

## COMMERCE, DEPARTMENT OF[181]

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NOTE: For the rules of divisions under this Department “umbrella,” see Alcoholic Beverages Division[185], Banking Division[187], Credit Union Division[189], Insurance Division[191], Professional Licensing and Regulation Division[193], Savings and Loan Division[197], Utilities Division[199]

### CHAPTER 1 ORGANIZATION AND OPERATION

- 1.1(546,17A) Purpose
- 1.2(546,17A) Scope of rules
- 1.3(546,17A) Waiver
- 1.4(546,17A) Duties of the department
- 1.5(546,17A) Definitions
- 1.6(546,17A) Central offices and communications
- 1.7(546,17A) Custodians of records, filings and requests for public information
- 1.8(546,17A) Division administrators’ responsibilities

### CHAPTER 2 PETITIONS FOR RULE MAKING

- 2.1(17A,546) Petition for rule making
- 2.2(17A,546) Briefs
- 2.3(17A,546) Inquiries
- 2.4(17A,546) Agency consideration

### CHAPTER 3 DECLARATORY RULINGS

- 3.1(17A,546) Petition for declaratory ruling
- 3.2(17A,546) Briefs
- 3.3(17A,546) Inquiries
- 3.4(17A,546) Agency consideration
- 3.5(17A,546) Refusal to issue ruling
- 3.6(17A,546) Contents of declaratory ruling—effective date
- 3.7(17A,546) Effect of a declaratory ruling



CHAPTER 1  
ORGANIZATION AND OPERATION

**181—1.1(546,17A) Purpose.** This chapter describes the organization and operation of the department of commerce (hereafter referred to as the “department”), including the offices where, and the means by which any interested person may obtain public information and make submittals or requests.

**181—1.2(546,17A) Scope of rules.** The rules for the department of commerce are promulgated under Iowa Code chapters 17A and 546 and shall apply to all matters before the department. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the various divisions of the department from any duty under the laws of this state.

**181—1.3(546,17A) Waiver.** The purpose of these rules is to facilitate the business before the department and to promote a just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided for by law, may be waived by the department to prevent undue hardship to a party to a departmental proceeding or to a person transacting business with the department. The reasons for granting a waiver of a departmental rule shall be stated in writing and shall be made a part of the record of the proceeding or a part of the departmental file in other matters.

**181—1.4(546,17A) Duties of the department.** The commerce department administers and coordinates the various regulatory, service, and licensing functions of the state regarding the conduct of business and commerce in the state. The department consists of the director’s office, an office of administrative services, and the following divisions: banking, credit union, savings and loan, utilities, insurance, alcoholic beverages, and professional licensing and regulation.

**1.4(1) Office of administrative services.** The office of administrative services coordinates personnel services and shared administrative support services for the department, coordinates the development of the department’s annual budget, and maintains monitoring and control systems for the department.

**1.4(2) Banking division.** The banking division regulates and supervises state banks, regulated loan companies, industrial loan companies, and performs other duties assigned to it by law.

**1.4(3) Credit union division.** The credit union division regulates and supervises the operation of credit unions within the state; the credit union review board performs duties assigned to it by Iowa Code chapter 533.

**1.4(4) Savings and loan division.** The savings and loan division regulates and supervises savings and loan associations and savings banks which operate within the state.

**1.4(5) Gaming division.** Rescinded IAB 11/23/94, effective 11/4/94.

**1.4(6) Utilities division.** The utilities division regulates and supervises all public utilities which operate within the state, and enforces the laws promulgated under Iowa Code chapters 476, 476A, 478, and 479. The division performs other duties assigned to it by law.

**1.4(7) Insurance division.** The insurance division regulates and supervises the conduct of the business of insurance within the state, and enforces the laws promulgated under Title XX, and Iowa Code chapters 502, 503, 505 to 523C, and 535C. The division performs other duties assigned to it by law.

**1.4(8) Alcoholic beverages division.** The alcoholic beverages division supervises and regulates all matters relating to alcoholic beverages within the state, and enforces the laws promulgated under Iowa Code chapter 123.

**1.4(9) Professional licensing and regulation division.** The professional licensing and regulation division coordinates and administers the licensing and regulation of the engineering and land surveying examining board, the accountancy examining board, the real estate commission, the architectural examining board, the real estate appraisers examining board, and the landscape architectural examining board. The commission and boards within this division retain the regulatory and licensing powers conferred upon them by the statutes creating the commission and boards.

**181—1.5(546,17A) Definitions.**

*“Administrator of alcoholic beverages”* means the chief executive officer of the alcoholic beverages division of the department of commerce.

*“Administrator of professional licensing and regulation”* means the chief administrative officer of the professional licensing and regulation division of the department of commerce.

*“Administrator of public utilities”* means the chief administrative officer of the utilities division.

*“Commissioner of insurance”* means the chief executive officer of the insurance division of the department of commerce.

*“Department”* means the department of commerce.

*“Director”* means the director of the department of commerce.

*“Person”* means an individual, corporation, partnership, association, professional corporation, licensee or permittee.

*“Superintendent of banking”* means the chief administrative officer of the banking division of the department of commerce.

*“Superintendent of credit unions”* means the chief administrative officer of the credit union division of the department of commerce.

*“Superintendent of savings and loan associations”* means the administrator of the professