A) Notice of hearing
- 20.6(17A) Presiding officer
- 20.7(17A) Waiver of procedures
- 20.8(17A) Telephone proceedings
- 20.9(17A) Disqualification
- 20.10(17A) Consolidation—severance
- 20.11(17A) Pleadings
- 20.12(17A) Service and filing of pleadings and other papers
- 20.13(17A) Discovery
- 20.14(17A) Subpoenas
- 20.15(17A) Motions
- 20.16(17A) Prehearing conference
- 20.17(17A) Continuances
- 20.18(17A) Withdrawals
- 20.19(17A) Hearing procedures
- 20.20(17A) Evidence
- 20.21(17A) Default
- 20.22(17A) Ex parte communication
- 20.23(17A) Recording costs
- 20.24(17A) Interlocutory appeals
- 20.25(17A) Final decision
- 20.26(17A) Appeals and review—actions by regent institution
- 20.27(17A) Appeals to the board of regents
- 20.28(17A) Applications for rehearing
- 20.29(17A) Stays of board of regents actions
- 20.30(17A) No factual dispute contested cases
- 20.31(17A) Emergency adjudicative proceedings

CHAPTER 11  
BOARD OF REGENTS ORGANIZATION AND GENERAL RULES

[Prior to 4/20/88, Regents, Board of[720]]

**681—11.1(262) Organization.**

**11.1(1) *President.*** The president of the board of regents is elected by the board from its members at the May meeting in even-numbered years for a two-year term and until a successor is elected and qualified. If a vacancy occurs in the office prior to the end of the regular term, the board elects a president to fill out the unexpired term.

**11.1(2) *Duties of the president.*** The duties of the president include presiding at all meetings of the board, appointing members of all special committees with the consent of the board of regents, executing, with the executive director, such instruments and contracts as may be ordered by the board, and performing such other duties as may be assigned by the board.

**11.1(3) *Executive director.*** The executive director is elected by the board. The duties of the executive director include recording proceedings of the board, preserving the documents and records of the board, providing a meeting agenda to the board, administering the board office, providing such staff work as may be necessary to assist the board in its planning and decision making, participating in budget preparation and presentation to the board, maintaining liaison between the board and other state agencies, providing information to the general assembly and the public, participating in the preparation and completion of matters relating to financing of capital improvements, and such other duties as may be assigned by the board.

Agendas containing matters to be brought before the board together with supporting material will be assembled by the executive director. Such agendas will be indexed and included in a binder for easy reference. Each institution will prepare its own portion of the agenda and forward same, with necessary supporting material, to the executive director at least ten days prior to the date a board meeting is scheduled. Assembled agendas will be mailed to members of the board by the executive director at least six days prior to any scheduled meeting.

The agenda of board meetings will be made available to students, faculty, staff, and the general public through the board office and the public information offices at each institution prior to the board meeting at which the agenda is to be considered.

**11.1(4) *Submissions and requests.*** Inquiries, submissions, petitions, and other requests directed to the board of regents may be made by letter addressed to the Executive Director, Board of Regents, Old Historical Building, Des Moines, Iowa 50319.

Any person may petition for a written or oral hearing before the board. All requests for a hearing must be in writing and state the specific subject to be discussed and the reasons why a personal appearance is necessary if one is requested.

Students, faculty, and other employees of institutions under the control of the board must route their petitions through the chief executive officer of the institution concerned. The chief executive officer will forward the petition, with the chief executive officer's comments, to the executive director of the board. The executive director of the board will place the item on the agenda for consideration by the board.

All other persons may request hearings by written petition directly to the executive director of the board. The executive director shall cause the subject matter of the petition to be investigated and make a written report to the board. The executive director of the board will place the item on the agenda for consideration by the board.

If the board grants a hearing, it shall be conducted in the manner prescribed by the board. The board may decide to grant a written hearing, an oral hearing, or both.

**11.1(5) *Rule making.*** The board of regents adopts rules having general application to the institutions subject to its governance. The president of each institution is delegated the authority to adopt such rules as may be appropriate to the operation of the individual institution and which are not inconsistent with the general rules adopted by the board. The board of regents retains the authority to rescind any such institutional rule.

**11.1(6) *Meetings.*** The board meets regularly once each month except one month in the summer. The schedule of meetings is available from the executive director at the address given in 11.1(4). The advance schedule of meetings is shown in each monthly agenda that is distributed to the press and the public at the board meeting. The meeting schedule, generally set for about six months, indicates at which regent institution the meeting will be held and the date(s) of the meeting. Formal notification is given to the press about a week prior to each monthly board meeting.

Six members of the board shall constitute a quorum. The number of votes required to constitute a majority for a given purpose shall be a majority of those present, assuming a quorum. Except where otherwise required by statute or these rules, the board shall conduct its meetings according to Robert's Rules of Order.

**11.1(7) *General role and scope of regent institutions.*** The universities under the control of the board of regents, State University of Iowa, Iowa State University, and the University of Northern Iowa, strive to offer diversified and high quality programs of undergraduate and postgraduate study at reasonable cost to a major segment of those seeking postsecondary education in this state. Educational programs are designed to allow the individual student a wide range of subject selection and the greatest freedom to fulfill potentialities in pursuit of knowledge and in preparation for a role in society.

These universities are the primary Iowa training ground for the professions including medical doctors, dentists, pharmacists, nurses, lawyers, veterinarians, educators, architects, agriculturists, engineers and others who will achieve advanced degrees in various fields of the arts and sciences. The state universities are deeply committed to research which expands knowledge and benefits society. They make educational programs and the results of research available through extension services and will offer services to the public appropriate to the role of each university.

General role and scope of the two specialized schools under the board of regents, Iowa School for the Deaf and Iowa Braille and Sight Saving School, are to provide residential, educational, and training programs for the blind and the deaf through grade 12.

The board of regents is the policymaking body representing the citizens of Iowa. It establishes goals and monitors progress toward those goals to ensure that the institutions under its governance accomplish their mission.

**11.1(8) *Committees.*** The board of regents has established interinstitutional committees of professional educators drawn from the institutions and staff under its governance. Their function is to advise the board on matters related to development of policy, and to ensure cooperation among the several institutions, and promote efficiency of operation.

The committees include the committee on educational coordination, the registrar's committee on coordination, the subcommittee on library coordination, the information committee, the regent committee on educational relations, the state extension and continuing education council, the committee on equal employment opportunity, the coordinating council for international studies, and the regent advisory committees on Iowa School for the Deaf and Iowa Braille and Sight Saving School.

This rule is intended to implement Iowa Code section 262.12.

**681—11.2(262) Petition regarding rules.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—11.3(262) Petition for declaratory ruling.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—11.4(262) Rule adoption—opportunity for oral presentation.** Rescinded IAB 12/15/99, effective 1/19/00.



**681—11.5(262) Contested cases. Rescinded IAB 12/15/99, effective 1/19/00.**

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\*Effective date of 11.1(3), 11.1(4) and 11.1(6) delayed 70 days by the Administrative Rules Review Committee



CHAPTER 12  
UNIVERSITY OF IOWA ORGANIZATION AND GENERAL RULES

[Prior to 4/20/88, Regents, Board of[720]]

**681—12.1(262) Organization.**

**12.1(1) *Statement of university mission.*** The State University of Iowa is committed to undergraduate, professional, graduate, and continuing education. To discharge this commitment, as part of its established mission, the university engages in teaching, research, and appropriate extension, health and other public services. The university is recognized as having a broad mandate in order that it may continue to be a distinguished state university, offering preprofessional courses, the full panoply of undergraduate liberal arts and science courses, graduate and professional work in law, medicine, dentistry, pharmacy, nursing, engineering, and allied fields related to these professional disciplines, as well as social work, business administration, journalism, education (early childhood, elementary, secondary, and higher), library science, and all the liberal arts and sciences. It will offer no major programs in agriculture; architecture; forestry; industrial arts; veterinary medicine; agricultural, aeronautical or ceramic engineering. It will be characterized by a general orientation toward human growth, the health sciences, the humanities, the fine arts and the social sciences. It will continue to maintain strong programs in the physical and biological sciences and engineering.

The University of Iowa will seek to maintain a balanced enrollment. It will do so in recognition of the joint responsibility it has with the other regent institutions, the private colleges, and the community colleges to provide a greater variety of educational opportunities to a larger and more diversified group of students.

Future programs will be determined by the continuing study of existing programs and of developing needs. Programs will be curtailed or eliminated when the assessment of need and resources indicates that resources could better be devoted to other programs. The university approaches the addition of new programs with considerable caution. Generally, new programs are fashioned out of existing programs in response to developing needs. But if the university is to remain vital, it must consider at the appropriate time the development of some new programs that fall within its general mission and that meet the new needs of students and society.

This rule is intended to implement Iowa Code section 263.1.

**12.1(2) *Officers.*** The university has three statutory officers: president, secretary, and treasurer. The president is the chief administrative officer of the university and has such authority and duties as have been delegated by the board of regents.

The president has nominated and the board of regents has appointed five vice presidents. The vice president for academic affairs and dean of the faculties is the chief academic officer of the university and is responsible with the deans of the colleges for the educational programs of the university, the appointment, promotion and welfare of the faculty and related matters. The vice president for educational development and research and dean of the graduate college is responsible for the advancement of research, educational development, relations with government agencies, private foundations and the public generally, and is the person to whom the graduate departments, the computer center, and the university press report. The vice president for student services and dean of academic affairs is responsible for the advancement of teaching, student services, admissions, orientation, records, financial aids, evaluation, counseling, job placement, recreation, programming of extracurricular events, and program advising in residence halls. The vice president for administrative services is responsible for nonfaculty personnel, development and assignment of facilities including housing, the Museum of Art and Old Capitol. The vice president for business and finance is responsible for investments, financial transactions, financial records, purchasing, maintenance of facilities, laundry, parking, traffic, security, and related services. The state hygienic laboratory and university health services report to the office of the president.

A detailed listing of the university units is shown on the organizational chart contained in the university operations manual.

**12.1(3) Operations.** The academic mission of the university is principally carried out through its ten colleges: pharmacy, law, education, nursing, medicine, dentistry, liberal arts, engineering, business administration, and the graduate college. The dean of each college is its chief administrative officer.

The university hospitals and clinics provide tertiary level patient care, clinical education and clinical research. The state sanatorium at Oakdale provides care and treatment for tuberculosis, chronic and rehabilitation patients and related services. The state psychopathic hospital provides care and treatment for persons afflicted with abnormal mental conditions. The hospital school provides education and treatment for severely handicapped children. The chief administrative officer of the hospital school is the director. The student health service provides primary health care services to students.

The state hygienic laboratory conducts examinations and investigations and makes recommendations pertaining to methods of overcoming and preventing epidemics of disease.

**12.1(4) Communications.** Written and personal inquiry, submissions and requests should be addressed to the office of public information, 102 Jessup Hall, University of Iowa, Iowa City, Iowa 52242; or the office of the Board of Regents, Old Historical Building, Des Moines, Iowa 50319. Generally, inquiries, submissions, and requests by the public may be submitted by informal letter. However, application for some purposes is to be made on a specified form. A list of forms, general description and the address where they may be obtained are found at 12.6(262).

**12.1(5) University operations manual.** The university operations manual contains the policies governing the internal administrative operation of the university. It is available for public inspection in the university library, the office of public information and in the office of the state board of regents.

**681—12.2(262) Petition regarding rules.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—12.3(262) Petition for declaratory ruling.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—12.4(262) Rule adoption—opportunity for oral presentation.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—12.5(262) Contested cases.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—12.6(262) Forms.** The university uses the forms listed below in dealing with the public. The various forms are classified by subject matter, followed by the name of the office where they are available in care of the University of Iowa, Iowa City, Iowa 52242.

Admission application forms—director of admissions; undergraduate, graduate, law, medicine, dental hygiene, special nondegree, physical therapy, dentistry, physicians assistant, student financial aid, Saturday and evening class—graduate and undergraduate, Quad-Cities graduate program, guided independent study through correspondence.

Housing forms—university housing office; application and contract for residence halls quarters for unmarried students, application for married student housing, leasehold for married student housing at Hawkeye Drive, Hawkeye Court, and Parklawn apartments.

Educational placement—educational placement office

Registration forms for credential service, reference forms for credential files.

Iowa memorial union—Iowa memorial union

Space use application.

Hancher auditorium space use—Hancher auditorium

Rental agreement.

Gymnastics—recreation department

Waiver of liability for public participants.

Dental care—college of dentistry

Patient registration form.

Hospital and health care—general hospital

Patient registration form.

Employment—personnel service

Application for employment.

Parking and traffic—transportation and security

Violation citation.

#### 681—12.7(262) General rules.

12.7(1) Dogs and other mammals, birds, and reptiles are not permitted in any university building or structure, and if found are subject to impoundment. Leader dogs and experimental subjects are excepted.

12.7(2) University buildings, except hospitals, are closed to public access from 10 p.m. until 7 a.m., except when different hours are communicated by signs at one or more points of access.

12.7(3) Salespersons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the university property, except with the permission of the vice president for business and finance in the case of employees, or the vice president for student services in the case of students.

Permission is given by the vice president for finance and university services for the solicitation of employees by charitable organizations under all of the following circumstances:

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

b. The solicitation is conducted through the university's campus mail system.

c. The solicitation by any one such charitable organization may occur once in any calendar year.

d. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the university campus mail system or other university facilities.

e. No solicitation using the university's facilities may occur except through campus mail as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the university deems reasonable.

f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 70A.14 and 70A.15, if qualified under the terms of those provisions.

12.7(4) Photographs, film, or videotapes for publication for commercial purposes may only be made of university programs, events, or activities in university buildings upon the invitation of or approval of the immediate supervisor of the program, event, or activity. If a decision to grant or deny invitation or approval is challenged, an appeal may be made to the vice president within whose responsibility the program, event, or activity is assigned.

12.7(5) Lost and found items are reported to and deposited promptly with university security. After 30 days unclaimed items are disposed of as surplus property or given to charitable organizations dealing with used materials.

12.7(6) The use of cameras, tape recorders, and noisemakers is prohibited during performances in the various theatres, auditoria, ballrooms, and lounges. Such items may be impounded by university personnel and returned at the conclusion of the performance. Permission may be granted for an exception by the president of the university or the president's designee, to be announced publicly in advance.

12.7(7) Hancher auditorium aisle doors will be closed when performances begin. Latecomers will be taken to an observation room and seated at intermission. Standing in aisles during performances is not permitted, except by employees.

**12.7(8)** Smoking of all types is prohibited in the following locations and circumstances:

a. In all rooms in which organized academic activity is occurring. This includes specifically, but is not limited to, classrooms, seminar rooms, auditoria, teaching laboratories, and gymnasias.

b. In all rooms, areas, and buildings posted with "no smoking" signs. The administrative (e.g., collegiate, departmental) unit primarily responsible for a room not covered by paragraph "a" above shall decide whether or not "no smoking" signs shall be posted. In rooms where smoking is not expressly prohibited, smoking will be permissible as long as no one present raises an objection.

**12.7(9)** Food and beverages shall be consumed in academic buildings only in areas designated by the responsible administrative (e.g., collegiate, departmental) unit.

**12.7(10)** Tickets for concerts scheduled primarily for the entertainment of university students, held in the field house are not to be made available to minors who are not university students; however, minors may attend field house concerts if accompanied by their parents or parent. Commencing with the academic year 1980-81, the prohibition against sales of tickets to minors and the attendance of minors at field house concerts unless accompanied by parent(s) is suspended on a concert-by-concert basis and the university administration is authorized to reinstate the rules after any concert if conditions warrant such action.

**12.7(11)** Use of the Iowa memorial union and university recreation facilities by minors who are not university students is not permitted, except in the following situations:

a. When participating in university-sponsored activities or when guests or invitees of the university;

b. While on campus tours or at preregistration events;

c. When accompanied by teachers, parents, or other responsible adults;

d. When displaying a university name badge for a conference or event in progress.

**12.7(12)** No alcoholic beverages or metal or glass containers are allowed in the field house, football stadium, or recreation building. Checking service is provided. A search sufficient to ensure that articles are not taken into the field house, recreation building or football stadium will be made. Refusing search or refusing to check the items are grounds to deny admission.

**12.7(13)** The following articles may not be taken into the field house or football stadium during contests or concerts for which admission tickets are required: placards, noisemakers, bugles, banners, horns, seat backs, coolers, disruptive devices.

**12.7(14)** Spectators who are not contestants are not permitted on the football field, basketball court, or other areas where athletic contests are taking place or to take place. Spectators may not block aisles and passageways which provide ingress and egress to seating at athletic contests.

**12.7(15)** The following fees or deposits apply to the members of the public prior to admission to the university as students:

a. A \$10 fee is required to accompany an application submitted by a prospective student. This fee is not required from a student previously enrolled for full-time study at the university during a regular academic year, or an applicant to the graduate college or the colleges of dentistry, law or medicine who has earned a degree from the university.

b. A \$50 deposit is required to accompany applications for contracts for residence hall accommodations. The deposit is credited to the first required payment for the accommodations.

c. A \$25 deposit is required to be paid at the time a married student apartment is assigned to the prospective student. The deposit is credited to the first required payment for the apartment.

**12.7(16)** *University sponsored productions.*

a. The selection of an artistic presentation to be produced or sponsored by the university through its colleges, departments, programs, or university committees, and to be presented to the public in a university auditorium or theatre should be made solely on the basis of its serious artistic merit as well as its educational value. Primary responsibility for ensuring the serious artistic merit and educational value of any such artistic presentation rests with the head of the producing or sponsoring unit.

b. The head of the producing or sponsoring unit will be responsible for:

(1) Providing adequate and reasonable advance notice to patrons of the nature of the artistic presentation, or portions thereof, which the head judges may be offensive to a substantial number of the prospective audience, using contemporary community norms as the criterion;

(2) Providing adequate and reasonable advance notice to patrons of the nature of the artistic presentation, or portions thereof, which the head judges to be legally obscene for minors, although not for adults, under the standards set forth in Iowa Code section 725.1, subsection 1; and

(3) Initiating and supervising procedures to exclude minors from any presentation described in subparagraph (2) unless such minors furnish parental or a guardian's permission to attend.

**12.7(17) Nonuniversity sponsored productions.** Any person, group or organization which is not defined in subrule 12.7(16) "a," as a condition of leasing or otherwise using a university auditorium or theatre, must agree to do so in a manner consistent with the laws of the state, including, specifically, Iowa Code chapter 725.

**12.7(18)** The memorial union is operated as a center for activities directed towards the entire university community. Members of the community are granted use of the facility, including the Iowa House, subject to scheduling restrictions and rules regarding such use. The university community includes:

a. Students, faculty, and staff of the university.

b. Participants in events sponsored by recognized student organizations, university departments, and conferences and institutes.

c. Others who have business related to university functions.

d. Visitors to the university.

**681—12.8(262) Contracting authority.** The state board of regents has delegated to the president authority to make contracts and agreements as specified in Iowa administrative rules, board of regents, 681—Chapter 8. The president has delegated authority for signing such agreements and contracts to the vice president for business and finance and the business manager in all cases except the following:

a. Employment matters involving deans, directors, departmental executive officers, and faculty are reserved to the office of the president.

b. Applications for grants for educational development and research from all sources are signed by the vice president for educational development and research.

c. Supplies, equipment, and services to be ordered from sources outside the university in compliance with Iowa departmental rules, board of regents, 681—Chapter 8 are purchased only by means of purchase orders or purchase contracts approved and signed by the purchase agent, and based on requisitions submitted to the purchasing agent.

**681—12.9(262) Merit system employee grievances.** For purposes of grievance procedure only, "employee" means a merit system employee who has completed the six-month probationary period and is presently employed, or has been dismissed within the previous one-year period.

Disputes or complaints by permanent employees regarding the interpretation or application of institutional rules governing terms of employment or working conditions (other than general wage levels) or the provisions of the merit system rules, or other than disputes whose resolution is provided for in the Iowa Administrative Code 681—3.127(19A) and 681—3.128(19A), will be resolved in accordance with this procedure, which has been approved by the merit system director in accordance with 681—3.129(1). Employees in an initial probationary period will be allowed access to the grievance procedure with the right to appeal orally at Step 1 and in writing at Steps 2 and 3. The university may permit an oral presentation at Steps 2 and 3 if deemed necessary.

**681—12.10(262) Grievance procedure.**

**12.10(1)** An employee who has a grievance and wishes to use the grievance procedure must initiate Step 1 within 21 calendar days from the date of the discovery of the grievance. No grievance may be filed later than one year from the occurrence of the event which gave rise to the grievance.

**12.10(2)** An aggrieved employee has the right to be accompanied by no more than two representatives throughout the grievance procedure. The names of such representatives will be noted on written grievances and each subsequent request for review.

**12.10(3)** An aggrieved employee is allowed reasonable time off from regular university duties without loss of pay to investigate and process a grievance. The immediate supervisor of the employee makes suitable arrangements.

**12.10(4)** The aggrieved employee may also request released time from work without loss of pay for such representative or representatives to investigate a grievance at any time following the oral presentation in Step 1 of the grievance procedure, except that the aggrieved employee and representative are allowed up to one hour off from regular university duties without loss of pay to confer before any grievance hearing held under these procedures.

Any request for time off for a grievant's representative is made in writing to the representative's supervisor, with an informational copy to the director of personnel, and should contain an indication of the reason released time is necessary. The representative's supervisor shall provide a reasonable bona fide amount of released time for the investigation, such time being scheduled as soon as reasonably possible and preferably within the same work day, consistent with the normal functioning of the employee's department.

Furthermore, it is a violation of institutional policy to restrain, interfere, coerce, or discriminate against an employee acting as a grievant's representative in accordance with this procedure. On the other hand, an employee acting as a grievant's representative shall not use time provided for grievance investigation for other matters and will conduct the investigation with dispatch.

**12.10(5)** The grievance procedure consists of the following four steps:

**Step 1.** An aggrieved employee states in writing that a grievance is being presented and then presents the grievance orally, stating the pertinent circumstances of the complaint or dispute and the actions requested, to the employee's immediate supervisor. The supervisor responds in writing to the grievance within seven calendar days. In such writing, the supervisor states the supervisor's understanding of the grievance, the response to the grievance, and justification for the response. If a satisfactory settlement is not reached, the employee has seven calendar days to request Step 2.

**Step 2.** If the employee requests Step 2, a written grievance is forwarded by the aggrieved employee to the administrative head of the unit or department within seven calendar days. The administrative head of the unit or department or designee has ten calendar days to reply in writing. If a satisfactory settlement is not reached, the employee has seven calendar days to request Step 3.

**Step 3.** If the employee decides to request Step 3, the written grievance is forwarded by the aggrieved employee to the head of major functional or administrative unit of the university with a copy sent to the director of personnel. A meeting shall be held within ten calendar days after the grievance has been submitted to the head of a major functional or administrative unit. The university may be represented by the director of personnel, or designee, the head of a major functional or administrative unit or designee, and the administrative personnel involved in Steps 1 and 2. The aggrieved employee has the right to be accompanied by representatives. The head of the administrative unit should respond in writing within seven calendar days. If a satisfactory settlement is not reached, the employee has seven calendar days to proceed to Step 4.

**Step 4.** If the employee is not satisfied with the decision rendered under Step 3, a hearing before an arbitrator may be requested within seven calendar days after receiving the Step 3 decision. Such a request will be in writing and include all of the information included in the initial grievance and subsequent appeals, all of the decision related thereto, and any other pertinent information the employees wishes to submit.



The appeal will be signed and dated by the employee and will be directed to the Merit System Director, State Board of Regents, Old Historical Building, Des Moines, Iowa 50319, who will arrange for a hearing before an arbitrator. The arbitrator will be expected to render a decision within 30 calendar days following the conclusion of the hearing.

A written grievance will contain a brief description of the complaint or dispute and the pertinent circumstances and dates of occurrence. It will specify the university or merit system rule which has allegedly been violated and will state the corrective action desired by the employee.

Presentations, reviews, investigations and hearings held under this procedure may be conducted during working hours, and employees who participate in such meetings will not suffer loss of pay as a result thereof.

If an employee does not appeal a decision rendered at any step of this procedure within the time prescribed by these rules, the decision becomes final. If a university representative does not reply to an employee's grievance or appeal within the prescribed time, the employee may proceed to the next step. With the consent of both parties, any of the time limits prescribed in these rules may be extended.

**681—12.11(262) Appeals.** The board of regents will approve the use of a single arbitrator in hearing an appeal. The selection of the arbitrator shall be made from a panel of arbitrators as referred from the Federal Mediation and Conciliation Service.

The arbitrator will hear a dispute appealed to the last step of the grievance procedure and render a decision thereon subject only to review by the courts.

The arbitrator establishes procedures for the conduct of the hearing in a fair and informal manner that affords each party reasonable and ample opportunity for case presentation and to rebut the presentation of the other. The arbitrator will be expected to render a decision to the involved parties and to the board of regents within the prescribed time.

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CHAPTER 13  
IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY  
ORGANIZATION AND GENERAL RULES

[Prior to 4/20/88, Regents, Board of[720]]

**681—13.1(262) Organization.**

**13.1(1) *Statement of university mission.*** Iowa State University of science and technology at Ames is recognized as a broad-based university with an orientation around science and technology which has sufficient scope and depth in its undergraduate and graduate instruction, its research, and its extension and public service functions to enable it to continue to be a distinguished land-grant university. In addition to its graduate and undergraduate work in the physical, biological, and social sciences, it will maintain strong undergraduate programs in the liberal arts, and will offer such master's and Ph.D. programs in this area as are justified to meet the needs of the state and to maintain the overall strength and desirable balance of the university as a whole. Although a majority of the degrees will continue to be bachelor of science and master of science degrees, the degrees offered in those major programs which are more closely related to the arts than to the sciences may be designated as bachelor of arts or master of arts degrees. In its professional programs, principal emphasis will be given to the maintenance of strong programs in the sciences, agriculture, engineering, veterinary medicine, environmental design, education, and home economics, with graduate instruction, research, extension and public service functions in these subject matter areas clearly recognized and generously supported. There will be no major programs in law, library science, human medicine, dentistry, pharmacy, nursing, social work, hospital administration, occupational therapy, physical therapy, speech pathology, or hydraulics engineering.

Future programs will be determined by the continuing study of existing programs and of developing needs. Programs will be curtailed or eliminated when the assessment of need and resources could best be spent on other programs. The university approaches the addition of new programs and courses with considerable caution. Generally, new programs are fashioned out of existing programs in response to developing needs. But if the university is to remain vital, it must consider at the appropriate time the development of some new programs that fall within its general mission and that meet the new needs of students and society.

This rule is intended to implement Iowa Code section 266.2.

**13.1(2) *Officers.*** The university has three statutory officers: president, secretary, and treasurer. The president is the chief administrative officer of the university and has authority and duties as have been delegated by the board of regents.

The president has recommended, and the board of regents has appointed, five vice presidents who are directly responsible to the president. The vice president for academic affairs, through the deans and directors, coordinates and administers the academic program and the personnel policies of the university. The vice president for research coordinates the research program of the university and also administers the graduate college. The vice president for student affairs coordinates all nonacademic student services. The vice president for business and finance manages the fiscal operations and physical plant of the university. The vice president for information and development is responsible for the information services and developmental activities of the university. The vice president also serves as advisor on many other aspects of university relations, both internal and external.

A detailed listing of the university units is shown on the organizational chart contained in the university office procedure guide.

**13.1(3) *Operations.*** The academic mission of the university is principally carried out through its six colleges: agriculture, education, engineering, family and consumer sciences, sciences and humanities, and veterinary medicine. The dean of each college is its chief administrative officer.

Research conducted by the experiment station varies from broad studies of statewide, regional and national impact, through studies to meet specific local needs, to fundamental work in the community, laboratory or greenhouse. This research gains information about people, animal life, plant growth and development, soils, climatology, ecology, water resources, and the relationships that exist among them. The chief administrative officer of the experiment station is the director.

The extension service is an integral part of the land-grant university system and provides the link whereby the findings of research are taken to Iowa people. The chief administrative officer of extension service is the director.

**13.1(4) Communications.** Written and personal inquiry, submissions and requests should be addressed to the Information Service, 116 Morrill Hall, Iowa State University, Ames, Iowa 50011; or the office of the Board of Regents, Old Historical Building, Des Moines, Iowa 50319. Generally, inquiries, submissions, and requests by the public may be submitted by informal letter. However, application for some purposes is to be made on a specified form. A list of the forms, general description and the address where they may be obtained are found in rule 13.6(262).

**13.1(5) University office procedure guide.** The university office procedure guide contains the policies governing the internal administrative operation of the university. It is available for public inspection at the reference desk in the university library and in the office of the state board of regents.

This rule is intended to implement Iowa Code section 266.2.

**681—13.2(262) Petition regarding rules.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—13.3(262) Petition for declaratory ruling.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—13.4(262) Rule adoption—opportunity for oral presentation.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—13.5(262) Contested cases.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—13.6(262) Forms.** The university uses the forms listed below in dealing with the public. The various forms are classified by subject matter, followed by the name of the office where they are available in care of the Iowa State University of Science and Technology, Ames, Iowa 50011.

Admission application forms—director of admissions.

Undergraduate, graduate, veterinary medicine, special student, Saturday and evening class—graduate and undergraduate.

Housing forms—director of residence.

Application and contract for residence halls quarters for unmarried students, application for married student housing, leasehold for married student housing at Pammel Court, Hawthorn Court, University Village, Schilleter Village.

Student financial aid—student financial aid office.

Application for student financial aid.

Educational placement—teacher placement office.

Registration forms for credential service, reference forms for credential files.

Engineering, sciences and humanities placement—engineering sciences and humanities placement office.

Alumni placement registration card.

Home economics placement—home economics placement office.

Registration forms for credential service, reference forms for credential files.

Agricultural placement—agriculture placement office.

Alumni placement registration card.

Veterinary placement—veterinary medicine placement office.

Placement information forms.

Soil testing—soil testing laboratory.

Informational forms for soil testing.

Veterinary services—veterinary clinic.

Informational forms and euthanasia form.

Seed testing—seed laboratory.

Seed sample identification forms.

Iowa State University Center space use—Iowa State University Center.

Rental agreement.

Employment—personnel office.

Application for employment.

Parking and traffic—traffic office.

Violation citation.

### 681—13.7(262) General rules.

13.7(1) All livestock and other domesticated animals, including but not limited to fowl, cats, dogs, cows, horses, mules, sheep, goats, swine, or reptiles, when on university property, must be kept confined or otherwise physically constrained. Any such animal found running at large or found within university facilities and not part of a university-sponsored research program or project may be impounded. Consistent with the laws of the state of Iowa, such animals may be turned over to a city pound or other appropriate state or university agency. For sanitation and safety reasons, pets are not permitted in university buildings. Leader dogs and experimental subjects are excepted.

Pets are permitted on the campus in outdoor areas when properly controlled and confined and when their presence does not jeopardize the safety or sanitation of university facilities or the safety of individuals on the campus. In the case of pets such as dogs, proper confinement shall consist of a cage or a leash of sufficient strength to restrain the dog held by a person competent to govern the behavior of the dog. Any pets brought on the campus must be properly licensed and vaccinated under the laws of Iowa and tags indicating such license and vaccination shall at all times be attached to the collar of the pet. In those cases where impoundment is necessary, the owner of the animal or its claimant shall be personally responsible for all costs associated with reclaiming the animal.

13.7(2) University buildings are open to public access except for specific periods of time based on building usage.

13.7(3) Salespersons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the university property, except with the permission of the vice president for business and finance.

Permission is given by the vice president for business and finance for the solicitation of employees by charitable organizations under all of the following circumstances:

*a.* The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

*b.* The solicitation is conducted through the university's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the university of the desire to participate at least 120 days prior to the campaign period.

*c.* The organization may be expected to pay the administrative and out-of-pocket costs associated with using the university campus mail system or other university facilities.

*d.* The solicitation by any one charitable organization may occur once in any calendar year.

*e.* No solicitation using the university's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the university deems reasonable.

*f.* Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 70A.14 and 70A.15, if qualified under the terms of those provisions.

13.7(4) Lost and found items are deposited in room 107 Beardshear Hall. At the end of the academic year unclaimed items are given to charitable organizations dealing with used materials.

13.7(5) The use of cameras, tape recorders, and noisemakers is prohibited during performances in the various theatres, auditoria, ballrooms, and lounges. Such items may be impounded by university personnel and returned at the conclusion of the performance. Permission may be granted for an exception by the president of the university or the president's designee, to be announced publicly in advance.

13.7(6) Auditoria aisle doors will be closed when performances begin. Latecomers may not be seated until an appropriate program break. Standing in aisles during performances is not permitted, except by employees.

13.7(7) Smoking is prohibited in all rooms in which organized academic activity occurs: classrooms, seminar rooms, auditoria, teaching laboratories and gymnasias.

13.7(8) Food and beverages shall be consumed in academic buildings only in areas designated by the responsible departmental supervisor.

13.7(9) The following fees and deposits apply to the members of the public prior to admission to the university as students:

a. A \$10 fee is required to accompany an application submitted by a prospective student. This fee is not required from a student previously enrolled for full-time study at the university during a regular academic year, or an applicant to the graduate college or the college of veterinary medicine who has earned a degree from the university.

b. A \$25 deposit is required to accompany applications for contracts for residence hall accommodations. This deposit is refunded when the student leaves the university provided there has been no damage to the accommodations.

c. A \$25 deposit is required to be paid at the time a married student apartment is assigned to the prospective student. This deposit is refunded when the student leaves the university provided there has been no damage to the apartment.

**681—13.8(262) Contracting authority.** The state board of regents has delegated to the president authority to make contracts and agreements as specified in Iowa administrative rules, board of regents, 681—Chapter 8. The president has delegated authority for signing such agreements and contracts to the vice president for business and finance in all cases except the following:

1. Employment matters involving deans, directors, departmental executive officers and faculty are administered by the vice president for academic affairs.
2. Applications for grants for educational development and research from all sources are signed by the contracts and grants officer.
3. Supplies, equipment, and services to be ordered from sources outside the university in compliance with Iowa administrative rules, board of regents, 681—Chapter 8, are purchased only by means of purchase orders or purchase contracts approved and signed by the purchasing agent, and based on requisitions submitted to the purchasing agent.

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CHAPTER 14  
THE UNIVERSITY OF NORTHERN IOWA  
ORGANIZATION AND GENERAL RULES

[Prior to 4/20/88, Regents, Board of[720]]

**681—14.1(262) Organization.**

**14.1(1) *Statement of university mission.*** The University of Northern Iowa at Cedar Falls is recognized as having a mission of sufficient scope to enable it to be a distinguished arts and sciences university with an outstanding teacher education program. It provides leadership in the development of programs for the preservice and in-service preparation of teachers and other educational personnel for schools, colleges, and universities. The institution offers undergraduate and graduate programs and degrees in the liberal and practical arts and sciences, including selected areas of technology. It offers preprofessional programs and conducts research and extension programs to strengthen the educational, social, cultural, and economic development of Iowa and the larger community. Evolution from a state college to a university entailed a broadening of offerings, development of more specialized undergraduate and graduate programs, and greater emphasis on research and public professional services.

It is imperative that the quality of the university's instruction be maintained and enhanced through increasingly strong emphasis on: (1) general or liberal education as the most essential ingredient for the undergraduate student, (2) the central importance and complementary relationship of teaching and research, (3) enrichment of instruction through extensive clinical, laboratory and field experiences, and independent study, and (4) development of the life of the university community itself as an effective educational force. In order to serve students of all ages and to be responsive to their needs and preferences and to the needs of society, it is imperative that the university offer a variety of programs in such areas as liberal arts, business, social work, and technology. It will offer no major programs in agriculture, architecture, dentistry, engineering, forestry, hospital administration, law, pharmacy, medicine, or veterinary medicine.

In the area of teacher preparation the university must remain at the forefront of developments in the field of education and be prepared to offer instruction in new areas required by society. Furthermore, UNI should be more than merely responsive to changing needs and interests of its students and society. It must provide leadership in educational innovations, programs, and research.

Future programs will be determined by the continuing study of existing programs and of developing needs. Programs will be curtailed or eliminated when the assessment of need and resources indicates that resources could better be devoted to other programs. The university approaches the addition of new programs with considerable caution. Generally, new programs are fashioned out of existing programs in response to developing needs. However, if the university is to remain vital, it must consider at the appropriate time the development of some new programs that fall within its general mission and meet the new needs of students and of society.

**14.1(2) *Officers.*** The university has three statutory officers: president, secretary, and treasurer. The president is the chief administrative officer of the university and has such authority and duties as have been delegated by the board of regents.

The president has nominated and the board of regents has appointed three vice presidents. The vice president and provost is acting president in the president's absence and is the chief academic officer of the university, having general administrative responsibility, under the president, for the educational program of the university. The vice president for student services is responsible for the administration of all student services. The vice president for administrative services serves as the chief fiscal officer of the university.

A detailed listing of the university units is shown on the organizational chart contained in the policies and procedures manual of the university.

**14.1(3) Operation.** In order to fulfill the academic mission of the university the following academic units have been established: school of business, college of education, graduate college, college of humanities and fine arts, college of natural sciences, and college of social and behavioral sciences.

The dean of each college is its chief administrative officer and the director of the school of business is the chief administrative officer of the school. Academic departments function within the organizational structure of colleges and the school of business. The executive officer of a department is the head, who is the chief administrative officer of an academic department.

**14.1(4) Policies and procedures manual.** The policies and procedures manual contains the policies and procedures governing the internal academic and administrative operations of the university. It is available for public inspection in the university library, the office of public information services, and in the office of the state board of regents.

**681—14.2(262) General rules.**

**14.2(1)** Sales persons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the university property, except with the permission of the vice president for administration and finance in the case of employees, or the vice president for educational and student services in the case of the students.

**14.2(2)** Permission is granted in limited cases by the vice president for administration and finance for the solicitation of employees by charitable organizations under all of the following circumstances:

*a.* The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

*b.* The solicitation is conducted through the university's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the university of the desire to participate at least 120 days prior to the campaign period.

*c.* The organization may be expected to pay the administrative and out-of-pocket costs associated with using the university campus mail system or other university facilities.

*d.* The solicitation by any one charitable organization may occur once in any calendar year and must not interfere with normal operations.

*e.* No solicitation using the university's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the university deems reasonable.

*f.* Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 70A.14 and 70A.15, if qualified under the terms of those provisions.

This rule is intended to implement Iowa Code sections 70A.14, 70A.15, and 262.9.

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CHAPTER 15  
IOWA BRAILLE AND SIGHT SAVING SCHOOL  
ORGANIZATION AND GENERAL RULES

[Prior to 4/20/88, Regents, Board of[720]]

**681—15.1(262) Organization.**

**15.1(1) *Statement of mission.*** The mission of the Iowa Braille and Sight Saving School (IBSSS) has two primary components: to provide direct educational services to visually impaired children and youth of the state of Iowa and to serve a leadership and resource role in statewide efforts to meet the needs of the visually impaired. In fulfilling its stated mission, IBSSS will coordinate its efforts with all appropriate state agencies, area education agencies, and local education agencies. Such coordination will be accomplished in the spirit of cooperation reflected in the agreements with these agencies.

Consistent with the various sections of the Iowa Code, the educational mission of the Iowa Braille and Sight Saving School is to provide an appropriate individual education program for visually impaired children and youth who require the comprehensive programs provided by the school.

The educational programs of the Iowa Braille and Sight Saving School will be consistent with the philosophy, reflected in federal and state legislation, that handicapped and nonhandicapped children and youth be educated together to the greatest extent possible. Thus, IBSSS assumes responsibility for providing an education for the visually impaired, including those with additional handicaps, for whom the comprehensive educational programs of the school are most appropriate.

The educational programs of the Iowa Braille and Sight Saving School are based on the premise that the school exists to serve its students by providing a learning environment which, to the greatest extent possible, maximizes each child's potential to become a contributing member of society by enhancing development of communication, knowledge, self-realization, human relationships, economic independence, and a sense of civic and social responsibility. The child-centered programs include learning activities and experiences that appropriately and specifically meet the needs of each child.

The scope of the educational program includes provisions for the visually impaired from infancy through secondary education. Program formats include full-time residential, day school, summer and other short-term residential programs to meet specific needs, and on- and off-campus individual assessment and evaluation services. For residential students, activities and experiences on a 24-hour basis, not restricted to the traditional academic day, are an integral part of the program.

The Iowa Braille and Sight Saving School also serves as a state resource and dissemination center for education of the visually impaired. In this role, the school has a central and vital mission in the statewide education of the visually impaired and provides a resource center for educators, related field professionals, parents, and all interested citizens. Such a role affords the opportunity for the community-at-large to draw upon the specialized program and services available at IBSSS.

The Iowa Braille and Sight Saving School will make its special resources available to regent universities, area education agencies, local education agencies, and other public and private agencies. Resource services would provide support in such activities as:

1. Assessment, counseling, and educational planning for visually impaired children and youth;
2. Programs for development of specialized skills;
3. Parent education;
4. Instruction in orientation and mobility;
5. Research;
6. Preservice and continuing education of teachers and related professionals;
7. Consultative services to other professionals;
8. Curriculum development and evaluation; and
9. Development, use, and dissemination of instructional materials and technology.

Within the scope of the school's mission, future programs will be determined by the ongoing evaluation of existing programs and an analysis of developing needs. Programs will be added, curtailed, or eliminated based on assessment of need and the most effective use of resources. The school remains flexible so as to respond quickly and effectively to unmet needs of visually impaired children and youth of Iowa.

**15.1(2) Officers.** The school has two statutory officers: the superintendent and the secretary-treasurer (business manager).

The superintendent is the chief administrative officer of the school and has such authority and duties as delegated by the board of regents.

The secretary-treasurer (business manager) is responsible for investments, financial transactions, financial records, maintenance of facilities and related services as delegated by the superintendent.

The superintendent has nominated, and the board of regents has appointed, a director of education.

The director of education is the chief administrative officer of the instructional department.

**15.1(3) Organization.** The mission of the school is carried out through the regular academic programs, the special curriculum program, and outreach services.

**15.1(4) Communications.** Written inquiries, personal inquiries, submissions, and requests should be addressed to the Office of the Superintendent, Iowa Braille and Sight Saving School, Vinton, Iowa 52349, or the office of the Board of Regents, Old Historical Building, Des Moines, Iowa 50319. In general, inquiries, submissions and requests by the public may be submitted via informal letter. However, application for a particular purpose is to be made on a specified form. A list of these forms and the address where they may be obtained is found in 15.6(262).

**15.1(5) School manual for employees.** The school manual for employees contains the policies governing the internal administrative operation of the school. It is available for public inspection in the school's business office, superintendent's office, the personnel office, and in the office of the state board of regents.

This rule is intended to implement Iowa Code section 269.1.

**681—15.2(262) Petition regarding rules.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—15.3(262) Petition for declaratory ruling.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—15.4(262) Rule adoption—opportunity for oral presentation.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—15.5(262) Contested cases.** Rescinded IAB 12/15/99, effective 1/19/00.

**681—15.6(262) Forms.** The school uses a number of forms in its relations with the public. They are available from the superintendent's office, Iowa Braille and Sight Saving School, Vinton, Iowa 52349.

**681—15.7(262) Contracting authority.** The board of regents has delegated to the superintendent authority to make contracts and agreements as specified in 681—subrule 8.2(3). The superintendent has delegated authority for signing such agreements and contracts to the business manager in all cases except the following:

1. Employment matters involving deans, directors, principals, faculty, and merit employees are reserved to the office of the superintendent.
2. Application for grants for educational development and research from all sources are signed by the superintendent.

3. Supplies, equipment and services to be ordered from sources outside the school in compliance with board of regents rules, 681—Chapter 8, are purchased only by means of purchase orders or purchase contracts approved and signed by the business manager and based on requisitions submitted to the business manager.

**681—15.8(262) General rules.**

**15.8(1)** Salespersons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the school property except with the permission of the superintendent of the school.

Permission is given by the superintendent for the solicitation of employees by charitable organizations under all of the following circumstances:

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

b. The solicitation is conducted through the school's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the school of the desire to participate at least 120 days prior to the campaign period.

c. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the campus mail system or other school facilities.

d. The solicitation by any one charitable organization may occur once in any calendar year.

e. No solicitation using the school's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the school deems reasonable.

f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 70A.14 and 70A.15, if qualified under the terms of those provisions.

**15.8(2)** Smoking of all types is prohibited in all buildings of the campus except the staff lounge and areas not frequented by students. No one may smoke in the presence of a student on any part of the campus or while in any building.

**15.8(3)** The campus speed limit is ten miles per hour.

**681—15.9(262) Transportation reimbursement.** Transportation reimbursement shall be provided to the parents or guardians of children enrolled in the Iowa Braille and Sight Saving School at a rate to be established annually by the state board of regents for:

**15.9(1)** Transportation on a daily basis for children who do not reside at the school.

**15.9(2)** Not more than 11 trips per year from the institution to the residence of the parent or guardian and return to the institution for children who reside at the school.

**681—15.10(262) Admission requirements.** To be enrolled at the Iowa Braille and Sight Saving School an individual must meet the following criteria:

1. Be visually impaired;

2. Be intellectually and physically capable of benefiting from an educational program;

3. Be under 21 years of age;

4. Be immunized as evidenced by a valid Iowa department of public health certificate of immunization; and

5. Be a resident of the state of Iowa. (The residency requirement will be established on an individual basis consistent with the laws of the state of Iowa and the rules of the state board of regents.)

These rules are intended to implement Iowa Code section 269.1.

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CHAPTER 16  
IOWA SCHOOL FOR THE DEAF  
ORGANIZATION AND GENERAL RULES

[Prior to 4/20/88, Regents, Board of[720]]

**681—16.1(262) Organization.**

**16.1(1) *Statement of mission.*** The mission of the Iowa School for the Deaf (ISD) has two primary components: to provide direct educational services to hearing-impaired children and youth of the state of Iowa and to serve a leadership and resource role in statewide efforts to meet the needs of the hearing impaired. In fulfilling its stated mission, ISD will coordinate its efforts with all appropriate state agencies, area education agencies, and local education agencies. Such coordination will be accomplished in the spirit of cooperation reflected in the agreements with these agencies.

Consistent with various sections of the Iowa Code, the educational mission of the Iowa School for the Deaf is to provide an appropriate individual education program for hearing-impaired children and youth who require the comprehensive programs provided by the school.

The educational programs of the Iowa School for the Deaf will be consistent with the philosophy, reflected in federal and state legislation, that handicapped and nonhandicapped children and youth be educated together to the greatest extent possible. Thus, ISD assumes responsibility for providing an education for those hearing-impaired children and youth, including those with additional handicaps, for whom the comprehensive educational programs of the school are most appropriate.

The educational programs of the Iowa School for the Deaf are based on the premise that the school exists to serve its students by providing a learning environment which, to the greatest extent possible, maximizes each child's potential to become a contributing member of society by enhancing the development of communication, knowledge, self-realization, human relationships, economic independence, and a sense of civic and social responsibility. The child-centered programs include learning activities and experiences that appropriately and specifically meet the needs of each child.

The scope of the educational program includes provisions for the hearing impaired from infancy through secondary education. Program formats include full-time residential, day school, summer and other short-term residential programs to meet specific needs, vocational, and on- and off-campus individual assessment and evaluation services. For residential students, activities and experiences on a 24-hour basis, not restricted to the traditional academic day, are an integral part of the program.

The Iowa School for the Deaf also serves as a state resource and dissemination center for education of the hearing impaired. In this role, the school has a central and vital mission in the statewide education of the hearing impaired and provides a resource center for educators, related field professionals, parents, the deaf community, and all interested citizens. Such a role affords the opportunity for the community-at-large to draw upon the specialized programs and services available at ISD.

The Iowa School for the Deaf will make its special resources available to regent universities, area education agencies, local education agencies, and other public and private agencies. Resource services would provide support in such activities as:

1. Assessment, counseling, and educational planning for hearing-impaired children and youth;
2. Programs for development of specialized communications skills;
3. Parent education;
4. Extended educational programming for hearing-impaired adults;
5. Research;
6. Preservice and continuing education of teachers and related professionals;
7. Curriculum development and evaluation; and
8. Development and dissemination of instructional materials and technology.

Within the scope of the school's mission, future programs will be determined by the ongoing evaluation of existing programs and an analysis of developing needs. Programs will be added, curtailed, or eliminated based on assessment of need and the most effective use of resources. The school remains flexible so as to respond quickly and effectively to unmet needs of hearing-impaired children and youth of Iowa.

**16.1(2) *Officers.*** The school has two statutory officers: the superintendent and the secretary-treasurer.

The superintendent is the chief administrative officer of the school and has such authority and duties as delegated by the board of regents.

The secretary-treasurer is responsible for nonfaculty personnel, investments, financial transactions, financial records, maintenance of facilities and related services as delegated by the superintendent. The secretary-treasurer is also designated as business manager.

The superintendent has nominated and the board of regents has appointed a director of education and four principals.

The director of education is the chief administrative officer of the instructional departments. The principal of each department is the administrative officer of the department.

**16.1(3) *Organization.*** The academic mission of the school is principally carried out through its four departments: elementary, upper elementary, high school, and vocational.

**16.1(4) *Communications.*** Written and personal inquiry, submissions and requests should be addressed to the Office of the Superintendent, Iowa School for the Deaf, 1600 South Highway 275, Council Bluffs, Iowa 51503-7898, or the office of the Board of Regents, Old Historical Building, Des Moines, Iowa 50319.

Generally, inquiries, submissions and requests by the public may be submitted by informal letter. However, application for some purposes is to be made on a specified form. A list of the forms, general description, and the address where they may be obtained are found at 16.6(262).

**16.1(5) *School operations manual.*** The school operations manual contains the policies governing the internal administrative operation of the school. It is available for public inspection in the school's business office, superintendent's office, and in the office of the state board of regents.

This rule is intended to implement Iowa Code section 270.3.

**681—16.2(262) *Petition regarding rules.*** Rescinded IAB 12/15/99, effective 1/19/00.

**681—16.3(262) *Petition for declaratory ruling.*** Rescinded IAB 12/15/99, effective 1/19/00.

**681—16.4(262) *Rule adoption—opportunity for oral presentation.*** Rescinded IAB 12/15/99, effective 1/19/00.

**681—16.5(262) *Contested cases.*** Rescinded IAB 12/15/99, effective 1/19/00.

**681—16.6(262) *Forms.*** The school uses the following forms in its relations with the public. They are available from the superintendent's office, Iowa School for the Deaf, Council Bluffs, Iowa 51503-7898.

Application for student admission

Gymnastics—waiver of liability for public participants

Employment—application for employment

This rule is intended to implement Iowa Code section 262.7.

**681—16.7(262) Contracting authority.** The board of regents has delegated to the superintendent authority to make contracts and agreements as specified in 681—subrule 8.2(3). The superintendent has delegated authority for signing such agreements and contracts to the business manager in all cases except the following:

1. Employment matters involving directors, principals, and faculty are reserved to the office of the superintendent.
2. Application for grants for educational development and research from all sources are signed by the superintendent.
3. Supplies, equipment, and services to be ordered from sources outside the school in compliance with board of regents rules, 681—Chapter 8, are purchased only by means of purchase orders or purchase contracts approved and signed by the business manager and based on requisitions submitted to the business manager.

**681—16.8(262) Transportation.** Transportation from the institution to the residence of the parents or guardians and return to the institution for children enrolled in the Iowa School for the Deaf shall be reimbursed or provided as follows:

1. Transportation or transportation reimbursement at a rate to be established annually by the state board of regents shall be provided to the parents or guardians of children who reside in the Council Bluffs area but do not live at the school and travel daily to the school.
2. Not more than 11 trips per year shall be provided by chartered bus for children who attend the school and live outside the Council Bluffs area.

This rule is intended to implement Iowa Code section 262.7.

**681—16.9(262) General rules.**

**16.9(1)** Salespersons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the school property, except with the permission of the superintendent.

**16.9(2)** Permission is given by the superintendent for the solicitation of employees by charitable organizations under all of the following circumstances:

- a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.
- b. The solicitation is conducted through the school's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the school of the desire to participate at least 120 days prior to the campaign period.
- c. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the campus mail system or other school facilities.
- d. The solicitation by any one charitable organization may occur once in any calendar year.
- e. No solicitation using the school's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the school deems reasonable.
- f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 70A.14 and 70A.15, if qualified under the terms of those provisions.

This rule is intended to implement Iowa Code sections 70A.14, 70A.15, and 262.9.  
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CHAPTER 17  
PUBLIC RECORDS AND  
FAIR INFORMATION PRACTICES

The board of regents hereby adopts, with the following exceptions and amendments, rules of the Government Task Force on Uniform Rules of Agency Procedures relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

**681—17.1(22) Definitions.** As used in this chapter:

“*Agency*” means the state board of regents and the institutions it governs—State University of Iowa, Iowa State University of science and technology, University of Northern Iowa, Iowa School for the Deaf, and Iowa Braille and Sight Saving School.

“*Custodian*” means the official delegated authority by the agency to release records or that official’s designee. Custodians are as follows: for the state board of regents, the executive director; for the State University of Iowa, the institutional secretary; for Iowa State University of science and technology, the institutional secretary; for the University of Northern Iowa, the institutional secretary; for Iowa School for the Deaf, the superintendent; and for Iowa Braille and Sight Saving School, the superintendent.

**681—17.3(22) Requests for access to records.**

**17.3(1) Location of record.** A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to Executive Director, State Board of Regents, Old Historical Building, Des Moines, Iowa 50319. The board of regents will forward the request to the appropriate person.

**17.3(2) Office hours.** Open records shall be made available during all customary office hours, which are from 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays. Some offices close for the noon hour from approximately 12 noon to 1 p.m. Additionally, some office hours may conclude at 4 p.m. during the summer.

**17.3(3) Request for access.** Requests for access to records may be in writing or in person. The agency may accommodate telephone requests. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

**17.3(7) Fees.**

*c. Supervisory fee.* An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly compensation of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

**681—17.6(22) Procedure by which a subject may have additions, dissents, or objections entered into the record.** Except as otherwise provided by law, the subject of a record shall be allowed to have a written statement of additions, dissents, or objections entered into the record. The subject shall send the statement to the custodian of the record or to the board of regents office. The statement must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject’s representative.

**681—17.7(22) Consent to disclosure by the subject of a confidential record.** The subject of a confidential record may consent to agency disclosure to a third party of that portion of the record concerning the subject. The consent must be in writing and must identify the particular record or records that may be disclosed, the particular person, or class of persons, to whom the record may be disclosed. The person to whom the record is to be disclosed must provide proof of identity. Appearance of counsel on behalf of the subject will be deemed consent to disclose records about the subject to that attorney.

**681—17.9(22) Disclosures without consent of the subject.**

**17.9(1)** Open records are routinely disclosed without the consent of the subject.

**17.9(2)** To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as defined in rule 17.10(22) or in the notice for a particular record system.
- b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that the record is transferred in a form that does not identify the subject.
- c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e. To the legislative fiscal bureau under Iowa Code section 2.52.
- f. Disclosures in the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

**681—17.10(22) Routine use.** "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential or exempt records.
2. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
3. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.
4. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
5. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
6. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**681—17.11(22) Consensual disclosure of confidential records.**

**17.11(1) Consent to disclosure by a subject individual.** The subject may consent in writing to agency disclosure of confidential records as provided in rule 17.7(22).

**17.11(2) Complaints to public officials.** A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**681—17.12(22) Release to subject.**

**17.12(1)** The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. As otherwise authorized by law.

**17.12(2)** When a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**681—17.13(22) Availability of records.**

**17.13(1) Open records.** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**17.13(2) Confidential records.** The following records shall be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

b. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

c. Tax records made available to the agency. (Iowa Code sections 422.17 and 422.20)

d. Student records (Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. 1232g and Iowa Code section 22.7)

e. Hospital records, medical records, and professional counselor records (42 CFR Part II, IAC 653—13.10(10), Iowa Code sections 228.2 and 135.40 to 135.42)

f. Work product of an attorney (Iowa Code section 602.10112). Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R. Civ. P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Public peace officers' investigative reports. (Iowa Code chapter 692)

h. Criminal identification files of law enforcement agencies. (Iowa Code chapter 692)

i. Records of identity of owners of public bonds or obligations. (Iowa Code section 76.11)

j. Information concerning the nature and location of any archaeological resources or site. (Iowa Code section 263B.10)

k. Documents related to civil rights actions. (Iowa Code section 216.15(4))

l. Any other records made confidential by law.

m. Records which are exempt from disclosure under Iowa Code section 22.7.

n. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”

o. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

(See Iowa Code sections 17A.2 and 17A.3)

p. Records exempted from public inspection under any other provision of law.

**681—17.14(22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 17.1(22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

**17.14(1) State board of regents.** Personnel and employment management information systems. The above listed records system is collected pursuant to the authority of Iowa Code chapter 262. Storage is in paper form and information cannot be matched, collated and compared.

**17.14(2) State University of Iowa.**

- a. Payroll and personnel information system
- b. Professional and scientific employees—employment status information system
- c. General service staff employment register
- d. Faculty personnel information system
- e. Student record information system
- f. Student aid resource management system
- g. Gifts and grants information management system
- h. Annual budget line entry system
- i. Student admission information management system
- j. Patient information system
- k. Hospital management information system
- l. Purchasing office management system
- m. Construction/jobs management system
- n. Event ticket sales systems
- o. Motor pool management system
- p. Residence halls management systems

All of the above listed records are collected pursuant to the authority of Iowa Code chapters 262, 262A, 263, 263A, and 271. All are stored in electronic form. Supplementary records in these categories are stored in paper form or on microfilm or microfiche. Information in categories lettered “a” through “i” can be matched, collated, and compared. Information in categories lettered “j” and “k” can be matched, collated, and compared. Information in categories lettered “l” through “p” cannot be matched, collated, and compared.

**17.14(3) Iowa State University of science and technology.**

- a. Student information system, for example, biographical, academic, housing, financial aid and admissions
- b. Personnel information system, for example, biographical, employment, payroll and budget information for the faculty, professional and scientific and merit systems
- c. Accounting information system, for example, accounts receivable, accounts payable, budget system, gifts and grants, and contracts and grants
- d. Telecommunications information system
- e. Miscellaneous information systems, for example, transportation services, media resources, information service biographical files, affirmative action, travel, traffic and library circulation
- f. Veterinary diagnostic laboratory system
- g. University extension system, for example, continuing education units, and plant pathology, horticulture, seed and soil testing
- h. Patient information system
- i. Medical management system
- j. Purchasing system
- k. Police records system
- l. Parking systems registration information
- m. Alumni records and event ticket sales system
- n. State board of regents registered bonds system

All of the above listed records are collected pursuant to the authority of Iowa Code chapters 262, 262A, and 266. All are stored in electronic form, except categories lettered "f" and "h" which are stored in hard copy form. Duplicate information or copies of the electronically stored information may be found in some cases on microfilm, microfiche or hard copy. Information in categories lettered "a" through "e," "g," "j," "l," and "m" can be matched, collated, and compared. Information in categories "f" and "h" can be matched, collated, and compared only with accounts receivable (see category "c"). The remaining categories cannot be matched, collated, or compared.

**17.14(4) University of Northern Iowa.**

- a. Academic achievement center records systems
- b. Academic advising examination services/orientation information systems
- c. Academic computing center systems
- d. Accounts receivable/payable systems
- e. Admissions information systems
- f. Affirmative action records systems
- g. Alumni foundation/development systems
- h. Architect/planning/engineering records systems
- i. Athletic department records systems
- j. Budget management records systems
- k. College of education/school of business advising center record systems
- l. Continuing education/correspondence/extension records systems
- m. Financial aid information systems
- n. Grants and contracts records systems
- o. Housing/dining systems
- p. Library/archives records systems
- q. Personnel/budget/payroll information systems
- r. Physical plant systems
- s. Purchasing/inventory systems
- t. School of business division of external services records systems
- u. Student information systems (student records)
- v. Student union/student activities records systems

- \*w. Academic affairs information systems #
- \*x. Ancillary services records systems
- \*y. Counseling/health/pharmacy systems
- \*z. Deans/department heads/faculty advisors record systems
- \*aa. Handicapped services systems #
- \*ab. Institutional officials records systems #
- \*ac. Institutional research records systems including social/behavioral research center
- \*ad. Operations record systems
- \*ae. Placement/career center/cooperative education systems
- \*af. Price laboratory management/records systems #
- \*ag. Public safety records systems
- \*ah. Small business assistance center (hazardous waste) record systems
- \*ai. Special events record systems
- \*aj. Speech/hearing/reading clinics records systems #
- \*ak. Student field experience systems #
- \*al. United faculty records systems #
- \*am. UNISA records systems #

All of the above listed records systems are collected pursuant to the authority of Iowa Code chapters 262, 262A, 265 and 268. Means of storage include electronic unless otherwise noted. Moreover, some records may also be stored in micrographic or paper forms. All or parts of information in each system may be matched, collated, and compared except for those systems noted by an asterisk (\*).

# Storage in paper or micrographic form only.

**17.14(5) Iowa School for the Deaf.**

- a. Academic
- b. Medical
- c. Business—payroll and purchasing
- d. Residential
- e. Personnel

All of the above listed records, in whole or in part, are maintained on paper and in electronic form. The records stored in electronic form for systems "a," "b," "d," and "e" can be matched, collated, and compared. Records stored in electronic form for system "c" cannot be matched, collated or compared to any other of the systems. All of the above listed records are collected pursuant to the authority of Iowa Code chapters 262 and 270.

**17.14(6) Iowa Braille and Sight Saving School.**

- a. Payroll and personnel information system
- b. Faculty and administrative personnel information system
- c. Financial accounting data system
- d. Student record information system (academic and medical)
- e. Annual budget system
- f. Evaluation report system for all students
- g. Consultative reports completed for other agencies
- h. Gifts and grants record keeping system
- i. State large print orders system
- j. State lend/lease depository system

Records in "a," "c," and "e" are stored in electronic form and can be matched, collated, and compared. Records in "b," "d," and "f" through "j" are stored on paper and cannot be matched, collated, or compared. All of the above listed records are collected pursuant to the authority of Iowa Code chapters 262, 262A, and 269.

**681—17.15(22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 17.1(22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, some records may contain information about individuals. All records are stored both on paper and in automated data processing systems unless otherwise noted.

**17.15(1) Rule making.** Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

**17.15(2) Board records.** Agendas, minutes, and materials presented to the state board of regents are available from the office of the state board of regents, except those records concerning closed sessions which are confidential under Iowa Code section 21.5(4) and other provisions of law. Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

**17.15(3) Publications.** News releases, annual reports, project reports, agency newsletters, etc., are available through the institutions' offices for public information. Brochures describing various agency programs are available at local offices of the agency.

Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees.

**17.15(4) Statistical reports.** Periodic reports for various agency programs are available through the institutions' office for public information.

**17.15(5) Grants.** Records on persons receiving grants are available through the institutions' offices for public information. The records may contain information about employees of a grantee.

**17.15(6) Published materials.** The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

**17.15(7) Policy manuals.** The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in every office of the agency. Policy manuals do not contain information about individuals.

**17.15(8) All other records that are not exempted from disclosure by law.** The agency maintains a variety of records which do not generally contain information pertaining to named individuals.

**17.15(9) All other records that are not exempted from disclosure by law.**

**17.15(10) All data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.**

**681—17.16(22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 18  
DECLARATORY ORDERS

**681—18.1(17A) Petition for declaratory order.** Any person may file a petition with the board of regents for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board of regents at the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The board of regents shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board of regents 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:

BOARD OF REGENTS

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.

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.

**681—18.2(17A) Assignment to regent institution.**

**18.2(1)** In matters which relate exclusively or primarily to one of the universities or schools under the governance of the board of regents, the board of regents will normally assign action on declaratory orders to the president or superintendent of the affected institution. The president or superintendent, or the president or superintendent's designee, shall assume all powers of the board of regents to handle and rule on petitions for declaratory orders. Assignment may be made by the executive director of the board of regents and will normally occur within five days of filing of the petition.

**18.2(2)** Upon assignment of a petition to a president or superintendent, the term "board of regents" in this chapter shall refer to the president or superintendent. Pleadings and documents related to such petitions shall be filed with the president or superintendent, or as designated in writing to the parties, and the documents may be revised to reflect that the matter is before the affected institution.

**18.2(3)** A party adversely affected by an adverse declaratory order issued by a regent institution may seek review of the order under 681—subrule 11.1(4).

**681—18.3(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the board of regents shall give notice of the petition to all persons not served by the petitioner pursuant to rule 18.7(17A) to whom notice is required by any provision of law. The board of regents may also give notice to any other persons.

**681—18.4(17A) Intervention.**

**18.4(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**18.4(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board of regents.

**18.4(3)** A petition for intervention shall be filed at the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. Such a petition is deemed filed when it is received by that office. The board of regents will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

**BOARD OF REGENTS**

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



**PETITION FOR  
INTERVENTION**

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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.

**681—18.5(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The board of regents may request a brief from the petitioner, any intervenor or any other person concerning the questions raised.

**681—18.6(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition.

**681—18.7(17A) Service and filing of petitions and other papers.**

**18.7(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.

**18.7(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board of regents or, in the case of a matter assigned to an institution, the president or superintendent.

**18.7(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 681—20.12(17A).

**681—18.8(17A) Action on petition.**

**18.8(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, the president or superintendent or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

**18.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in rule 681—20.2(17A).

**681—18.9(17A) Refusal to issue order.**

**18.9(1)** The board of regents shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board of regents to issue an order.
3. The board of regents does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other board of regents 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 decision already made.

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

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

11. The petitioner requests the board of regents to issue a preliminary determination in any academic matter, such as sufficiency of academic performance or whether or how a particular grade or degree may or will be awarded to an individual.

12. The petitioner requests a determination of a matter being considered in an internal grievance, disciplinary hearing or investigatory process underway at the board of regents or a regent institution.

13. The petitioner requests a determination regarding a purchasing transaction, a grant or a contract of the board of regents or regent institution.

14. The petitioner requests a determination regarding a personnel matter, including but not limited to layoff, program reorganization and benefits matters.

15. The petitioner requests a determination regarding the provision of medical care to a patient or animal at medical or veterinary facilities operated by a regent institution.

16. The petitioner requests a determination of a matter subject to collective bargaining or a matter required to be addressed under the terms of any collective bargaining agreement.

**18.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**18.9(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.

**681—18.10(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.

**681—18.11(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.

**681—18.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board of regents, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board of regents. The issuance of a declaratory order constitutes final agency action on the petition.

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

[Filed 11/23/99, Notice 4/7/99—published 12/15/99, effective 1/19/00]

CHAPTER 19  
PROCEDURE FOR RULE MAKING

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

**681—19.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the board of regents may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by the board of regents by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

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

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

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

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

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

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

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

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

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

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

**19.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) "a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any board of regents determinations with respect thereto;
- h. Any known timetable for board of regents decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

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

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

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

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

**19.4(2) Incorporation by reference.** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 19.12(2) of this chapter.

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

### **681—19.5(17A) Public participation.**

**19.5(1) Written comments.** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

**19.5(2) Oral proceedings.** The board of regents may, at any time, schedule an oral proceeding on a proposed rule. The board of regents shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board of regents by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

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

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

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

#### **19.5(3) Conduct of oral proceedings.**

a. **Applicability.** This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. **Scheduling and notice.** An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

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

*d. Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board of regents at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board of regents decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

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

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

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the board of regents.

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

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

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

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

#### **681—19.6(17A) Regulatory analysis.**

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

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

- a. The name of the small business or organization of small businesses;
- b. Its address;



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

The board of regents may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board of regents may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

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

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

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

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

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

- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

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

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

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

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

**19.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

**19.6(11) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

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

**19.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**19.7(2)** If the board of regents determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board of regents shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

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

**19.8(1) *Time of adoption.*** The board of regents shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board of regents shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**19.8(2) *Consideration of public comment.*** Before the adoption of a rule, the board of regents shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

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

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

**19.9(1)** The board of regents shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

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

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

19.9(3) The board of regents shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board of regents finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

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

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

19.10(1) *Omission of notice and comment.* To the extent the board of regents for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board of regents may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board of regents shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

19.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

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

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

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

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

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

19.10(3) *Public proceedings on rules adopted without them.* The board of regents may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 19.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board of regents shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 19.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board of regents may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 19.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

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

**19.11(1) General.** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board of regents shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

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

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board of regents' reasons for overruling the arguments made against the rule.

**19.11(3) Time of issuance.** After a proper request, the board of regents shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

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

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

- a. The date the board of regents adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the board of regents in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the board of regents in its discretion decides to include such reasons; and
- g. The effective date of the rule.

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

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

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

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

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

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

**19.13(1) *Requirement.*** The board of regents shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

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

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

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

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

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

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

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

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

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

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

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*k.* A copy of any executive order concerning the rule.

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

**19.13(4) *Maintenance of record.*** The board of regents shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action or the date of any written criticism as described in 19.13(2) "g," "h," "i," or "j."

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

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

**19.15(1) *Grounds.*** The board of regents may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board of regents shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

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

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

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

**19.16(1) *Compilation, indexing, public inspection.*** The board of regents shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10) "a," "c," "f," "g," "h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7) "f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**19.16(2) *Compilation at each regent institution.*** Each regent institution shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10) "a," "c," "f," "g," "h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7) "f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

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

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

**19.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board of regents to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board of regents shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The board of regents may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**19.17(2)** In conducting the formal review, the board of regents shall prepare, within a reasonable time, a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the board of regents' findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the board of regents or granted by the board of regents. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board of regents' report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Board of Regents

Legal Affairs

100 Court Avenue

Des Moines, IA 50319



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

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

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

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

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

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

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

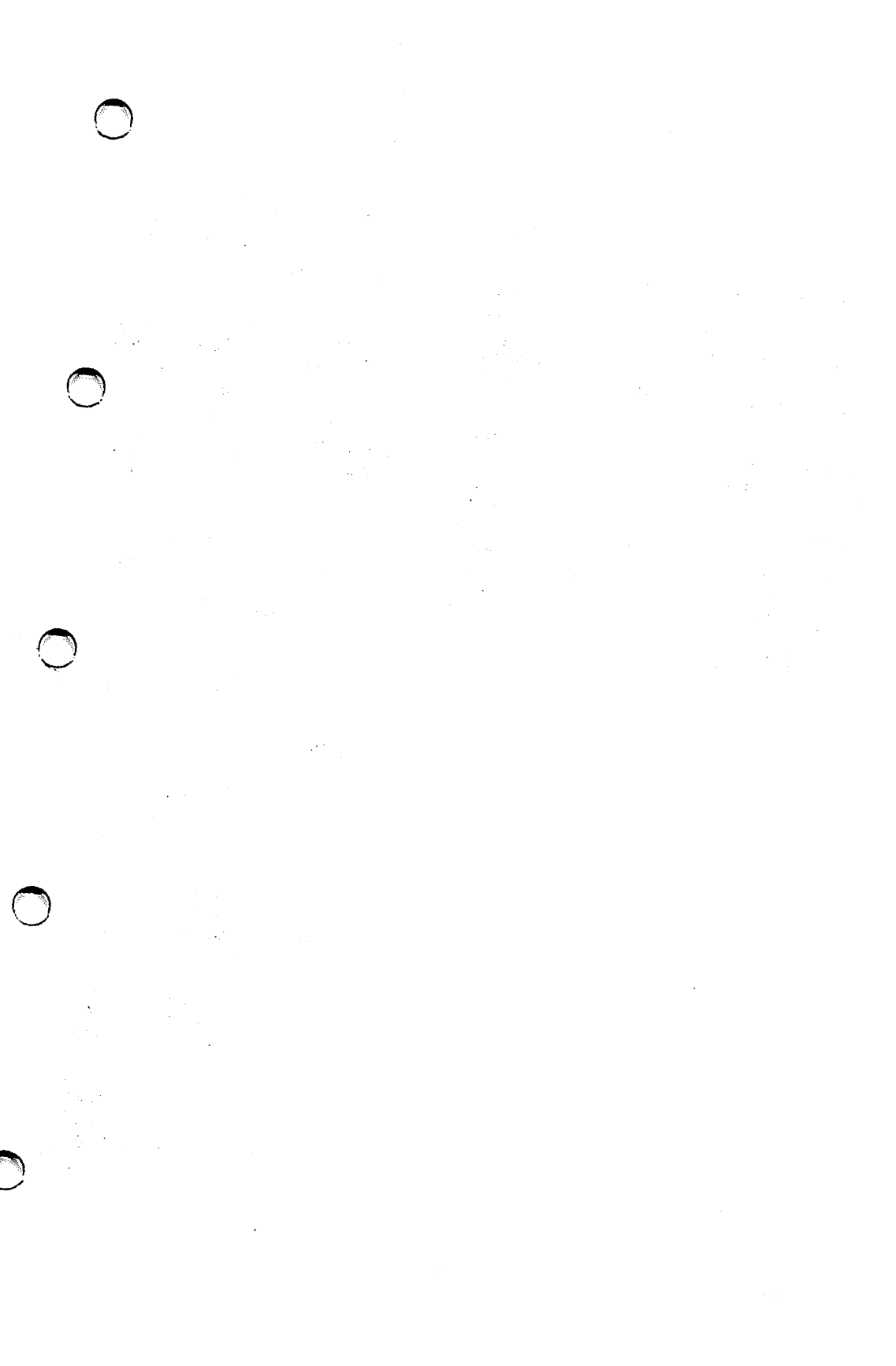
**19.18(11) *Violations.*** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

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

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

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

[Filed 11/23/99, Notice 4/7/99—published 12/15/99, effective 1/19/00]



CHAPTER 20  
CONTESTED CASES

**681—20.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the board of regents.

**681—20.2(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 the regent institution or board of regents named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the administrative law judge, the board of regents or subcommittee of the board of regents.

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

**681—20.3(17A) Time requirements.**

20.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

20.3(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.

**681—20.4(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 board of regents or regent institution action in question.

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

**681—20.5(17A) Notice of hearing.**

20.5(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; or
- e. In the case of a student residing in facilities of a regent institution, by leaving a copy in the student’s mailbox at the student’s residence hall or apartment.

20.5(2) *Contents.* The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;

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

*e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board of regents or the regent institution and of parties' counsel where known;

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

*g.* Reference to the procedural rules governing informal settlement;

*h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and

*i.* Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 20.6(17A), that the presiding officer be an administrative law judge.

### **681—20.6(17A) Presiding officer.**

**20.6(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 board of regents head or members of the board of regents.

**20.6(2)** The board of regents may deny the request only upon a finding that one or more of the following apply:

*a.* Neither the board of regents nor any officer of the board of regents 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 20.6(4) is unavailable to hear the case within a reasonable time.

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

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

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

*g.* The request was not timely filed.

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

**20.6(3)** The board of regents or its 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 20.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**20.6(4)** An administrative law judge assigned to act as presiding officer in a case involving discipline or discharge of a faculty member at one of the universities, or discipline or discharge of a student for academic dishonesty at one of the universities shall have the following technical expertise unless waived by the board of regents: an advanced degree showing scholarly achievement, such as a doctor of philosophy degree, or knowledge of academic traditions and methods of teaching and research at institutions of higher education in the United States.

**20.6(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 regents, or in a case involving a matter arising from a regent institution, the president or superintendent of that institution. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**20.6(6)** Unless otherwise provided by law, the board of regents, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**681—20.7(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 board of regents, in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest. When a regent institution provides for procedures for handling contested case matters in any handbook or policy guide, the board of regents and the regent institutions consent to the use of the procedures therein and waive these rules. If a party does not consent to the use of the institutional procedures, or has elected use of formal proceedings under the Iowa administrative procedure Act (Iowa Code chapter 17A) instead of institutional procedures, the board of regents will normally not waive the provisions of this chapter.

**681—20.8(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. The presiding officer, for good cause, and upon request of a party, may permit the party to present witness testimony by telephone or remote video so long as the parties and their representatives have substantially the same opportunity to hear and observe the witness testimony.

**681—20.9(17A) Disqualification.**

**20.9(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.

**20.9(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 20.9(3) and 20.23(9).

**20.9(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.

**20.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.9(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 20.24(17A) and seek a stay under rule 20.29(17A).

#### **681—20.10(17A) Consolidation—severance.**

**20.10(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.

**20.10(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

#### **681—20.11(17A) Pleadings.**

**20.11(1) Pleadings** may be required by rule, by the notice of hearing, or by order of the presiding officer.

##### **20.11(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.

**20.11(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.

**20.11(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.

**681—20.12(17A) Service and filing of pleadings and other papers.**

**20.12(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 board of regents, 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.

**20.12(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.

**20.12(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 presiding officer, at the address provided in notices to the parties. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board of regents or, in the case of a matter arising from one of the regent institutions, the president's or superintendent's office of the regent institution.

**20.12(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board of regents or as appropriate, the president's or superintendent's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**20.12(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 (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)

**681—20.13(17A) Discovery.**

**20.13(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.

**20.13(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 20.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

20.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**681—20.14(17A) Subpoenas.**

**20.14(1) Issuance.**

a. A board of regents 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.

20.14(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.

**681—20.15(17A) Motions.**

20.15(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.

20.15(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 board of regents or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

20.15(3) The presiding officer may schedule oral argument on any motion.

20.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days (or other time period designated by the board of regents) prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board of regents or an order of the presiding officer.

20.15(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 30 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 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 20.28(17A) and appeal pursuant to rules 20.28(17A) and 20.26(17A).

**681—20.16(17A) Prehearing conference.** Prehearing conferences may be ordered at the discretion of the presiding officer.

**681—20.17(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

20.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days (or other time period designated by the board of regents) before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

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



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

**20.17(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.

**681—20.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board of regents rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**681—20.19(17A) Hearing procedures.**

**20.19(1)** The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**20.19(2)** All objections shall be timely made and stated on the record.

**20.19(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**20.19(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**20.19(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**20.19(6)** Witnesses may be sequestered during the hearing.

**20.19(7)** The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

**20.19(8)** As provided by rule 20.8(17A), witness testimony may be taken by telephone or remote video at the discretion of the presiding officer.

**681—20.20(17A) Evidence.**

**20.20(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**20.20(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**20.20(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**20.20(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**20.20(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**20.20(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**681—20.21(17A) Default.**

**20.21(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**20.21(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**20.21(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 20.26(17A) or 20.27(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.

**20.21(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**20.21(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**20.21(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

**20.21(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 20.24(17A).

**20.21(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**20.21(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues except, unless the defaulting party has appeared, it cannot exceed the relief demanded.

**20.21(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 20.29(17A).

**681—20.22(17A) Ex parte communication.**

**20.22(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board of regents 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 20.9(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.

**20.22(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**20.22(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**20.22(4)** To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 20.12(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.

**20.22(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**20.22(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 20.22(1).

**20.22(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 20.17(17A).

**20.22(8) Disclosure of prohibited communications.** A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**20.22(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**20.22(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board of regents. Violation of ex parte communication prohibitions by board of regents personnel shall be reported to the executive director of the board of regents for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**681—20.23(17A) Recording costs.** Upon request, the board of regents 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.

**681—20.24(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board of regents may review an interlocutory order of the presiding officer. In determining whether to do so, the board of regents 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 of regents 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 five 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.

**681—20.25(17A) Final decision.**

**20.25(1)** When the board of regents presides over the reception of evidence at the hearing, its decision is a final decision.

**20.25(2)** When the board of regents 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 board of regents without further proceedings unless there is an appeal to, or review on motion of, the president, the superintendent or the board of regents within the times provided in rules 20.26(17A) and 20.27(17A).

**681—20.26(17A) Appeals and review—actions by regent institution.**

**20.26(1) *Appeal by party.*** Any adversely affected party may appeal a proposed decision in a case involving an appeal of action or proposed action by a regent institution, to the president or superintendent of the regent institution within 20 days after issuance of the proposed decision.

**20.26(2) *Review.*** The president or superintendent of the regent institution may initiate review of a proposed decision on the president or superintendent's own motion at any time within 20 days following the issuance of such a decision.

**20.26(3) *Notice of appeal.*** An appeal of a proposed decision is initiated by filing a timely notice of appeal with the president or superintendent. 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.

**20.26(4) *Requests to present additional evidence.*** A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 10 days of service of the notice of appeal. The president or superintendent may either remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

**20.26(5) *Scheduling.*** The president or superintendent shall issue a schedule for consideration of the appeal.

**20.26(6) *Briefs and arguments.*** Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The president or superintendent has the discretion to resolve the appeal on the briefs or provide an opportunity for oral argument. The president or superintendent may shorten or extend the briefing period as appropriate.

**681—20.27(17A) Appeals to the board of regents.**

**20.27(1) *Appeal by party.*** Any adversely affected party may appeal the president or superintendent's decision to the board of regents within 10 days after issuance of the decision. In the case of an appeal of initial action by the board of regents, any adversely affected party may appeal the proposed order of a presiding officer to the board of regents within 20 days after issuance of the proposed decision.

**20.27(2) *Review.*** The board of regents may initiate review of the president or superintendent's decision or a proposed decision involving an appeal of board of regents action on its own motion at any time within 20 days following the issuance of such a decision.

**20.27(3) *Notice of appeal.*** An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board of regents. In cases of appeals of action by an institution, a copy of the notice shall be sent to the president or superintendent of the regent institution. 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.

**20.27(4) Requests to present additional evidence.** In a case which has not been reviewed by a regent institution president or superintendent, 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 10 days of service of the notice of appeal. The board of regents, or its executive director, may remand a case to the president or superintendent for further hearing or it may preside at the taking of additional evidence.

**20.27(5) Scheduling.** The board of regents, or its executive director, shall issue a schedule for consideration of the appeal.

**20.27(6) Briefs and arguments.** Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board of regents has the discretion to resolve the appeal on the briefs or provide an opportunity for oral argument. The board of regents, or its executive director, may shorten or extend the briefing period as appropriate.

#### **681—20.28(17A) Applications for rehearing.**

**20.28(1) By whom filed.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**20.28(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 board of regents decision on the existing record and whether, on the basis of the grounds enumerated in subrule 20.26(4), the applicant requests an opportunity to submit additional evidence.

**20.28(3) Time of filing.** The application shall be filed with the board of regents within 20 days after issuance of the final decision.

**20.28(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 board of regents shall serve copies on all parties.

**20.28(5) Disposition.** Any application for a rehearing shall be deemed denied unless the board of regents grants the application within 20 days after its filing.

#### **681—20.29(17A) Stays of board of regents actions.**

##### **20.29(1) When available.**

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

*b.* Any party to a contested case proceeding may petition the board of regents 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.

**20.29(2) When granted.** In determining whether to grant a stay, the presiding officer or board of regents shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

**20.29(3) Vacation.** A stay may be vacated by the issuing authority upon application of the board of regents or any other party.

**681—20.30(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.

**681—20.31(17A) Emergency adjudicative proceedings.**

**20.31(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 board of regents may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board of regents by emergency adjudicative order. Before issuing an emergency adjudicative order the board of regents shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board of regents is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the board of regents is necessary to avoid the immediate danger.

**20.31(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 board of regents' decision to take immediate action.
- b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:
  - (1) Personal delivery;
  - (2) Certified mail, return receipt requested, to the last address on file with the board of regents;
  - (3) Certified mail to the last address on file with the board of regents;
  - (4) First-class mail to the last address on file with the board of regents; or
  - (5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board of regents orders be sent by fax and has provided a fax number for that purpose.
- c. To the degree practicable, the board of regents shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**20.31(3) Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board of regents shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**20.31(4) *Completion of proceedings.*** After the issuance of an emergency adjudicative order, the board of regents shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. Issuance of a written emergency adjudicative order shall include notification of the date on which board of regents proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board of regents proceedings to a later date will be granted only in compelling circumstances upon application in writing.

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

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# REVENUE AND FINANCE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

## CHAPTER 1 STATE BOARD OF TAX REVIEW— ADMINISTRATION

- 1.1(17A) Establishment, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests
- 1.2(17A) Time for issuing a decision
- 1.3(17A) Declaratory orders
- 1.4(17A) Petitions for rule making

## CHAPTER 2 CONDUCT OF APPEALS, RULES OF PRACTICE AND PROCEDURE

### DIVISION I CONDUCT OF APPEALS FOR PROCEEDINGS COMMENCED BEFORE JULY 1, 1999, AND GENERAL RULES OF PRACTICE AND PROCEDURE

- 2.1(421,17A) Definitions
- 2.2(421,17A) Notice of appeal
- 2.3(421,17A) Contents of notice of appeal
- 2.4(421,17A) Certification by director
- 2.5(421,17A) Motions and special appearances
- 2.6(421,17A) Responsive pleadings
- 2.7(421,17A) Docketing
- 2.8(421,17A) Filing of papers
- 2.9(421,17A) Hearing an appeal
- 2.10(421,17A) Amendments
- 2.11(421,17A) Appearances by appellant
- 2.12(421) Authority of chairperson to enter prehearing and procedural orders
- 2.13(421,17A) Prehearing procedure
- 2.14(421,17A) Continuances
- 2.15(421,17A) Place of hearing
- 2.16(421,17A) Members participating
- 2.17(421,17A) Presiding officer
- 2.18(421,17A) Rulings of the chair
- 2.19(421,17A) Rules of evidence
- 2.20(421,17A) Transcript of hearing
- 2.21(421,17A) Suspension or alterations of rules
- 2.22(17A) Declaratory rulings
- 2.23(17A) Petitions for rule making

### DIVISION II RULES GOVERNING CONTESTED CASE PROCEEDINGS COMMENCED ON OR AFTER JULY 1, 1999

- 2.24(421,17A) Definitions
- 2.25(421,17A) Notice of appeal
- 2.26(421,17A) Contents of notice of appeal
- 2.27(421,17A) Certification by director
- 2.28(421,17A) Motions
- 2.29(421,17A) Answer
- 2.30(421,17A) Docketing
- 2.31(421,17A) Filing of papers
- 2.32(421,17A) Hearing an appeal
- 2.33(421,17A) Appearances by appellant
- 2.34(421) Authority of state board to issue procedural orders
- 2.35(421,17A) Continuances
- 2.36(421,17A) Place of hearing
- 2.37(421,17A) Members participating
- 2.38(421,17A) Presiding officer
- 2.39(421,17A) Applicability and scope
- 2.40(17A) Definitions
- 2.41(421,17A) Time requirements
- 2.42(421,17A) Notice of appeal
- 2.43(421,17A) Contents of notice of appeal
- 2.44(421,17A) Certification by director
- 2.45(421,17A) Answer
- 2.46(421,17A) Docketing
- 2.47(421,17A) Appearances by appellant
- 2.48(421,17A) Place of hearing
- 2.49(421,17A) Transcript of hearing
- 2.50(421,17A) Requests for contested case
- 2.51(421,17A) Notice of hearing
- 2.52(17A) Presiding officer
- 2.53(421,17A) Transfer of case for hearing or appeal
- 2.54(17A) Waiver of procedures
- 2.55(17A) Telephone proceedings
- 2.56(421,17A) Disqualifications
- 2.57(421,17A) Consolidation and severance
- 2.58(17A) Service and filing of pleadings and other papers
- 2.59(421,17A) Discovery
- 2.60(421,17A) Subpoenas
- 2.61(421,17A) Motions
- 2.62(421,17A) Prehearing conference
- 2.63(421,17A) Continuances
- 2.64(17A) Withdrawals
- 2.65(421,17A) Intervention
- 2.66(421,17A) Hearing procedures
- 2.67(421,17A) Evidence

- 2.68(421,17A) Default
- 2.69(421,17A) Ex parte communication
- 2.70(421,17A) Recording costs
- 2.71(421,17A) Interlocutory appeals
- 2.72(421,17A) Final decision
- 2.73(421,17A) Appeals and review
- 2.74(421,17A) Applications for rehearing
- 2.75(421,17A) Stays of agency actions
- 2.76(421,17A) No factual dispute contested case

**CHAPTERS 3 and 4**  
Reserved

**CHAPTER 5**  
**PUBLIC RECORDS AND FAIR**  
**INFORMATION PRACTICES**  
(Uniform Rules)

- 5.1(17A,22) Definitions
- 5.3(17A,22) Requests for access to records
- 5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records
- 5.9(17A,22) Disclosures without the consent of the subject
- 5.10(17A,22) Routine use
- 5.11(17A,22) Consensual disclosure of confidential records
- 5.12(17A,22) Release to subject
- 5.13(17A,22) Availability of records
- 5.14(17A,22) Personally identifiable information
- 5.15(17A,22) Other groups of records
- 5.16(17A,22) Applicability

**TITLE I**  
**ADMINISTRATION**

**CHAPTER 6**  
**ORGANIZATION, PUBLIC INSPECTION**

- 6.1(17A) Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests
- 6.2(17A) Public inspection
- 6.3(17A) Examination of records
- 6.4(17A) Copies of proposed rules
- 6.5(17A) Regulatory analysis procedures
- 6.6(422) Retention of records and returns by the department
- 6.7(68B) Consent to sell

**CHAPTER 7**  
**PRACTICE AND PROCEDURE BEFORE**  
**THE DEPARTMENT OF REVENUE AND**  
**FINANCE**

**DIVISION I**  
**INFORMAL, FORMAL, ADMINISTRATIVE AND**  
**JUDICIAL REVIEW PROCEDURES APPLICABLE TO**  
**CONTESTED CASES AND OTHER PROCEEDINGS**  
**COMMENCED PRIOR TO JULY 1, 1999**

- 7.1(17A) Definitions
- 7.2(17A) Scope of rules
- 7.3(17A) Business hours
- 7.4(17A) Computation of time, filing of documents
- 7.5(17A) Form and style of papers
- 7.6(17A) Persons authorized to practice before the department
- 7.7(17A) Resolution of tax liability
- 7.8(17A) Protests
- 7.9(17A) Identifying details
- 7.10(17A) Docket
- 7.11(17A) Informal procedures and dismissals of protests
- 7.12(17A) Answer
- 7.13(17A) Subpoenas
- 7.14(17A) Commencement of contested case proceedings
- 7.15(17A) Discovery
- 7.16(17A) Prehearing conference
- 7.17(17A) Contested case proceedings
- 7.18(17A) Interventions
- 7.19(17A) Record and transcript
- 7.20(17A) Rehearing
- 7.21(17A) Service
- 7.22 Reserved
- 7.23(17A) Ex parte communications
- 7.24(17A) Licenses
- 7.25(17A) Declaratory rulings—in general
- 7.26(17A) Department procedure for rule making—in general
- 7.27(9C,91C) Procedure for nonlocal business entity bond forfeitures
- 7.28 and 7.29 Reserved
- 7.30(421) Definitions which apply to rules 701—7.31(421) to 701—7.35(421)
- 7.31(421) Abatement of unpaid tax
- 7.32(421) Time and place of taxpayer interviews
- 7.33(421) Mailing to the last-known address
- 7.34(421) Power of attorney
- 7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied

47.6(422)	Penalties: Failure to file and underpayment of estimated tax	50.7(422)	Credit for taxes paid to another state
		50.8(422)	Refunds
		50.9(422)	Examples
	<b>CHAPTER 48</b>		
	<b>COMPOSITE RETURNS</b>		
48.1(422)	Composite returns		<b>TITLE VI</b>
48.2(422)	Definitions		<b>CORPORATION</b>
48.3(422)	Filing requirements		
48.4(422)	When the application for permission to file a composite return must be filed	51.1(422)	<b>CHAPTER 51</b>
48.5(422)	The director may in accordance with rule 701—48.3(422) require the filing of a composite return under the following conditions	51.2(422)	<b>ADMINISTRATION</b>
48.6(422)	Determination of composite Iowa income	51.3(422)	Definitions
48.7(422)	Determination of composite Iowa tax	51.4(422)	Statutes of limitation
48.8(422)	Estimated tax	51.5(422)	Retention of records
48.9(422)	Time and place for filing	51.6(422)	Cancellation of authority to do business
		51.7(422)	Authority for deductions
		51.8(422)	Jeopardy assessments
		51.9(422)	Information confidential
			Power of attorney
			Delegation of authority to audit and examine
			<b>CHAPTER 52</b>
			<b>FILING RETURNS, PAYMENT OF TAX AND PENALTY AND INTEREST</b>
		52.1(422)	Who must file
49.1(422)	Who must pay estimated income tax	52.2(422)	Time and place for filing return
49.2(422)	Time for filing and payment of tax	52.3(422)	Form for filing
49.3(422)	Estimated tax for nonresidents	52.4(422)	Payment of tax
49.4(422)	Special estimated tax periods	52.5(422)	Minimum tax
49.5(422)	Reporting forms	52.6(422)	Motor fuel credit
49.6(422)	Penalty—underpayment of estimated tax	52.7(422)	Research activities credit
49.7(422)	Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances	52.8(422)	New jobs credit
		52.9(422)	Seed capital income tax credit
		52.10(15)	New jobs and income program tax credits
		52.11(422)	Refunds and overpayments
		52.12(422)	Deduction of credits
		52.13(422)	Livestock production credits
		52.14(422)	Enterprise zone tax credits
		52.15(15E)	Eligible housing business tax credit
		52.16(422)	Franchise tax credit
			<b>CHAPTER 53</b>
			<b>DETERMINATION OF NET INCOME</b>
50.1(422)	Apportionment of income for resident shareholders of S corporations	53.1(422)	Computation of net income for corporations
50.2(422)	Definitions	53.2(422)	Net operating loss carrybacks and carryovers
50.3(422)	Distributions	53.3(422)	Capital loss carryback
50.4(422)	Computation of net S corporation income	53.4(422)	Net operating and capital loss carrybacks and carryovers
50.5(422)	Computation of federal tax on S corporation income	53.5(422)	Interest and dividends from federal securities
50.6(422)	Income allocable to Iowa		

- 53.6(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions
- 53.7(422) Safe harbor leases
- 53.8(422) Additions to federal taxable income
- 53.9(422) Gains and losses on property acquired before January 1, 1934
- 53.10(422) Work opportunity tax and alcohol fuel credit
- 53.11(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals
- 53.12(422) Federal income tax deduction
- 53.13(422) Iowa income taxes
- 53.14(422) Method of accounting, accounting period
- 53.15(422) Consolidated returns
- 53.16(422) Federal rulings and regulations
- 53.17(422) Depreciation of speculative shell buildings
- 53.18(422) Deduction of multipurpose vehicle registration fee
- 53.19(422) Deduction of foreign dividends
- 53.20(422) Employer social security credit for tips
- 53.21(422) Deduction of gifts, grants, or donations

#### CHAPTER 54

##### ALLOCATION AND APPORTIONMENT

- 54.1(422) Basis of corporate tax
- 54.2(422) Allocation or apportionment of investment income
- 54.3(422) Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978
- 54.4(422) Net gains and losses from the sale of assets
- 54.5(422) Where income is derived from the manufacture or sale of tangible personal property
- 54.6(422) Apportionment of income derived from business other than the manufacture or sale of tangible personal property

- 54.7(422) Apportionment of income of transportation, communications, and certain public utilities corporations
- 54.8(422) Apportionment of income derived from more than one business activity carried on within a single corporate structure
- 54.9(422) Allocation and apportionment of income in special cases

#### CHAPTER 55

##### ASSESSMENTS, REFUNDS, APPEALS

- 55.1(422) Notice of discrepancies
- 55.2(422) Notice of assessment
- 55.3(422) Refund of overpaid tax
- 55.4(422) Abatement of tax
- 55.5(422) Protests

#### CHAPTER 56

##### ESTIMATED TAX FOR CORPORATIONS

- 56.1(422) Who must pay estimated tax
- 56.2(422) Time for filing and payment of tax
- 56.3(422) Special estimate periods
- 56.4(422) Reporting forms
- 56.5(422) Penalties
- 56.6(422) Overpayment of estimated tax

#### TITLE VII

##### FRANCHISE

#### CHAPTER 57

##### ADMINISTRATION

- 57.1(422) Definitions
- 57.2(422) Statutes of limitation
- 57.3(422) Retention of records
- 57.4(422) Authority for deductions
- 57.5(422) Jeopardy assessments
- 57.6(422) Information deemed confidential
- 57.7(422) Power of attorney
- 57.8(422) Delegation to audit and examine

#### CHAPTER 58

##### FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST, AND ALLOCATION OF TAX REVENUES

- 58.1(422) Who must file
- 58.2(422) Time and place for filing return
- 58.3(422) Form for filing
- 58.4(422) Payment of tax
- 58.5(422) Minimum tax
- 58.6(422) Refunds and overpayments
- 58.7(422) Allocation of franchise tax revenues

**CHAPTER 5  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES**

The Iowa department of revenue and finance hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code. Uniform Rules X.1(17A,22) to X.8(17A,22) appear as rules 5.1(17A,22) to 5.8(17A,22). The following rules in this chapter may reference rules that have not been adopted and, therefore, the text of such rules is not set forth in this chapter. Reference to these types of rules is only for the purpose of reference and is not intended for the purpose of adopting the referenced rules in their entirety.

**701—5.1(17A,22) Definitions.** As used in this chapter:

"Agency." In lieu of "(official or body issuing these rules)" insert "department of revenue and finance."

**701—5.3(17A,22) Requests for access to records.**

**5.3(1) Location of record.** In lieu of "(insert agency head)" insert "director". In lieu of "(insert agency name and address)" insert "Iowa Department of Revenue and Finance, Taxpayer Services, Box 10457, Des Moines, Iowa 50306".

**5.3(2) Office hours.** In lieu of "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert "8 a.m. to 4:30 p.m. daily excluding Saturdays, Sundays, and legal holidays".

**5.3(7) Fees.**

*c. Supervisory fee.* In lieu of "(specify time period)" insert "one-half hour". In lieu of "(An agency wishing to deal with search fees authorized by law should do so here.)" insert "An hourly fee may be charged for actual agency expenses in searching for requested records when the time required for searching for a combination of searching, supervision and copying is in excess of one-half hour."

**701—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Strike the words "or to (designate office)".

**701—5.9(17A,22) Disclosures without the consent of the subject.**

**5.9(1) Open records** are routinely disclosed without the consent of the subject.

**5.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in subrule 5.10(1) or in any notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative fiscal bureau under Iowa Code section 2.52.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

**701—5.10(17A,22) Routine use.**

**5.10(1) Defined.** “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records laws, Iowa Code chapter 22.

**5.10(2)** To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**701—5.11(17A,22) Consensual disclosure of confidential records.**

**5.11(1) Consent to disclosure by a subject individual.** To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

**5.11(2) Complaints to public officials.** A letter from the subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**701—5.12(17A,22) Release to subject.**

**5.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officer’s investigative reports may be withheld from the subject, except as required by Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

**5.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**701—5.13(17A,22) Availability of records.**

**5.13(1) General.** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3.)  
b. Records which are exempt from disclosure under Iowa Code section 22.7.  
c. Minutes of closed meetings of a government body (Iowa Code section 21.5(4)).  
d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

(See Iowa Code sections 17A.2 and 17A.3.)

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Corporate income return systems, corporate income tax field and office audit systems, related field collections system, and corporate tax error resolution system (Iowa Code section 422.20).

h. Individual and fiduciary income returns, individual and fiduciary income tax field and office audit systems, and related field collections system (Iowa Code section 422.20, 422.72, and 450.68).

i. Individual income tax withholding system, IA-W4 system, declaration of estimated tax, and withholding penalty waiver systems (Iowa Code sections 422.20 and 422.72).

j. Penalty waiver, abatement, and settlement systems (Iowa Code sections 421.5, 422.20, and 422.72).

k. Franchise tax returns, audit and collection systems (Iowa Code section 422.72).

l. Sales and use tax returns, field and office audit and collections systems, sales tax refund examination system, industrial machinery, equipment, and computer refund systems, and sales and use tax penalty waiver systems (Iowa Code section 422.72).

m. Motor vehicle fuel, railway fuel tax, and special fuel tax return and error resolution systems, and related field and office audit and collection systems (Iowa Code section 452A.63).

n. Inheritance, generation skipping transfer, qualified use inheritance and estate tax returns, field and office audit systems, and related field collections system (Iowa Code section 450.68).

o. Federal and state exchange of information systems (Iowa Code sections 422.20(2) and 422.72).

p. Cigarette and tobacco tax systems with related office and field audit and field collections systems (Iowa Code section 22.7(6)).

q. Property assessor and deputy assessor examination records systems (Iowa Code section 441.5).

r. Central property tax assessments systems (Iowa Code sections 422.20 and 22.7(6)).

s. Elderly credit mobile home system (Iowa Code section 425.28).

t. Iowa disabled and senior citizen property tax and special assessment credit systems (Iowa Code section 425.28).

u. Local option sales and services tax system (Iowa Code section 422.72).

v. New job tax credit system (Iowa Code section 422.20).

- w. Corporate and franchise estimated tax systems (Iowa Code section 422.20).
- x. Hotel and motel tax system (Iowa Code section 422.72).
- y. The work product portion of the hearing officer case files (Iowa Code subsection 22.7(4)).
- z. Permit application and maintenance systems (Iowa Code sections 22.7(6), 452A.63, 422.20, and 422.72).
- aa. Taxpayer contact systems (Iowa Code subsection 22.7(18) and any relevant tax confidentiality sections).
- bb. Centralized payroll and department personnel and payroll systems, including those of the Iowa Lottery, to the extent covered (Iowa Code subsection 22.7(11)).
- cc. Inheritance tax returns, estate tax returns, and generation skipping transfer tax returns (Iowa Code sections 450.68, 450A.12, 450B.7 and 451.12).
- dd. Any other records made confidential by law.

**5.13(3) Authority to release confidential records.** The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

This rule is intended to implement Iowa Code chapters 450, 450A, 450B, and 451.

**701—5.14(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22).

**5.14(1) Retrieval.** Personal identifiers may be used to retrieve information from any of the systems of records that the agency maintains that contain personally identifiable information.

**5.14(2) Means of storage.** Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

**5.14(3) Comparison.** Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

**5.14(4) Comparison with data from outside the agency.** Personally identifiable information in systems of records maintained by the agency may be compared with information from outside the agency when specified by law. This comparison is allowed in situations including:

- a. Determination of any offset of a debtor's income tax refund or rebate for child support recovery or foster care recovery (Iowa Code subsection 421.17(21));
- b. Collection of taxes by collection agencies (Iowa Code subsection 421.17(22));
- c. Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (Iowa Code subsection 421.17(23));
- d. Offset from any tax refund or rebate for any liability owed a state agency (Iowa Code subsection 421.17(29));
- e. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (Iowa Code subsection 421.17(25)).

**5.14(5) Nature and extent.** All of the record systems listed in subrule 5.14(6) contain personally identifiable information concerning matters such as income, property holdings or exchanges, financial transactions, and demographic information such as address and number of dependents.



**5.14(6) Records systems with personally identifiable retrieval.** The agency maintains the systems of records which contain personally identifiable information as enumerated in the following list. Confidential information as described in subrule 5.13(2) is contained in systems described in the following lettered paragraphs of subrule 5.14(6): “b” through “l,” “n,” “o,” “q,” “s,” through “v,” and “x” through “mm.” The legal authority for the collection of the information is listed with the description of the system.

- a. Board of tax review agendas, minutes, and presentation materials (Iowa Code section 421.1);
- b. Centralized payroll and accounting systems (Iowa Code sections 7A.1, 7A.27, 19A.11, 421.17, 421.32, and 421.40);
- c. Corporate income returns, corporate income tax field and office audit systems, related field collections system, and corporate tax error resolution (Iowa Code sections 422.33, 422.41, and 422.85);
- d. Individual income returns, individual income tax field and office audit systems, and related field collections system (Iowa Code sections 422.5, 422.13, and 422.14);
- e. Individual income tax withholding system, IA-W4 system, declaration of estimated tax, and withholding penalty waiver systems (Iowa Code sections 422.15 and 422.16);
- f. Penalty waiver, abatement, and settlement systems (Iowa Code sections 422.25 and 422.28);
- g. Franchise tax returns and audit and collection systems (Iowa Code sections 422.60, 422.66, and 422.85);
- h. Sales and use tax returns, field and office audit and collection systems, sales tax refund examinations system, and sales and use tax penalty waivers systems (Iowa Code sections 422.43, 422.54, and 423.2);
- i. Motor vehicle fuel tax return and error resolution systems, and related field audit and collection systems (Iowa Code chapter 452A);
- j. Inheritance, generation-skipping transfer, qualified use inheritance and estate tax systems, related field and office audit systems, and related field collections systems (Iowa Code sections 450.66, 450.67, 450.71, 450.81, 450.88, 450.94, 450.97, 450A.8, 450A.11, 450A.12, 450B.7, 451.5, 451.11, and 451.12);
- k. Federal and state exchange of information systems for tax administration (Iowa Code sections 422.20 and 422.72);
- l. Cigarette and tobacco tax systems with related office and field audit and field collections system (Iowa Code chapter 453A);
- m. Hearing officer case files (Iowa Code sections 17A.11 to 17A.18);
- n. Property assessor assistance, provisional assessor training, and property assessor and deputy assessor examinations (Iowa Code sections 421.25, 441.5, and 441.8);
- o. Annual assessment sales ratio study system (Iowa Code section 428A.1);
- p. Declaration of value system (Iowa Code section 428A.1);
- q. Central property tax assessments (Iowa Code sections 433.1, 433.2, 434.1, 434.6, 434.7, 434.8, 434.9, 434.10, 434.11, 434.14, 437.2, 437.4, 438.3, 438.4, 438.6, and 438.12);
- r. Real estate transfer tax system (Iowa Code section 428A.1);
- s. Elderly credit mobile home system (Iowa Code section 435.22);
- t. Elderly credit special assessment system and Iowa disabled and senior citizen property tax and rent reimbursement credit system (Iowa Code sections 425.25, 425.26, and 425.27);
- u. Equalization of property appraisals system (Iowa Code subsection 421.17(2));
- v. Police officers’ and firefighters’ retirement system (Iowa Code section 411.20);
- w. Tax policy and interpretation and final orders, decision, and opinion files (Iowa Code section 17A.3);
- x. Equipment and security inventory systems (Iowa Code sections 7A.30 and 421.17(1));
- y. Mailing systems for tax forms and newsletters (Iowa Code subsection 421.17(1));
- z. Permit applications and maintenance systems (Iowa Code subsection 421.17(1));

- aa.* Taxpayer contact systems (Iowa Code subsection 421.17(1));
- bb.* Department personnel, budget, and payroll systems (Iowa Code sections 7A.1, 19A.9(13), 421.17(1), 421.32, and 421.40);
- cc.* Local option sales and services tax system (Iowa Code section 422B.9);
- dd.* Corporate and franchise estimated tax (Iowa Code section 422.85);
- ee.* New jobs tax credit system (Iowa Code subsection 422.33(7));
- ff.* Hotel and motel tax system (Iowa Code section 422A.1);
- gg.* Industrial machinery, equipment, and computers refund system (Iowa Code section 422.47A);
- hh.* Rescinded IAB 12/15/99, effective 1/19/00.
- ii.* Iowa lottery systems for marketing, licensing, security contracts, claims processing, claims payment, and payroll and personnel (Iowa Code sections 99E.9, 99E.11, 99E.12, 99E.16, and 99E.17);
- jj.* Express company tax system (Iowa Code sections 436.3, 436.4, 436.6, and 436.9);
- kk.* Farm machinery and equipment refund system (Iowa Code section 422.47B);
- ll.* Litigation file systems (Iowa Code subsection 421.17(1));
- mm.* Criminal investigation and charge systems (Iowa Code subsection 421.17(1)).

**701—5.15(17A,22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(17A,22). The records listed may contain information about individuals.

1. Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions. (See Iowa Code subsection 421.17(1).)

2. Publications. The agency receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. (See Iowa Code subsection 421.17(1).)

3. Office publications. This agency issues a variety of materials including newsletters, brochures, and pamphlets, press releases, and statistical reports. (See Iowa Code subsection 421.17(1).)

4. Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. (See Iowa Code subsection 421.17(1).)

5. Office manuals. Information in office manuals may be confidential under Iowa Code subsection 17A.2(7), paragraph "f" or other applicable provision of law.

6. Legal library (Iowa Code subsection 421.17(1)).

7. Legislation monitoring system (Iowa Code subsection 421.17(1)).

8. All other records that are not exempt from disclosure by law.

**701—5.16(17A,22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in possession of the agency which are governed by regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges and applicable regulations of the agency.

This rule is intended to implement Iowa Code chapter 22.

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TITLE I  
ADMINISTRATION

CHAPTER 6  
ORGANIZATION, PUBLIC INSPECTION

[Prior to 10/7/87, see Revenue Department[730] Ch 6]

**701—6.1(17A) Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests.**

**6.1(1) *Establishment of the department of revenue and finance.*** By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review and a five-member lottery board established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5. As to the organization and functions of the lottery board, see rules contained in 705—Chapters 1 to 10.

The department of revenue and finance in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

“The Department of Revenue and Finance is dedicated to serving the citizens of Iowa and other public officials, while performing the following missions:

- Collect all taxes due, which any person may be required by law to pay, but no more;
- Conduct the Iowa lottery in an effort to maximize the amount of revenues for the state in a manner that maintains the dignity of the state and the general welfare of its people;
- Manage the state’s financial resources by utilizing generally accepted accounting principles and procedures, by operating cost-effective accounting and payroll systems, by processing claims timely and accurately, and by preparing and issuing financial statements.

“In carrying out these missions, the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees.”

The office of the department is maintained at the seat of government in the Hoover State Office Building, P.O. Box 10460, Des Moines, Iowa 50306. The lottery division maintains an office at 2015 Grand Avenue, Des Moines, Iowa 50312.

The department maintains field offices in six regions of the state and in seven cities outside the state.

**6.1(2) *Organization.*** For ease of administration, the director has organized the department into divisions which are in some instances further divided into bureaus, sections, subsections and units.

**6.1(3) *Methods by which and location where the public may obtain information or make submissions or requests.*** The department of revenue and finance maintains its principal office in the Hoover State Office Building, P.O. Box 10460, Des Moines, Iowa 50306, and maintains regional offices located in Sioux City, Waterloo, Council Bluffs, Des Moines, Cedar Rapids, and Davenport. This affords members of the public two possible alternatives for obtaining information or making submissions or requests depending upon the person’s particular location and the type of information needed.

**a. *Principal office.*** Members of the public wishing to obtain information or make submissions or requests on any matters may do so at the department’s principal office. Applications for permits or licenses may be obtained and submitted at the principal office and any assistance needed in filling out the applications will be provided if the taxpayer so desires. Requests for confidential information should be submitted to the director and the appropriate form will be provided and should be filled out and submitted to the director. Members of the public wishing to inspect information required to be made available to members of the public may do so in the director’s office.

*b. Regional offices.* The regional offices provide an excellent means of aiding taxpayers. Members of the public desiring forms, aid, assistance or other information are encouraged to contact the regional office located in their particular area. However, regional offices do not have facilities for making available all matters available for public inspection under 6.2(17A). The regional offices and auditors do have copies of all rules and will make them available to the public. Members of the public needing forms or needing assistance in filling out forms are encouraged to contact the regional offices.

#### DEPARTMENT OF REVENUE AND FINANCE

The department consists of three entities, which are the department of revenue and finance, which includes the compliance, internal resource management, and state financial management divisions; the state board of tax review; and the lottery division and commission.

#### THE OFFICE OF THE DIRECTOR

The office of the director consists of the director and the following areas within this division: property tax, strategic planning, internal audit, clerk of the hearing section, and public/private partnership. Essential Functions of the Director's Office:

1. The director's office provides overall management of the agency and reviews protest and revocation cases on appeal.
2. The property tax section provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for railroads, electric, water, and pipeline companies.
3. The strategic planning section plans and coordinates the future operations and goals of the department.
4. Provides financial checks and balances within the department.
5. The clerk of the hearing section receives all protests, tracks protests and coordinates protest processing.
6. Public/private partnership provides for a working relationship between the public and private sector.

#### COMPLIANCE DIVISION

The compliance division is led by two coadministrators. These administrators supervise the daily operations of the examination section, audit services, taxpayer services, policy section, investigative audit section, in-state field offices and out-of-state field offices.

Essential Functions of the Compliance Division:

1. Examination, which includes office examination of returns, assessment, and review and approval of refund claims, and which identifies nonfilers and those that underreport income;
2. Audit services, which includes the development and review of audit programs and completed audits, manuals, and guidelines for auditors, and which coordinates the administrative process of protests and protest resolution;
3. Taxpayer services, which is responsible for responding to inquiries from the public, practitioners and other agencies, and drafting brochures and graphics, completes returns, maintains library and Web page, and coordinates public education by the department;
4. Policy, which is responsible for the interpretation of legislation, statutes and cases, develops and maintains rules for the department and monitors tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports;
5. Investigative audit, which is responsible for audits for criminal prosecution, reviews cases for potential prosecution and represents the department in criminal proceedings and depositions;
6. In-state field offices provide assistance to taxpayers concerning procedure and perform audits; and
7. Out-of-state field offices perform audits for all taxes throughout the country from nine locations throughout the United States.

#### INTERNAL RESOURCE MANAGEMENT DIVISION

This division consists of information resources management and employee and financial resources. These sections include administrative services, application design and development, program management, program evaluation, operations, employee resource team, finance, form management, fiscal analysis, reporting, and technical planning and support.

Essential Functions of Internal Resource Management Division:

1. Central accounting, which includes operating budget development, maintenance and reporting;
2. Application development, which includes system analysis, programming, database administration and support;
3. Fiscal analysis and reporting, which includes fact-finding, defining issues, issue resolution, and projection of revenues, and which evaluates fiscal impact of tax legislation and policies on state budget;
4. Forms management, which includes review and performing function of compliance with federal and state law and managing electronic filing programs;
5. Technical planning and support, which includes technical support to the agency on software and hardware issues and which assists in application and development regarding technology-related issues; and
6. Employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service.

#### STATE FINANCIAL MANAGEMENT DIVISION

This division is led by two financial management coadministrators and includes collections (accounts receivable, central collections, field office advanced collections), customer accounts, document processing, data operations and information technology, and accounting bureau, which includes financial reporting and processing and financial systems.

Essential Function of State Financial Management Division:

1. Collections, which includes accounts receivable, central collections, advanced collection field offices and customer accounts;
2. Document processing, which includes preparing tax information for processing, deposits and records;
3. Data entry, which includes entry of all tax forms, files, and databases and which edits taxpayer documents and mailing information;
4. Financial reporting and processing which includes general accepted accounting principles (GAAP) reporting, reporting on the financial condition of the state, daily processing and the income offset program; and
5. Financial systems, which includes maintaining all state accounting programs and systems which includes, but is not limited to, collections, offset, taxes and payroll.

This rule is intended to implement Iowa Code sections 421.1, 421.2, 421.9, 421.14 and 422.1.

**701—6.2(17A) Public inspection.** Effective July 1, 1975, Iowa Code section 17A.3(1) "c" and "d" provides that the department shall index and make available for public inspection certain information. Pursuant to this requirement the department shall:

1. Make available for public inspection all rules;
2. Make available for public inspection and index by subject all written statements of law or policy, or interpretations formulated, adopted, or used by the department in the discharge of its functions;
3. Make available for public inspection and index by name and subject all final orders, decisions and opinions.

Section 17A.3(1)“c” and “d” also excepts certain matters from the public inspection requirement.

Except as provided by constitution or statute, or in the use of discovery or in criminal cases, the department shall not be required to make available for public inspection those portions of its staff manuals, instructions or other statements issued by the department which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

Identifying details which would clearly warrant an invasion of personal privacy or trade secrets will be deleted from any final order, decision or opinion which is made available for public inspection upon a proper showing by the person requesting such deletion as provided in rules 701—7.15(17A) and 7.42(17A).

Furthermore, the department shall not make available for public inspection or disclose information deemed confidential under Iowa Code sections 422.20 and 422.72.

Unless otherwise provided by statute, by rule or upon a showing of good cause by the person filing a document, all information contained in any petition or pleading shall be made available for public inspection.

All information accorded public inspection treatment shall be made available for inspection in the office of the Policy Section, Compliance Division, Department of Revenue and Finance, P.O. Box 10457, Des Moines, Iowa 50306, during established office hours.

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

**701—6.3(17A) Examination of records.** Situations may occur that give rise to the need for state officials, other officers, agents or employees of the state, or other persons based on a court subpoena to review tax returns or information belonging to the department in order to fulfill duties and responsibilities or to assist in an investigation. However, there are guidelines that govern such reviews, which are as follows:

**6.3(1)** Upon the express written approval of the director of revenue and finance or administrator of the compliance division, officers or employees of the state of Iowa may examine state tax returns and information belonging to the department to the extent required as part of their official duties and responsibilities. Written approval will be granted in those situations where the officers or employees of the state of Iowa have (1) statutory authority to obtain information from the department of revenue and finance and (2) the information obtained is used for tax administration purposes. Where information is obtained from the department of revenue and finance on a regular basis, the director of revenue and finance may enter into a formal agreement with the state agency or state official who is requesting the information. The agreement will cover the conditions and procedures under which specific information will be released. The following persons do not need written approval from the director of revenue and finance or the administrator of the compliance division to examine state information and returns:

1. Assistant attorneys general assigned to the department of revenue and finance.
2. Local officials acting as representatives of the state in connection with the collection of taxes or in connection with legal proceedings relating to the enforcement of tax laws.
3. The child support recovery unit of the department of human services and other state agencies and subdivisions of the state that are set forth in Iowa Code section 422.17 as amended by 1999 Iowa Acts, chapter 152, section 1, to secure a taxpayer's name and address per the terms of an interagency agreement. (Also see Iowa Code section 252B.9)



4. Workforce development department per the terms of an interagency agreement.
5. The legislative fiscal bureau regarding sample individual income tax information to be used for statistical purposes. (Also see Iowa Code section 422.72(1).)
6. The auditor of state, to the extent that the information is necessary to complete the annual audit of the department as required by Iowa Code section 11.2. (Also see Iowa Code section 422.72(1).)

Tax information and returns will not be released to officers and employees of the state who do not meet the requirements set forth above. (See Letter Opinions, November 25, 1981, Richards to Bair, Director of Revenue, and March 4, 1982, Richards to Johnson, Auditor, and Bair, Director of Revenue.)

The director may disclose state tax information, including return information, to tax officials of another state or the United States government for tax administration purposes provided that a reciprocal agreement exists which has laws that are as strict as the laws of Iowa protecting the confidentiality of returns and information.

**6.3(2)** The director of revenue and finance must provide state tax returns and return information in response to a subpoena issued by the court based on Rule of Criminal Procedure 5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of Iowa Code chapter 124, "Controlled Substances," or 706B, "Money Laundering." Affidavits accompanying the subpoenas and the information provided by the director of revenue and finance must remain a confidential record and may only be disseminated to a prosecutor, peace officer involved in the investigation, or to the taxpayer who filed the information. In addition, the court in connection with the filing of criminal charges or institution of a forfeiture action may also receive such confidential information.

A person who knowingly files a false affidavit with the director to secure information or who divulges information received under this rule in any manner prohibited by this rule commits a serious misdemeanor.

This rule is intended to implement Iowa Code sections 252B.9, 421.18, 421.19, 422.20, 422.72, and 452A.63.

**701—6.4(17A) Copies of proposed rules.** A trade or occupational association, which has registered its name and address with the department of revenue and finance, may receive, by mail, copies of proposed rules. Registration of the association's name and address with the department is accomplished by written notification to the Administrator, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. In the written notification, the association must designate, by reference to rule 701—7.36(421,17A), the type of proposed rules and the number of copies of each rule it wishes to receive. If the association wishes to receive copies of proposed rules not enumerated in rule 701—7.36(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of such rules. A charge of 20 cents per single-sided page shall be charged to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

This rule does not prevent an association which has registered with the department in accordance with this rule from changing its designation of types of proposed rules or number of copies of proposed rules which the association desires to receive. If an association makes such changed designation, it must do so by written notification to the Administrator, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 17A.4 as amended by 1998 Iowa Acts, chapter 1202.

**701—6.5(17A) Regulatory analysis procedures.** Any small business as defined in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] or organization of small businesses which has registered its name and address with the department of revenue and finance shall receive by mail a copy or copies of any proposed rule which may have an impact on small business. Registration of the business's or organization's name and address with the department is accomplished by written notification to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. In the written notification, the business or organization must state that it wishes to receive copies of rules which may have an impact on small business, the number of copies of each rule it wishes to receive, and must also designate, by reference to rule 701—7.36(421,17A), the types of proposed rules it wishes to receive. If the small business or organization of small businesses wishes to receive copies of proposed rules not enumerated in rule 701—7.36(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of the rules. A charge of 20 cents per single-sided page shall be imposed to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

The administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons may request issuance of a regulatory analysis by writing to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319. The request shall contain the following information: the name of the persons qualified as a small business and the name of the small business or the name of the organization as stated in its request for registration and an address; if a registered organization is requesting the analysis, a statement that the registered organization represents at least 25 persons; the proposed rule or portion of the proposed rule for which a regulatory analysis is requested; the factual situation which gives rise to the business's or organization's difficulties with the proposed rule; any of the methods for reducing the impact of the proposed rule on small business contained in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] which may be particularly applicable to the circumstances; the name, address and telephone number of any person or persons knowledgeable regarding the difficulties which the proposed rule poses for small business and other information as the business or organization may deem relevant.

This rule is intended to implement Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202].

**701—6.6(422) Retention of records and returns by the department.** The director may destroy any records, returns, reports or communications of a taxpayer after they have been in the custody of the department for three years, or at such later time when the statute of limitations for audit of the returns or reports has expired. The director may destroy any records, returns, reports or communications of a taxpayer before they have been in the custody of the department for three years provided that the amount of tax and penalty due has been finally determined.

This rule is intended to implement Iowa Code section 422.68.

**701—6.7(68B) Consent to sell.** In addition to being subject to any other restrictions in outside employment, self-employment or related activities imposed by law, an official of the department of revenue and finance may only sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the authority of the department of revenue and finance when granted permission subsequent to completion and approval of an Iowa department of revenue and finance application to engage in outside employment. The application to engage in outside employment must be approved by the official's immediate supervisor, division administrator, and the administration division administrator. Approval to sell may only be granted when conditions listed in Iowa Code section 68B.4 are met.

This rule is intended to implement Iowa Code section 68B.4.

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CHAPTER 48  
COMPOSITE RETURNS

**701—48.1(422) Composite returns.** For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1987, a partnership, limited liability company, S corporation, or trust may be allowed or be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1999, a partnership, limited liability company, S corporation, or trust may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years beginning on or after January 1, 1995, professional athletic teams may be allowed or required to file a composite return and pay the tax due on behalf of nonresident team members.

This rule is intended to implement Iowa Code section 422.13 as amended by 1999 Iowa Acts, chapter 151.

**701—48.2(422) Definitions.** For the purposes of this chapter:

*“Employee”* means a nonresident member of a professional athletic team as defined in subrule 701—40.46(1).

*“Partner”* includes a member of a limited liability company which is treated as a partnership for tax purposes.

*“Taxpayer”* means a partnership, S corporation, professional athletic team, or trust which files a return and pays the tax on behalf of the nonresident partners, shareholders, employees, or beneficiaries.

*“Tax year”* means the tax year of the partners, shareholders, employees, or beneficiaries included in the composite return.

This rule is intended to implement Iowa Code section 422.13.

**701—48.3(422) Filing requirements.** A composite return may be allowed or required to be filed based upon the following:

1. The composite return must include all nonresident partners, shareholders, employees, or beneficiaries unless the taxpayer can demonstrate which nonresident partners, shareholders, employees, or beneficiaries are filing separate income tax returns because the partner, shareholder, employee or beneficiary has Iowa source income other than that which may be reported on a separate composite return, or has elected to file an Iowa individual income tax return. Nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident has less than the minimum statutory filing amount. For example, for 1993 the minimum income from Iowa sources before a nonresident is required to file an Iowa individual income tax return is \$1,000 of income attributed to Iowa sources as determined by applying the allocation and apportionment provisions of 701—Chapter 54 to the nonresident's prorated share of the entity's income. In addition, nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident does not have more income from Iowa sources than the amount of one standard deduction for a single taxpayer plus an amount of income necessary to create a tax liability at the effective tax rate on the composite return sufficient to offset one personal exemption. For example, for 1993 a standard deduction for a single individual is \$1,330 and at the maximum tax rate of 9.98 percent, \$200 of income is required to offset the \$20 personal exemption, while at a 5 percent tax rate \$400 income is required. The taxpayer must include a list of all nonresident partners, shareholders, employees, or beneficiaries who are filing separate income tax returns. The list must also include the address and social security number or federal identification number of the nonresident partners, shareholders, employees, or beneficiaries. Requesting permission to file a composite return is an election which may not be withdrawn after the due date of the return (considering any extension of time to file), but the nonresidents may, as an individual or as a group, withdraw their election at any time prior to the due date (considering any extension of time to file).

2. Income of partners, shareholders, employees, or beneficiaries whose state of residence is not known by the taxpayer must be included in the composite return.

3. Income of partners in publicly traded limited partnerships held in street names by brokers must be included in the composite return unless the taxpayer can demonstrate that the partner is an Iowa resident.

4. A taxpayer who has been granted permission to file a composite return shall continue to file composite returns unless the taxpayer notifies the department in writing that the taxpayer wishes to discontinue filing composite returns. The notice shall be filed with the Iowa Department of Revenue and Finance, Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306, before the due date of the return for the tax year for which the change in filing is to be made.

A taxpayer who was required to file a composite return for the immediately preceding taxable year is required to file a composite return unless permission is given to discontinue filing a composite return.

5. Each nonresident partner, shareholder, employee, or beneficiary whose income is included in the composite return must have the same tax year, which must be the tax year of the majority of the nonresident partners, shareholders, employees, or beneficiaries. Those nonresident partners, shareholders, employees, or beneficiaries who are not included in the composite return must file separate individual income tax returns.

This rule is intended to implement Iowa Code section 422.13.

**701—48.4(422) When the application for permission to file a composite return must be filed.** The application must be filed no later than the due date (not including any extension of time to file) of the return for the tax year for which a composite return is to be filed.

The application letter must include the name, address, and federal employer's identification number of the partnership, S corporation, limited liability company, employer, or trust which will be filing the composite return on behalf of the nonresident partners, shareholders, members, employees, or beneficiaries.

The application is to be filed with the Iowa Department of Revenue and Finance, Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code section 422.13.

**701—48.5(422) The director may in accordance with rule 701—48.3(422) require the filing of a composite return under the following conditions.**

1. The director may require the filing of a composite return if the nonresident partners, shareholders, or beneficiaries do not file individual income tax returns and pay the tax due.

2. Where some of the nonresident partners, shareholders, or beneficiaries file individual income tax returns and pay the tax due, but other nonresident partners, shareholders, or beneficiaries do not file individual returns, the director may require a composite return which includes the Iowa taxable income of those nonresident partners, shareholders, or beneficiaries who did not file individual returns.

This rule is intended to implement Iowa Code section 422.13.

**701—48.6(422) Determination of composite Iowa income.** Because a composite return is filed on behalf of the nonresident partners, shareholders, employees, or beneficiaries, it must be based upon the tax year of the majority of its partners, shareholders, employees, or beneficiaries. The composite return must be filed on Form IA 1040C, "Composite Iowa Individual Income Tax Return." Attach schedules as necessary to explain the return. For the purposes of this rule, federal income means federal ordinary income (loss) from trade or business activities plus those items of income which flow through separately less expense items which flow through separately to the partners, shareholders, or beneficiaries joining in the filing of a composite return.

1. Adjustments to federal income. For partnerships and trusts, make those adjustments to federal income set forth in Iowa Code section 422.7 except subsections 4 to 8, 12 to 15, 17, and 19 to 21. For S corporations, make those adjustments to federal income set forth in Iowa Code section 422.35.

2. Apply the allocation and apportionment provisions of 701—Chapter 54 or rule 701—40.46(422) for allocation of compensation paid to nonresident employees of professional athletic teams.

3. Deduct one standard deduction equal to the amount allowed a single taxpayer, not to exceed the amount of income attributable to Iowa, for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

4. For tax years beginning on or after January 1, 1989, deduct an amount in lieu of a federal tax deduction based upon the following schedule.

0 — \$ 49,999	No deduction
\$ 50,000 — \$ 99,999	5% of net income attributable to Iowa
\$100,000 — \$199,999	10% of net income attributable to Iowa
\$200,000 and over	15% of net income attributable to Iowa

5. A net operating loss carryback or carryforward is allowed. See 701—subrule 40.18(3). In lieu of a net operating loss carryback, the taxpayer may elect to carry the loss forward.

This rule is intended to implement Iowa Code section 422.13.

**701—48.7(422) Determination of composite Iowa tax.**

**48.7(1)** The tax will be computed in accordance with Iowa Code section 422.5, including the alternative minimum tax as though a resident.

**48.7(2)** Deduct from the computed tax one personal exemption credit of \$20 for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

**EXAMPLE:** For tax year 1991, X corporation is an S corporation, all of whose shareholders but one are nonresidents who have elected to join in the filing of a composite return. The three electing shareholders' share of income or loss is 87 percent of the corporation's total income. The S corporation's net income is \$800,000, and income items totaling \$6,000 and expenses of \$500,000 flow directly to the shareholders. The corporation has 25 percent of its sales with an Iowa destination. The corporation has tax preferences and adjustments of \$475,000. The composite tax liability would be computed as follows:

Net income attributable to electing shareholders $\$800,000 \times 87\%$	\$696,000
Add: electing shareholders' share of income items which flow separately to shareholders $\$6,000 \times 87\%$	5,220
Less: electing shareholders' share of expenses which flow separately to shareholders $\$500,000 \times 87\%$	<u>&lt;435,000&gt;</u>
Income attributable to electing shareholders	\$266,220
Times the Iowa business activity ratio	<u>25%</u>
Net income attributable to Iowa	\$ 66,555
Less: one standard deduction per shareholder $3 \times \$1,280$	< 3,840>
Federal tax deduction $\$66,555 \times 5\%$	<u>&lt; 3,328&gt;</u>
Iowa taxable income	\$ 59,387
Computed tax	\$ 4,515
Less: one personal exemption credit per shareholder $3 \times \$20$	<u>&lt; 60&gt;</u>
Iowa tax	<u><u>\$ 4,455</u></u>



The alternative minimum tax would be computed as follows:

Iowa taxable income	\$ 59,387
Add: tax preferences and adjustments attributable to electing shareholders times Iowa activity ratio $\$475,000 \times 87\% \times 25\%$	103,313
	<u>\$162,700</u>
Less: exemption	<u>35,000</u>
Minimum taxable income	\$127,700
times minimum tax rate 7.5%	<u>.075</u>
Computed minimum tax	\$ 9,578
Less regular tax	<u>&lt; 4,455&gt;</u>
Minimum tax liability	<u><u>\$ 5,123</u></u>

This rule is intended to implement Iowa Code section 422.13.

**701—48.8(422) Estimated tax.** Taxpayers filing composite returns are not required to make payments of estimated tax. However, if taxpayers desire to make estimated payments, the estimated payments should be made on Form IA 1040ES using the partnership's, S corporation's, or trust's identification number assigned by the department in lieu of the social security number.

This rule is intended to implement Iowa Code section 422.13.

**701—48.9(422) Time and place for filing.**

**48.9(1)** A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the taxpayer's taxable year, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or legal holiday, the composite return is due the first business day following the Saturday, Sunday, or legal holiday. If a return is placed in the mails, properly addressed, postage paid, and post-marked, on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Income Tax Return Processing, Department of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319.

**48.9(2)** Extension of time for filing composite returns. If the taxpayer has paid at least 90 percent of the tax required to be shown due by the due date and has not filed a return by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment should be made with the Iowa Tax Voucher form. This form can be requested from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

To determine whether or not at least 90 percent of the tax was "paid" on or before the due date, the aggregate amount of tax credits applicable on the return, plus the tax payments made on or before the due date, are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax and minimum tax. The tax credits applicable are the credits set out in Iowa Code sections 422.10, 422.11A, 422.11B, 422.11C, 422.12 and 422.111.

If the aggregate of the tax credits and the tax payments are equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed. However, the taxpayer will still be subject to statutory interest on any tax due when the return is filed.

Any tax elections, such as the election to carry forward a net operating loss occurring in the tax year, will be considered to be valid in instances when the return is filed within the six-month extended period after the due date. The fact that the taxpayer has paid less than 90 percent of the tax required to be shown due will not invalidate any tax elections made on the return, if the return is filed within the six-month extended period.

**48.9(3)** Rescinded IAB 2/1/95, effective 3/8/95.

This rule is intended to implement Iowa Code section 422.13.

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CHAPTER 52  
FILING RETURNS, PAYMENT OF TAX AND  
PENALTY AND INTEREST

[Prior to 12/17/86, Revenue Department[730]]

**701—52.1(422) Who must file.** Every corporation, organized under the laws of Iowa or qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

For tax years beginning on or after January 1, 1989, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real or tangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

For tax years beginning on or after January 1, 1995, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. For tax years beginning on or after January 1, 1999, every corporation doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

**52.1(1) Definitions.**

*a. Doing business.* The term “doing business” is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be “doing business.” In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

For the period from July 1, 1986, through December 31, 1988, the term “doing business” does not include placing of liquor in bailment pursuant to 1986 Iowa Acts, chapter 1246, section 603, if this is the corporation’s sole activity within Iowa. Any activities by corporate officers or employees in Iowa in addition to bailment are “doing business” and will subject the corporation to corporation income tax.

*b. Representative.* A person may be considered a representative even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

*c. Tangible property having a situs within this state.* The term “tangible property having a situs within this state” means that tangible property owned or used by a foreign corporation is habitually present in Iowa or it maintains a fixed and regular route through Iowa sufficient so that Iowa could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S. Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller*, 202 U.S. 584, 26 S. Ct. 714, 50 L.Ed. 1155 (1906); *American Refrigerator Transit Company v. State Tax Commission*, 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review*, Woodbury County, 210 N.W.2d 828.

d. *Intangible property located or having a situs within Iowa.* Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term "intangible property located or having a situs within Iowa" means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

52.1(2) *Corporate activities not creating taxability.* Public Law 86-272, 15 U.S.C.A., Sections 381-385, in general prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and, if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272. Public Law 86-272 does not extend to those corporations which sell services, real estate, or intangibles in more than one state or to domestic corporations.

a. If the only activities in Iowa of a foreign corporation selling tangible personal property are those of the type described in the noninclusive listing below, the corporation is protected from the Iowa corporation income tax law by Public Law 86-272.

- (1) The free distribution by salespersons of product samples, brochures, and catalogues which explain the use of or laud the product, or both.
- (2) The lease or ownership of motor vehicles for use by salespersons in soliciting orders.
- (3) Salespersons' negotiation of a price for a product, subject to approval or rejection outside the taxing state of such negotiated price and solicited order.
- (4) Demonstration by salesperson, prior to the sale, of how the corporation's product works.
- (5) The placement of advertising in newspapers, radio, and television.
- (6) Delivery of goods to customers by foreign corporation in its own or leased vehicles from a point outside the taxing state. Delivery does not include nonimmune activities, such as picking up damaged goods.
- (7) Collection of state or local-option sales taxes or state use taxes from customers.
- (8) Audit of inventory levels by salespersons to determine if corporation's customer needs more inventory.
- (9) Recruitment, training, evaluation, and management of salespersons pertaining to solicitation of orders.
- (10) Salespersons' intervention/mediation in credit disputes between customers and non-Iowa located corporate departments.

For tax years beginning on or after January 1, 1995, S corporations which are subject to tax on built-in gains under Section 1374 of the Internal Revenue Code or passive investment income under Section 1375 of the Internal Revenue Code are subject to Iowa corporation income tax on this income to the extent received from business carried on in this state or from sources in this state.

a. The starting point for computing the Iowa tax on built-in gains is the amount of built-in gains subject to federal tax after considering the federal income limitation. The starting point for computing the capital gains subject to Iowa tax is the amount of capital gains subject to federal tax. The starting point for computing the passive investment income subject to Iowa income tax is the amount of passive investment income subject to federal tax. To the extent that any of the above three types of income exist for federal income tax purposes, they are combined for Iowa income tax purposes.

b. No adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation. The 50 percent of federal income tax and Iowa corporation income tax deducted in computing federal net income are adjustments to the Iowa net income which flows through to the shareholders.

c. The allocation and apportionment rules of 701—Chapter 54 apply to nonresident shareholders if the S corporation is carrying on business within and without the state of Iowa.

d. Any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain, capital gains, or passive investment income of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, after the year of the net operating loss, the amount of the net recognized built-in gain shall be treated as taxable income.

e. Except for estimated and other advance tax payments and any credit carryforward under Iowa Code section 422.33 arising in a taxable year for which the corporation was a C corporation no credits shall be allowed against the built-in gains tax or the tax on capital gains or passive investment income.

For tax years beginning after 1996, Iowa recognizes the federal election to treat subsidiaries of a parent corporation that has elected S corporation status as “qualified subchapter S subsidiaries” (QSSSs). To the extent that, for federal income tax purposes, the incomes and expenses of the QSSSs are combined with the parent’s income and expenses, they must be combined for Iowa tax purposes.

**52.1(6) Exempted corporations and organizations filing requirements.**

a. *Exempt status.* An organization that is exempt from federal income tax under Section 501 of the Internal Revenue Code, unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code, is exempt from Iowa corporation income tax except as set forth in paragraph “e” of this subrule. The department may, if a question arises regarding the exempt status of an organization, request a copy of the federal determination letter.

b. *Information returns.* Every corporation shall file returns of information as provided by Iowa Code sections 422.15 and 422.16 and any regulations regarding information returns.

c. *Annual return.* An organization or association which is exempt from Iowa corporation income tax because it is exempt from federal income tax is not required to file an annual income tax return unless it is subject to the tax on unrelated business income. The organization shall inform the director in writing of any revocation of or change of exempt status by the Internal Revenue Service within 30 days after the federal determination.

d. *Tax on unrelated business income for tax years beginning prior to January 1, 1988.* Where a corporation or organization is subject to the federal income tax imposed by Section 511 of the Internal Revenue Code on unrelated business income, such corporation or organization is not subject to Iowa corporation income tax on the unrelated business income. Opinion of the Attorney General, Griger to Craft, February 13, 1978.

*e. Tax on unrelated business income for tax years beginning on or after January 1, 1988.* A tax is imposed on the unrelated business income of corporations, associations, and organizations exempt from the general business tax on corporations by Iowa Code section 422.34, subsections 2 through 6, to the extent this income is subject to tax under the Internal Revenue Code. The exempt organization is also subject to the alternative minimum tax imposed by Iowa Code section 422.33(4).

The exempt corporation, association, or organization must file Form IA 1120, Iowa Corporation Income Tax Return, to report its income and complete Form IA 4626 if subject to the alternative minimum tax. The exempt organization must make estimated tax payments if its expected income tax liability for the year is \$1,000 or more.

The tax return is due the last day of the fourth month following the last day of the tax year and may be extended for six months by filing Form IA 7004 prior to the due date. For tax years beginning on or after January 1, 1991, the tax return is due on the fifteenth day of the fifth month following close of the tax year and may be extended six months by filing Form IA 7004 prior to the due date.

The starting point for computing Iowa taxable income is federal taxable income as properly computed before deduction for net operating losses. Federal taxable income shall be adjusted as required in Iowa Code section 422.35.

If the activities which generate the unrelated business income are carried on partly within and partly without the state, then the taxpayer should determine the portion of unrelated business income attributable to Iowa by the apportionment and allocation provisions of Iowa Code section 422.33.

The provisions of 701—Chapters 51, 52, 53, 54, 55 and 56 apply to the unrelated business income of organizations exempt from the general business tax on corporations.

**52.1(7) *Income tax of corporations in liquidation.*** When a corporation is in the process of liquidation, or in the hands of a receiver, the income tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such corporations, and must be filed at the same time and in the same manner as required of other corporations.

**52.1(8) *Income tax returns for corporations dissolved.*** Corporations which have been dissolved during the income year must file income tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a corporation dissolves and disposes of its assets without making provision for the payment of its accrued Iowa income tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

This rule is intended to implement Iowa Code sections 422.21, 422.32, 422.33 as amended by 1999 Iowa Acts, chapter 151, 422.34, 422.34A and 422.36.

#### **701—52.2(422) Time and place for filing return.**

**52.2(1) *Returns of corporations.*** A return of income for all corporations must be filed on or before the due date. The due date for all corporations excepting cooperative associations as defined in Section 6072(d) of the Internal Revenue Code is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

**52.9(4) Tax treatment of disposal of investment within two years.** If during the tax year the investment or a portion of the investment in the seed capital fund or the qualified business is disposed of prior to having been owned by the taxpayer for two years, the tax is increased by the amount of the credit taken on the investment or portion of the investment. For example, a corporation made a \$10,000 investment for 100 shares in a qualified seed capital fund in December 1991 and claimed a \$1,000 seed capital income tax credit on the 1991 return of the corporation. In August 1992, the taxpayer sold 50 of the shares for \$4,000. On the taxpayer's 1992 return, the taxpayer must increase the tax liability by \$500 to account for the credit that is recaptured because of the taxpayer's failure to hold the seed capital shares for the two-year holding period.

If a taxpayer makes an investment in a seed capital fund or a qualified business in a tax year and disposes of the investment during the tax year, no tax credit will be allowed and recapture of the credit will not be necessary.

**52.9(5) Carryover of the seed capital credit.** If the seed capital credit for which the taxpayer qualifies is greater than the state income tax liability of the taxpayer for the tax year in which the investment was made, the portion of this credit which exceeds the liability may be carried over to the subsequent tax year. If the remaining seed capital is not used in the subsequent tax year, the credit may be carried over to the income tax returns for the following four tax years or until the credit is exhausted. In a situation where a taxpayer's seed capital credit is greater than the taxpayer's liability for the year the credit arises and the next five years, the unused portion of the credit expires.

**52.9(6) Investments eligible for the seed capital credit.** If a taxpayer makes an investment in securities offered by a seed capital fund or a qualified business, the taxpayer will be eligible for the seed capital income tax credit only if the investment is in an unaffiliated and unrelated person, partnership, or corporation.

**52.9(7) Statement of qualified investment to be included in the income tax return.** A taxpayer who wants to claim a seed capital income tax credit for an investment in a qualified seed capital fund or qualified business must include a copy of a signed statement from a corporate officer or designated agent of the seed capital fund or qualified business with the corporation income tax return to attest to the corporate investment in the fund or qualified business. The signed statement must provide a statement to the effect that the person who signed the statement is subject to the penalty of perjury if the statement on the form is not accurate.

**52.9(8) Seed capital funds or qualified businesses may be subject to audit.** Seed capital funds or qualified businesses which qualify investors for the seed capital income tax credit will be subject to audit by the department of revenue and finance to ascertain if all qualifications and conditions for the credit have been met.

**52.9(9) Filing annual reports with the department.** The issuer of shares qualifying for the seed capital fund income tax credit must file a copy of its annual report with the department for the first year in which the shares are offered as well as annual reports for the following two years. These reports are to be sent to the address shown below:

Iowa Department of Revenue and Finance  
Audit and Compliance Division  
Hoover State Office Building  
P.O. Box 10456  
Des Moines, Iowa 50306

This rule is intended to implement Iowa Code section 422.33.

**701—52.10(15) New jobs and income program tax credits.** For tax years ending after May 1, 1994, for programs approved after May 1, 1994, an investment tax credit under Iowa Code section 15.333 and an additional research activities credit under Iowa Code section 15.335 are available to an eligible business.

**52.10(1) Definitions:**

- a. "*Eligible business*" means a business meeting the conditions of Iowa Code section 15.329.
- b. "*Improvements to real property*" includes the cost of utility lines, drilling wells, construction of sewage lagoons, parking lots and permanent structures. The term does not include temporary structures.
- c. "*Machinery and equipment*" means machinery used in manufacturing establishments and computers except point-of-sales equipment as defined in Iowa Code section 427A.1. The term does not include computer software.
- d. "*New investment directly related to new jobs created by the location or expansion of an eligible business under the program*" means the cost of machinery and equipment purchased for use in the operation of the eligible business which has been depreciated in accordance with generally accepted accounting principles and the cost of improvements to real property.

For the cost of improvements to real property to be eligible for an investment tax credit, the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332. Replacement machinery and equipment and additional improvements to real property placed in service during the period of property tax exemption by an eligible business qualify for an investment tax credit.

**52.10(2) Investment tax credit.** An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this subrule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- d. Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.



**52.10(3) Research activities credit.** An additional research activities credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, and section 15.335.

#### **701—52.11(422) Refunds and overpayments.**

**52.11(1) to 52.11(6) Reserved.**

**52.11(7) Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974.** If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or 60 days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

**52.11(8) Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending on or after July 1, 1980.** If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or 30 days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

**52.11(9) Computation of interest on refunds resulting from net operating losses or net capital losses for tax years ending on or after April 30, 1981.** If the amount of tax is reduced as a result of a net operating loss or a net capital loss carryback, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or the first day of the second calendar month following the actual payment date, whichever is the later.

**52.11(10) For refund claims received by the department after June 11, 1984.** If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

**52.11(11) Overpayment—interest accruing before July 1, 1980.** If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred prior to April 30, 1980, interest shall accrue from 60 days after the date of payment, at the statutory rate, to the date refunded.

**52.11(12) Interest commencing on or after January 1, 1982.** See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

**52.11(13) Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.** If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred on or after April 30, 1980, and before April 30, 1981, interest shall accrue from 30 days after the date of payment or due date of the return, whichever is the later, at the statutory rate, to the date refunded. Date of payment means the date the return is filed.

**52.11(14) Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.** If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

**701—52.12(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code section 422.33 shall be deducted in the following sequence.

1. Seed capital credit.
2. New jobs credit.
3. Investment tax credit.
4. Research activities credit under Iowa Code section 15.335.
5. Alternative minimum tax credit.
6. Research activities credit.
7. Motor fuel credit.
8. Estimated tax and payments with extensions.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

**701—52.13(422) Livestock production credits.** For rules relating to the livestock production income tax credit refunds see rule 701—43.8(422).

This rule is intended to implement 1996 Iowa Acts, chapter 1197, sections 19, 20, and 21.

**701—52.14(422) Enterprise zone tax credits.** An eligible business in an enterprise zone may take the following tax credits:

1. New jobs credit from withholding as provided in Iowa Code section 15.331 (see rule 701—52.8(422)).
2. Investment tax credit as provided in Iowa Code section 15.333 (see rule 701—52.10(15)).
3. Research activities credit as provided in Iowa Code section 15.335 (see rule 701—52.10(15)).

This rule is intended to implement Iowa code section 15E.186 created by 1997 Iowa Acts, House File 724.

**701—52.15(15E) Eligible housing business tax credit.** A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 1998 Iowa Acts, chapter 1179.

New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, or estate or trust.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of 1998 Iowa Acts, chapter 1179, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 1998 Iowa Acts, chapter 1179. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

This rule is intended to implement 1998 Iowa Acts, chapter 1179.

**701—52.16(422) Franchise tax credit.** For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro-rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33, as amended by 1999 Iowa Acts, chapter 95.

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**CHAPTER 53**  
**DETERMINATION OF NET INCOME**

[Prior to 12/17/86, Revenue Department[730]]

**701—53.1(422) Computation of net income for corporations.** Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 53.2(422) to 53.13(422) and 53.17(422) to 53.20(422). The remaining provisions of this rule and 53.14(422) to 53.16(422) shall also be applicable in determining net income.

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.

**701—53.2(422) Net operating loss carrybacks and carryovers.** In years beginning after December 31, 1954, net operating losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes for the same period, provided the following adjustments are made:

**53.2(1) Additions to income.**

a. Refunds of federal income taxes due to net operating loss and investment credit carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs. (See Revenue Ruling 69-372 for similar federal treatment of state income tax.)

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

b. Iowa income tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

**53.2(2) Reductions of income.**

a. Federal income tax paid or accrued during the year of the net operating loss shall be reflected to the extent allowed by law as an additional deduction in the year of the loss.

b. Iowa income tax refunds reported as income for federal return purposes in the loss year shall be reflected as reductions of income in the year of the loss.

c. Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

**53.2(3)** If a corporation does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 53.2(1) and 53.2(2).

*a.* After making the adjustments to federal taxable income as provided in 53.2(1) and 53.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—54.5(422), 54.6(422) and 54.7(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

*b.* The net operating loss attributable to Iowa, as determined in rule 53.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

*c.* For tax years beginning after August 5, 1997, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

*d.* For tax years beginning on or after January 1, 1998, for a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss. If the taxpayer has elected for federal income tax purposes to carry a net operating loss from the trade or business of farming back two years, the taxpayer must carry the Iowa net operating loss from the trade or business of farming back two years. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

When the taxpayer carries on more than one trade or business within a corporate shell or files a consolidated Iowa corporation income tax return, the income or loss from each trade or business must be combined to determine the amount of net operating loss that exists and whether it is a net operating loss from the trade or business of farming.

**EXAMPLE 1.** The taxpayer carries on the trade or business of farming and also the trade or business of trucking for entities outside the corporate shell. For the tax year, the taxpayer had a net operating loss from farming of \$25,000 and net income from trucking of \$10,000 for a net operating loss for the year of \$15,000 which is a net operating loss from the trade or business of farming which may be carried back 5 tax years and forward 20 tax years.

**EXAMPLE 2.** The taxpayer carries on the trade or business of farming and the trade or business of construction. For the tax year, the taxpayer had income from farming of \$12,000 and a net operating loss from construction of \$45,000 for a net operating loss for the year of \$33,000 which is a net operating loss from the trade or business of construction which may be carried back 2 tax years and forward 20 tax years.

**EXAMPLE 3.** The taxpayer carries on the trade or business of farming and the trade or business of construction. During the tax year, the taxpayer had a net operating loss of \$18,000 from farming and a net operating loss of \$9,000 from construction for a total net operating loss of \$27,000. Of this net operating loss, \$18,000 is from farming and may be carried back 5 years and forward 20 years and \$9,000 is from construction and may be carried back 2 years and forward 20 years.

**53.2(4)** No part of a net operating loss for a year which the corporation was not subject to the imposition of Iowa corporation income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss. To be deductible, a net operating loss must be sustained from that portion of the corporation's trade or business carried on in Iowa.

**53.2(5)** No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

**53.2(6)** The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a part of a consolidated income tax return for federal income tax purposes, but a separate return for Iowa income tax purposes, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 1999 Iowa Acts, chapter 95.





**701—53.20(422) Employer social security credit for tips.** Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994. No social security tax credit is allowed on the Iowa corporation income tax return.

This rule is intended to implement Iowa Code section 422.35 as amended by 1995 Iowa Acts, chapter 152.

**701—53.21(422) Deduction of gifts, grants, or donations.** For tax years ending on or after July 1, 1998, to the extent that any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust made on or after that date has not been deducted in computing federal taxable income, the amount may be deducted for Iowa income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 1998 Iowa Acts, House File 2119.

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CHAPTER 54  
ALLOCATION AND APPORTIONMENT

[Prior to 12/17/86, Revenue Department[730]]

**701—54.1(422) Basis of corporate tax.** Iowa Code section 422.33 imposes a tax on all corporations incorporated under the laws of Iowa and upon every foreign corporation doing business in Iowa. For tax years beginning on or after January 1, 1999, Iowa Code section 422.33 imposes a tax on all corporations doing business in Iowa. For corporations or other entities subject to the tax (as corporations), the tax is levied and collected only on such income as may accrue or be recognized to the corporation from business done or carried on in the state plus net income from certain sources without the state which by law follows the commercial domicile of the corporation.

If a corporation carries on its trade or business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The corporation will be presumed to be carrying on its business entirely within the state of Iowa if its sales or other activities are carried on only in Iowa, even though it received income from sources outside the state in the form of interest, dividends, royalties and other sources of income from intangibles. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

For tax years beginning on or after January 1, 1986, the income from the operation of a farm may be allocated and apportioned within and without the state if the business activities of the corporation are carried on partly within and partly without the state. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

See subrule 54.1(4) for the definition of carrying on a trade or business partly within and partly without the state.

**54.1(1) Definition—operation of a farm.** A taxpayer is engaged in the operation of a farm if the taxpayer cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of Iowa Code section 422.33(1), a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the operation of a farm. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the operation of a farm only if the taxpayer participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the operation of a farm. A taxpayer cultivating or operating a farm for recreation or pleasure rather than a profit is not engaged in the operation of a farm. For the purpose of this subrule, the term “farm” is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A taxpayer is engaged in the operation of a farm if the taxpayer is a member of a partnership engaged in the operation of a farm. The operation of a farm includes the sale of products produced on the farm. The purchase of livestock for feeding purposes and subsequent resale is part of the operation of a farm.

**54.1(2) Definition—property used in the operation of a farm.** Property used in the operation of a farm means land and buildings which are used in the operation of a farm. The land must be used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. For the purposes of this subrule, the term livestock includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive furbearing animals, chickens, turkeys, pigeons, and other poultry. It does not include fish, frogs, reptiles, and the like. Land used for the sustenance of livestock includes land used for grazing such livestock.

Property used in the operation of a farm means property used in the unitary operations of a farm whether or not the acreage is contiguous.

**54.1(3) Definition—unitary operations of a farm.** Unitary operations of a farm means the operation of one or more tracts of land or the conducting of one or more types of farming operations where the operation of a farm within Iowa is integrated with, dependent upon or contributes to the operations of a farm outside the state.

**54.1(4) Definition—carrying on a trade or business partly within and partly without the state.** Carrying on a trade or business partly within and partly without the state means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a corporation is carrying on a trade or business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of a past or future tax year have no bearing on the current year.

The following nonexclusive list of activities on a non-de minimus basis determined by aggregating all activities if physically carried on in a regular, systematic, and continuing basis by corporate officers or employees or representatives in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

The term “representative” means independent contractors, agents, brokers, and other individuals or entities who act on behalf of or at the direction of the corporation. A person may be considered a “representative” even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

- a. The free distribution of product samples, brochures, and catalogues which explain the use of or laud the product, or both.
- b. Negotiation of a price for a product.
- c. Demonstration of how the corporation’s product works.
- d. Delivery of goods to customers by the corporation in its own or leased vehicles.
- e. Audit of inventory levels.
- f. Recruitment, training, evaluation, and management of employees, officers, or representatives.
- g. Intervention/mediation in credit disputes between customers and Iowa-located corporate departments.
- h. Use of hotel rooms and homes for business meetings.
- i. Assistance to wholesalers in obtaining suitable displays for products.
- j. Furnishing of display racks at no charge.
- k. Advice to sellers on the art of displaying goods to the public.
- l. Rental of hotel rooms for short-term display of products.
- m. Mere forwarding of customer questions, concerns, or problems.
- n. Installation or assembly of the corporate product.
- o. Ownership or lease of real estate by the corporation and used for a business purpose.
- p. Solicitation of orders for, or sale of, services or real estate.
- q. Solicitation of sales or sale of tangible personal property (as opposed to solicitation of orders).
- r. Maintenance of a stock of inventory.
- s. Existence of an office or other business location.

- t. Managerial activities.
- u. Collections on regular or delinquent accounts.
- v. Technical assistance and training given to purchaser and user of corporate products.
- w. The repair or replacement of faulty or damaged goods.
- x. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.
- y. Rectification of or assistance in rectifying any product complaints or shipping complaints, for example.
  - z. Delivery of corporate merchandise inventory to corporation's distributors or dealers on consignment.
    - aa. Maintenance of personal property.
    - ab. Participation in recruitment, training, monitoring, or approval of servicing distributors, dealers, or others where purchasers of corporation's products can have such products serviced or repaired.
    - ac. Inspection or verification of faulty or damaged goods.
    - ad. Inspection of the customer's installation of the corporate product.
    - ae. Research.
    - af. Employees' or officers' use of part of their homes or other places as an office if the corporation pays for such use.
    - ag. The use of samples for replacement or sale; storage of such samples at home or in rented space.
    - ah. Removal of old or defective products.
    - ai. Verification of the destruction of damaged merchandise.
    - aj. Repair or warranty work on company goods or products after sale.
    - ak. Any other activities carried on in advancement, promotion, or fulfillment of the business of the corporation.

Some of the above activities may not create a tax liability in another state because of the protections afforded by Public Law 86-272, 15 USCA Sections 381-385, which prohibit the taxation of a corporation if its only activities in the state are the solicitation of orders which are approved and filled by shipment or delivery from outside the state. Irrespective of whether the corporation is taxable in another state, it may apportion its income if it carries on one or a combination of the above activities in a regular and continuing basis by corporate officers or employees in at least one other state.

The mere shipment of goods via common carrier or the United States Postal Service to non-Iowa destinations does not constitute doing business partly within and partly without the state. *Irvine Co. v. McColgan*, 26 Cal.2d 160, 157 P.2d 847 (1945); *W.J. Dickey & Sons, Inc. v. State Tax Commission*, 212 Md. 607, 131 A.2d 277 (1957); *State of Georgia v. Coca-Cola Bottling Co.*, 214 Ga. 316, 104 S.E.2d 574 (1958); *E.F. Johnson Company v. Commissioner of Taxation*, 224 N.W.2d 150 (Minnesota 1975); 1980 O.A.G. 588, and *Kuehn to Bair #85-5-53(L)*.

For tax years beginning on or after January 1, 1989, a corporation domiciled in this state whose trade or business is carried on partly within and partly without the state or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real or tangible property located or having a situs within and without the state.

The term "tangible property having a situs without the state" means that a tangible property is habitually present in a state other than Iowa or it maintains a fixed and regular route through another state sufficient that the other state could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller*, 202 U.S. 584, 26 S.Ct. 714, 50 L.Ed. 155 (1906); *American Refrigerator Transit Company v. State Tax Commission*, 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review*, Woodbury County, 210 N.W.2d 828.

For tax years beginning on or after January 1, 1995, a corporation whose trade or business is carried on partly within and partly without the state of Iowa or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real, tangible, or intangible property located or having situs within and without the state.

This rule is intended to implement Iowa Code section 422.33(1) as amended by 1999 Iowa Acts, chapter 151.

**701—54.2(422) Allocation or apportionment of investment income.**

**54.2(1)** The classification of investment income by the labels customarily given them, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents, and royalties shall be apportioned as business income to the extent the income was earned as a part of a corporation's unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes*, 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.*, 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether investment income is part of a corporation's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of investment income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of corporations in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

**54.2(2)** All business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include business investment income where the election would result in an understatement of net income reasonably attributable to Iowa.

For a tax year which begins on or after January 1, 1984, if the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

If the taxpayer makes an election to include investment income deemed to be business income in the computation of the denominator of the business activity ratio, the computation of the business activity ratio is as follows:

*a.* Interest income from accounts receivable. Accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair*, supra.

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue*, 414 N.W.2d 113 (Iowa 1987).

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule "statutory method of apportionment" means the Iowa single sales factor formula set forth in Iowa Code section 422.33, subsection 2, paragraph "b," and the apportionment methods set forth in 701—Chapter 54.

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the audit division if the request is the result of an audit or by the policy section of the technical services division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing its return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.33.

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**EASEMENTS**

Blufflands, conservation 571—24.9

Dams, construction 567—72.3(2)*b*

Highways, land acquisition 761—116.1(9), 116.4

Land use, restriction, recycled property 567—137.7(2)*e*, 137.7(3)Pipelines 199—9.2(2), 9.3(2), 9.4(2)*a*, 10.2(1)*h*, 10.2(2), 10.3(4), 10.14, *see also*  
*PIPELINES*

Primary road access control 761—ch 112

Utilities

*See also Pipelines above*

Communications 199—25.2(4)

Electric 199—11.4(6), 11.5, 24.4(1)*h*, 25.2(4)

Public lands/waters 571—13.7

Wastewater disposal 567—69.5(1)*b*, 69.6(1)*h*

Wells, construction 567—49.6(4)

**ECONOMIC DEVELOPMENT DEPARTMENT**

Address 261—1.5, 41.4, 51.4(1), 57.7, 58.6, 64.6, 72.7, 72.8, 80.6

Agricultural products/processes, financial assistance 261—50.2(2), ch 57

Appeals 261—23.15(12), 25.9(10), 28.9(9), 53.16(3)

Board

*See also City Development Board below**Generally* 261—1.2, 1.3

Community economic betterment account (CEBA) program 261—53.2, 53.3, 53.6

City development board 261—21.2(2), ch 37

COG (councils of government) assistance 261—ch 44

Community builder program 261—ch 80; 761—163.1, 163.8(2)*i*, 163.9(2)*h*, 163.9(6)*c*,  
163.11(2)*a*Community development block grant 261—chs 21, 23, *see also GRANTS: Block*

Community economic betterment account (CEBA) program

*Generally* 261—ch 53Address 261—53.6(3)*b*

Administration 261—21.2(2), 50.2(2)

Appeals 261—53.16(3)

Application, rank/award 261—53.6—53.12

Audits 261—53.12

Business opportunities/product development 261—53.9

*ECONOMIC DEVELOPMENT DEPARTMENT (cont'd)**Community economic betterment account (CEBA) program*

- Contracts 261—53.11(3), 53.13, 53.16(1)
  - Deadlines 261—53.6(4), 53.9(4), 53.12, 53.16
  - Default, repayment/collection 261—53.14, 53.15
  - Definitions 261—53.2
  - Eligibility, applicants/projects 261—53.4—53.6, 53.11
  - Financial management 261—53.13
  - Forms 261—53.8(2), 53.9(2), 53.10(1)c, 53.16(6)
  - Project review committee 261—53.3
  - Records, retention/access 261—53.13(3)
  - Reports 261—53.13(4), 53.16
  - Small business 261—53.7—53.9
  - Venture project components 261—53.10
- Declaratory orders 261—ch 103
- Director 261—1.4, 71.2(1), 75.4, 75.5; 541—10.3
- Divisions
- Generally* 261—1.4(4)
  - Administration 261—chs 71, 72, 80, 100–103
  - Business development 261—chs 50–58
  - Community/rural development 261—chs 21, 23–25, 37–39, 41, 43, 44
  - International 261—chs 67, 68
  - Tourism 261—chs 62–64
- Enterprise zones 261—ch 59, *see also HOMES, HOUSING*
- Entrepreneurial ventures assistance (EVA), *see Funds below*
- Exports, trade assistance 261—67.2(2), ch 68
- Funds
- See also Grants below; Loan Programs below*
  - Career education programs, accelerated (ACE) 261—ch 20
  - Disaster recovery 261—23.14
  - Entrepreneurial ventures assistance (EVA) 261—ch 60
  - Environmental criteria 261—80.86–80.91
- Housing
- Assistance program, local (LHAP) 261—ch 28
  - Tax increment financing (TIF) 261—ch 26
- Job training, *see Job Training Programs below*
- Physical infrastructure assistance program (PHAP) 261—ch 61
- Workforce development 261—chs 4, 75

## ECONOMIC DEVELOPMENT DEPARTMENT (cont'd)

## Grants

*See also Loan Programs below*

Agriculture 261—ch 57

Apprenticeship, high technology 261—ch 17, *see also Job Training Programs below*

Colleges/universities 261—ch 17, 38.9, ch 41

Community 261—chs 21, 23–25, 39, 41, 43–45, 65, *see also Home Investment Partnership Program below; Main Street Program below; GRANTS: Block*

Disabilities, employment/training 261—ch 30

Entrepreneurs, disabled 261—ch 56

Homeless 261—21.2(1), chs 24, 28, 29

Housing 261—chs 23–25, 28, 45

Research, renewable fuels/coproducts 261—57.2, 57.6

Review system 261—ch 38

Small business 261—ch 55

Welcome center program 261—63.4(4)

High technology apprenticeship program, *see Job Training Programs below*

Historic preservation, *see Main Street Program below*

Home investment partnership program, *see Housing Fund (HOME/CDBG) below*

Homeless, *see Grants above*

Housing and Urban Development (HUD) 261—23.2, ch 25, 38.7

Housing assessment and action planning program 261—ch 45

Housing assistance program, local (LHAP) 261—ch 28

Housing fund (HOME/CDBG)

Activities, eligibility 261—25.4

Administration 261—21.2(1)

Appeals 261—25.9(10)

Application 261—25.3, 25.5–25.7

Assistance types 261—25.4(2)

Compliance 261—25.9(1,8–10)

Contracts 261—25.9(2,6,7)

Definitions 261—25.2

Funds, allocation 261—25.8

Industrial new jobs training program 261—ch 5

Intergovernmental review system

Clearing houses, *generally* 261—ch 38

Definitions 261—38.2

*ECONOMIC DEVELOPMENT DEPARTMENT (cont'd)*  
*Intergovernmental review system*

- Federal assistance 261—38.6, 38.9
- Forms 261—38.6, 38.8, 38.9
- Housing programs, application procedures 261—38.7
- Purpose 261—38.1
- Iowa jobs training Act program 261—ch 7
- Job training programs
  - See also DISABILITIES: Employment; GRANTS: Job Training Partnership Act (JTPA) Program*
  - Administration 261—5.11, 7.24(4,5)
  - Agreements 261—5.4, 7.17, 7.27(4), 7.28(6), 20.6
  - Application 261—7.11, 7.18—7.20, 7.31, 20.5
  - Apprenticeship 261—7.4(4,8), 7.7, 7.17, 7.19, 7.20(3), 7.21, 7.25, 7.26, ch 17,  
*see also Default this subheading below; Forms this subheading below*
  - Authority 261—5.1, 7.1
  - Business networks 261—7.3, 7.4(5,7), 7.6, 7.20(2), 7.23, 7.24
  - Certificates 261—5.7, 5.11
  - Community college responsibilities 261—5.4—5.10, 5.13(4,5), ch 7, 20.4
  - Consortiums 261—7.6, 7.8, 7.20(2), 7.21(5), 7.22
  - Contracts 261—7.21, 7.22(2), 7.23(5), 7.24(10), 7.27
  - Coordination, relevant agencies 261—5.4(4)
  - Costs 261—5.4(5—7), 7.9, 7.10, 7.20(1)n, 7.24(4,5,15)
  - Credits, new jobs
    - Supplemental 261—5.4(2), 5.13, 59.6(3)a
    - Withholding 261—5.6, 59.6(3)a
  - Default 261—7.22(3,4), 7.23(7,8), 7.24(11,12), 7.26(8,9), 7.27—7.30
  - Definitions 261—5.3, 7.3, 17.2, 20.2
  - Eligibility 261—7.13—7.16, 20.3
  - Equipment 261—5.4(8), 7.9(4)
  - Forms 261—5.4(1), 5.6(1), 7.19(2), 7.21(1), 7.22(1,2,5), 7.23(4,5,9), 7.28(1,3), 7.32
  - Funding 261—5.5(1), 5.7, 5.8, chs 7, 17, 20.4, 23.9, ch 75, *see also Credits, New Jobs this subheading above*
  - Notifications 261—5.4(3), 5.6, 5.7, 7.27(4), 7.28(1,3), 7.30
  - Property tax 261—5.5, 5.8
  - Purpose, *generally* 261—5.2, 7.2, 17.1, 20.1
  - Records 261—7.31
  - Reports 261—ch 4, 5.4(3), 5.9, 7.22(5), 7.23(9), 7.24(13,14)
  - Loan programs 261—7.18, 7.23, 7.24, 7.27—7.31, chs 25, 28, 38, 43, 50.2(2), chs 51, 53, 55, 57, 61, 65

*ECONOMIC DEVELOPMENT DEPARTMENT (cont'd)*

## Logos, Iowa

Iowa products 261—ch 72

Vendors, licensure 261—ch 64

## Main street program

Administration 261—21.2(2), 39.3, 43.5

Advisory council 261—39.3(6)

Applications 261—39.3(4,5), 39.4

Audits/records 261—39.8

Definitions 261—39.2, 43.2

Eligibility 261—39.3(3), 39.4, 43.3

Forms 261—39.11

Funding 261—39.5–39.8, ch 43

Loans, linked investments 261—ch 43

Noncompliance 261—39.10

Performance reviews 261—39.9

Purpose 261—39.1, 43.1

Selection criteria 261—39.6, 39.7

Marketing/research 261—50.2(1), chs 57, 63, 64, 67, 68, 71.2(4), ch 72

New business opportunities program 261—53.6(3)e, 53.9, *see also Community Economic Betterment Account (CEBA) Program above*

## New jobs/income program

Agreement 261—58.3, 58.11

Application 261—58.3, 58.6, 58.9, 58.10

Compliance 261—58.10, 58.13, 58.14

Definitions 261—58.2

Eligibility 261—58.7, 58.8

Taxation, credits/exemptions 261—58.4, 58.13(3), 58.14, 59.6(3), 59.13(4)

## Organization 261—ch 1

## Records

*Generally*, public/fair information 261—ch 100

Address 261—100.3(1), 100.15(6)

Confidential 261—100.9(2), 100.11, 100.12, 100.13(2,3), 100.14, 100.15

Data processing 261—100.14

Definitions 261—100.1, 100.10(1)

Disclaimer 261—100.16

Disclosure 261—100.9–100.11

Fees 261—100.3(7)

*ECONOMIC DEVELOPMENT DEPARTMENT (cont'd)*  
*Records*

- Open 261—7.31, 100.9(1), 100.13(1), 100.15
- Personally identifiable information 261—100.14
- Personnel 261—100.14(1)
- Rule-making 261—100.15(1), 101.13
- Renewable fuels/coproducts 261—ch 57
- Report, department procurements 541—10.3
- Rule making 261—100.15(1), chs 101, 102
- Rural/community planning/development 261—21.2(3), ch 41
- School to career program 261—ch 11
- Self-employment
  - Assistance 261—ch 52
  - Loan program 261—50.2(2), ch 51
- Shelters, emergency 261—21.2(1), ch 24
- Small business
  - See also SMALL BUSINESS*
  - Community economic betterment account (CEBA) program 261—53.6(3)e, 53.7, 53.8
  - Grants
    - See also Community Economic Betterment Account (CEBA) Program this subheading above*
    - Targeted 261—50.2(2), ch 55
  - Job training, *see Job Training Programs above*
  - Loan programs
    - See also Community Economic Betterment Account (CEBA) Program this subheading above*
    - Self-employment 261—ch 51
    - Targeted 261—ch 55
  - Resource office (SBRO) 261—50.2(3)
  - Self-employment business assistance 261—ch 52
  - Targeted
    - Financial assistance 261—50.2(2), ch 55
    - Procurement 261—ch 54
- Tourism 261—62.2, chs 64, 65
- Welcome center program 261—62.2, ch 63

**EDUCATION**

- See also COLLEGES AND UNIVERSITIES; REGENTS BOARD; SCHOOLS; TEACHERS*
- Abuse, child 281—ch 102

*EDUCATION (cont'd)*

Accreditation, schools **281**—ch 12, 21.11

Activities, extracurricular, *see Extracurricular Activities below*

## Administration

Community colleges **281**—21.2

Director, state **281**—1.2, 36.17, 41.112, 41.113(4)

Grants, women/minorities advancement **281**—ch 94

Licensure/endorsement, administrators **281**—12.4(4), 79.14; **282**—14.22, 14.23,\*  
16.8–16.10, 17.7, ch 20

Records **281**—12.4(11)

Standards **281**—12.3; **282**—13.5(3), 13.7(3)

Adult education **281**—21.4(3), 21.4(6)c, ch 23

Advisory committees **281**—1.1(5), 71.3(3); **282**—14.29\*

Advisory council, youth services **281**—66.4(16)

Affirmative action **281**—ch 95

Appeals, *see Hearings/Appeals below*

## Area education agencies

Accounting, uniform **281**—63.15–63.18

Administrator **282**—14.23(4),\* 17.7

Affirmative action/equal employment opportunity **281**—ch 95

Arbitration **621**—7.5

Asbestos inspection **875**—82.6(6)

Bus routes **281**—43.1, 43.2

Conservation education grants **281**—ch 68

Definitions **281**—70.2, 70.3, 71.2, 72.2

Depositories **781**—chs 3, 12–15

Director **281**—41.5, 41.9(1), 41.9(3)a, 41.12(9), 41.22(5)c,d, 41.27, 41.52, 41.110(2)c,  
41.132(6), 63.6(3)

Evaluator approval, in-service **282**—20.5(2)

Gifted/talented student placement **281**—59.6–59.8

Human relations programs **282**—14.29, 14.31\*

Improvement projects **281**—5.15(28), ch 62

Media services **281**—63.8, ch 70, 72.4(6), *see also Media below*

Medicaid providers **441**—77.28, 78.32, 79.1(2), 80.2(2)ab

Procurements, bid solicitation **261**—54.10

## Programs/services

*See also Special Education: Programs/Plans below*

Access **281**—31.4(1)f, 31.4(4)c, 31.5(5)

Accreditation **281**—ch 72

\*See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01

## EDUCATION (cont'd)

## Area education agencies

- Beginning teacher induction 281—83.3
  - Development 281—ch 71
  - Dropouts 281—61.6
  - Juvenile shelter/detention homes 281—ch 63
  - Plan 281—72.3, 72.9, 72.10(2)
  - Special education 281—31.4(1)f, ch 41, 63.6, 72.4(5), *see also Special Education below*
  - Standards 281—72.4
  - Teacher education excellence (Phase III) 281—ch 91
  - Youth services 281—66.6
- Records/reports 281—5.14(1), 5.15(8,14,24,25), 41.12(5), 41.18(5), 41.48, 41.133, 72.10
- Staff 281—12.4(15)
- Telecommunications network, *see Telecommunications below*
- Area schools, *see COLLEGES AND UNIVERSITIES: Community Colleges*
- Athletics, *see Extracurricular Activities below*
- At-risk student program 281—12.5(13), chs 64, 65, 67
- Board
- Educational examiners
    - Authority 282—1.2(4)
    - Complaints 282—ch 11
    - Contracts 282—ch 12
    - Declaratory orders 282—ch 3, 5.15(6)
    - Definitions 282—1.1, 11.1, 13.4
  - Educators
    - Ethics 282—12.2, 12.3
    - Standards, competency 282—ch 13
  - Hearings/appeals 282—11.2(3), 11.7—11.16
  - Licensure, *see Licenses/Endorsements below*
  - Members 282—1.2(2), 12.3(5)
  - Records
    - Generally, public/fair information* 282—ch 5
    - Addresses 282—5.3(1), 5.15(5)
    - Confidential 282—5.9(2), 5.10—5.12, 5.13(2), 5.14, 5.15
    - Data processing 282—5.14, 5.15(2,4)
    - Definitions 282—5.1, 5.10(1)
    - Disclaimer 282—5.16
    - Disclosure 282—5.9—5.11



*EDUCATION (cont'd)**Board**Educational examiners**Records*Fees **282—5.3(7)**Open **282—5.9, 5.13(1), 5.15**Personally identifiable information **282—5.14, 5.15(6)**Rule-making **282—5.15(1)**Rule making **282—ch 4**State **281—1.1**Buses, school **281—5.14(3,4), 5.15(13), 17.9(1), chs 43, 44, see also BUSES**Career education **261—chs 11, 20; 281—5.14(12), 5.15(18), 12.5(7), chs 46, 48**Certification/endorsement, *see Licenses/Endorsements below*Child development coordinating council **281—ch 64**Coaches **281—36.15(6); 282—ch 10, 14.18, 14.20(1), 14.32,\* 16.7(6), ch 19, see also Extracurricular Activities below**Community colleges, *see COLLEGES AND UNIVERSITIES*Continuing, *see specific profession*Counselors **281—41.94(2), ch 66; 282—14.18, 14.20(5,6), 14.26,\* 16.7(3), 16.9(6)**

## Curricula/programs

*See also specific programs*Community colleges **261—ch 17; 281—21.4, 21.12**Credit **281—12.5(15)**Definitions **281—12.2, 12.5(14,15)**Elementary/secondary schools **281—12.3(9), 12.5, 12.6, 12.8, chs 15, 26, 46, 48, 59–68**Extracurricular, *see Extracurricular Activities below*Juvenile homes **281—ch 63**Postsecondary **281—22.4**Private instruction **281—31.2(1)a**Special education **281—ch 41, see also Special Education below**Teacher education **281—chs 77, 78, 91; 282—14.27–14.31,\* 17.11; 283—ch 17; 681—2.12, 2.37, see also TEACHERS**Definitions **281—6.2, 12.2, 12.4(7–9), 12.5(14,15,18), 17.2, 22.1, 33.1, 36.1, 48.2, 56.23(1), 61.2, 62.2, 63.2, 64.2, 65.2, 66.2, 67.2, 68.4, 70.3, 71.2, 78.2, 83.1, 84.2, 91.3, 95.2, 96.2, 97.1, 102.2; 282—1.1, 11.1, 13.4, see also Special Education below**Delinquents **281—5.15(26), ch 63; 441—151.42, 151.81–151.87**

## Department

*See also Special Education below*Addresses **281—1.3(4,5)***\*See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01*

*EDUCATION (cont'd)**Department*

- Adjudicative proceedings, emergency 281—6.22
- Contested cases, *see Hearings/Appeals below*
- Declaratory orders 281—ch 3, 5.15(6)
- Director, state 281—1.2, 12.8(4)c(4), 36.17, 41.113(4)
- Hearings, *see Hearings/Appeals below*
- Organization 281—1.3(1)
- Public broadcasting division 281—1.3(1)g
- Records, *see Records below*
- Rule making 281—ch 2, 5.15(1), 5.16“3”
- Discrimination 281—12.1(1), 12.5(4,8), 17.6(2), 66.4(14); 282—14.30(2),\*  
*see also Minorities below*
- Driver/safety education
  - Automobile 281—26.1–26.6
  - Community colleges, drinking driver 281—21.30–21.32
  - Motorcycle 281—26.9
  - Motorized bicycle 281—26.8
  - Records 281—5.14(2,14)
  - Taxation deduction 701—41.5(5)c
  - Teachers 281—26.1, 26.8(4), 26.9(4,6); 282—14.21(6),\* ch 21
- Dropouts 281—5.15(17), ch 61
- Early intervention program 281—12.5(8)
- Educational excellence program 281—12.5(7)
- Employees, financial assistance 581—15.10
- Endowment funds, savings plan trusts, taxation 701—53.21, 59.22
- English, second language program 281—ch 60; 282—14.20(4)\*
- Enrollment
  - Dual 281—17.10(2), 31.4(2,3), 31.4(4)b, 31.4(5), 31.5, 31.7(3), 36.15(5)b, 41.98(2)b;  
751—7.8
  - Homeless 281—ch 33
  - Increases, on-time funding 289—ch 7
  - Open 281—6.17(7), ch 17, 31.6, 36.15(4)
  - Postsecondary 281—ch 22, 97.2(5)
  - Records 281—5.15(10,15,20)
  - Reports
    - Infrastructure, sales tax 281—96.2, 96.3
    - Supplementary weighting 281—97.3
  - Shared time 281—22.5, 36.15(5), 97.2(7)
  - Supplementary weighting 281—ch 97

\*See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01

*EDUCATION (cont'd)*

## Extracurricular activities

*See also Coaches above; Special Education below*

Agreements, cooperative **281—36.15(5)b**, 36.20

Awards **281—36.14(3)**

Board, executive **281—36.4**, 36.9, 36.15(3), 36.16

Civil defense projects **281—43.39**

Conferences, athletic **281—ch 37**

Eligibility **281—17.8(2,6)**, 31.5(3,4), 36.14–36.16, 36.18(5,6), 36.19, 36.20

Fees **281—31.4(4)b**

Finances/records **281—36.6–36.8**, 36.10–36.13, 43.9

## Participation

Nonpublic enrollees **281—31.5(3,4)**, 36.15(5)*b,d*

Nonschool teams **281—36.15(7)**

Standards **281—12.5(5)f(3)**, 12.6

Summer camps/clinics **281—36.15(6)**

Transportation **281—43.9–43.11**

Funds/grants **261—ch 20**; **281—ch 7**, 12.3(10), 12.5(17,18), 21.45, 21.58–21.62, 21.67–21.70, 31.4(3), ch 60, 63.16, 63.17, chs 64–68, 83, 91, 94, 96; **289—ch 7**; **349—1.18–1.23**, 1.26, 1.31; **441—chs 10, 94**; **701—ch 108**; **781—ch 16**, *see also Special Education below; Tuition below; GRANTS*

Gifted/talented, programs **281—12.5(12)**, ch 59

Global **281—12.5(11)**

Graduation **281—12.1(7)**, 12.3(5)

Grants, *see Funds/Grants above; GRANTS*

Guidance services, *see Counselors above*

Handicapped, *see DISABILITIES*

Health services **281—12.3(7)**, 12.5(3)*e*, 12.5(4)*e*, 12.5(5)*e*, 12.5(6); **282—16.1(3)a**, *see also Special Education: Services below*

Hearings/appeals **281—5.14(20,22)**, ch 6, 7.5, 36.17, 43.24, 56.14, 56.23(14)*a,e*, 56.23(16)*e*, 64.22, 64.23, 65.19, 65.20, 67.18, 67.19, 83.7, 84.5; **282—5.14(3)**, 11.7–11.16, 17.10, *see also Special Education: Appeals/Hearings below*

High school equivalency (GED) tests **281—5.15(23)**, ch 32

Homeless **281—ch 33**

Home school, *see Instruction, Private below*

Human relations programs **282—14.27–14.31\***

Improvement projects **281—5.15(28)**, ch 62

Instruction, private **281—17.10(2,3)**, ch 31, *see also Private/Nonpublic Schools below*

\**See IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01*

*EDUCATION (cont'd)*

- Juvenile shelter care/detention homes **281**—5.15(26), ch 63
- Law enforcement training, *see* *LAW ENFORCEMENT ACADEMY*
- Lead professionals **641**—70.4, 70.5
- Leaves of absence **581**—14.6, 14.10
- Libraries/librarians **282**—16.7(1), 16.9(4), *see also* *Media below; LIBRARIES*
- Licenses/endorsements **282**—chs 9, 10, 14–18, 20, *see also* *Special Education: Endorsements below; TEACHERS*
- Loans, *see* *LOANS*
- Lunch program **281**—5.15(11), ch 58
- Media  
Centers/services **281**—63.8, ch 70  
Specialists **281**—41.9(3)*k*; **282**—14.20(8–10),\* 15.3“1,” 15.3(4), 16.7(2), 16.9(5)
- Medical, *see* *PHYSICIANS AND SURGEONS*
- Merged areas, *see* *COLLEGES AND UNIVERSITIES: Community Colleges*
- Minorities **281**—5.15(15), 17.6(2), chs 94, 95, *see also* *Discrimination above*
- Organizations, *see* *Extracurricular Activities above*
- Physical education **281**—12.5(4)*f*, 12.5(5)*f*, 12.5(6); **282**—14.18, 14.21(15)\*
- Postsecondary education, high school students **281**—ch 22, 97.2(5)
- Principals **281**—12.4(5–7)
- Private/nonpublic schools **281**—chs 12, 31, 36.15(5)*b–d*, 36.20(3), ch 68, 102.5, ch 103; **701**—41.5(5)*f*
- Psychologists **281**—41.9(3)*h*; **282**—15.3“1,” 15.3(8)
- Records  
*Generally*, public/fair information **281**—ch 5, 56.22, 56.23  
Address **281**—5.3(1), 56.23(3)*a*, 56.23(15)*b,c*  
Audits **281**—41.12(5), 41.52, 41.133  
Board **281**—5.15(2)  
Confidential **281**—5.9(2), 5.10–5.12, 5.13(2), 5.14, 5.15, 56.22, 56.23(9)*b*, 56.23(10–12), 56.23(13)*b*, 56.23(14,15)  
Data processing **281**—5.14, 56.23(14)  
Definitions **281**—5.1, 5.10(1), 56.23(1,10)  
Disclaimer **281**—5.16, 56.23(16)  
Disclosure **281**—5.9–5.11, 56.23(9–13)  
Fees **281**—5.3(7), 6.16, 56.23(3)  
Open **281**—5.9, 5.13(1), 5.15, 56.23(9)*a*, 56.23(13)*a*  
Personally identifiable information **281**—5.14, 41.31(6,7), 56.23(13)*b*(9), 56.23(14)  
Personnel **281**—5.14(1,16), 56.23(13)*b*(9)“1,” 56.23(14)*a*  
Rule-making **281**—5.15(1), 56.23(15)*a*

\**See* IAC 6/3/98 for amendments to 282—ch 14, effective 8/31/01

## EDUCATION (cont'd)

## Records

Schools, programs/employees/students **281**—5.14, 5.15(8,10–15,17,19–22), 12.3(6), 33.4; **641**—7.7(1)*b*

Special education, *see Special Education below*

Vocational rehabilitation cases **281**—56.21

Recruitment program, women/minorities **281**—ch 94

## Special education

Agencies, *generally* **281**—41.5, 41.12, 41.30, 41.31, 41.33, 41.35, 41.37–41.40, 41.59–41.62, 41.64, 41.70, 41.73, 41.74, 41.102, 41.104–41.110, 41.135, 41.143(1), *see also Area Education Agencies (AEA) this subheading below; Local Education Agencies (LEA) this subheading below*

Appeals/hearings **281**—5.14(20), 41.22(5), 41.33, 41.80(4), 41.106, 41.107, 41.109(5), 41.112–41.125

Area education agencies (AEA) **281**—31.4(1)*f*, 41.3, 41.5, 41.12(5), 41.18, 41.20, 41.22, 41.23, 41.26, 41.47, 41.48, 41.50–41.54, 41.75(2), 41.77, 41.83, 41.98, 41.106(1), 41.109(3,6), 41.110, 41.128, 41.132, 41.134, 63.6, *see also Area Education Agencies: Director above*

Bureau **281**—1.3(1)*e*(5)

Class size **281**—41.27(2)*d*, 41.84(1)

Complaints **281**—5.14(10), 41.51, 41.105, 41.125

Compliance **281**—41.18(4), 41.135, 41.141–41.144

Confidentiality **281**—41.12(11)*k*, 41.30, 41.31, 41.37, 41.52, 41.96(2), 41.110(3)

Consultants **281**—41.9(3)*c*, 41.100(7), 41.132(7); **282**—15.3“1,” 15.3(1)

Contractual agreements **281**—41.3(2), 41.12(8,10), 41.88, 41.128, 41.132(2)

Costs **481**—41.3(3), *see also Evaluations this subheading below; Funds this subheading below*

Definitions **281**—41.5, 41.6, 41.9, 41.10(2), 41.29, 41.59, 41.96, 41.103(1), 41.109(1), 41.110(1), 41.112

Department responsibilities **281**—41.12(10), 41.22(4,5), 41.23(2), 41.27, 41.41, 41.43, 41.44, 41.105, 41.106, 41.110(4,5), 41.135(2), 41.141, 41.143, 41.144

## Directors

Area agencies, *see Area Education Agencies above*

State **281**—41.113(4)

Disabilities **281**—5.14(6–11), 5.15(15), 21.4(4), 41.3(9), 41.5, 41.15(4), 41.22(1)*d*, 41.25, 41.37, 41.48(4), 41.56, 41.67(5), 41.70(7), 41.73, 41.84(1)*a,b*, 41.108, 41.110, 41.143, 63.6; **282**—15.2, *see also Endorsements this subheading below*

Early childhood (ECSE) **281**—41.5, 41.75, 41.84(1)*b*, 41.132(8)

Eligibility **281**—41.5, *see also Evaluations this subheading below*

Emergencies/disasters **281**—41.25(3)

*EDUCATION (cont'd)**Special education*

## Endorsements

*Generally* 281—41.8; 282—ch 15

Behavioral disorders 282—15.2(1)

Conditional license 282—15.4

Disabled, mildly 282—15.2(13,14)

Early childhood 282—15.2(9)

Hearing impairment 282—15.2(6)

Instructional 282—15.2(12)

Learning disabilities 282—15.2(4)

Mental disabilities 282—15.2(2,3)

## Multicategorical

Resource teacher 282—15.2(8)

Special class/integration 282—15.2(10)

Physically handicapped 282—15.2(5)

Supervisors 282—15.3“1,” 15.3(5,10)

## Support personnel

*Generally* 282—15.3

Audiologist 282—15.3“1,2,” 15.3(7)

Consultant 282—15.3“1,” 15.3(1)

Coordinator, work experience 282—15.3“1,” 15.3(6)

Director 282—15.3(11)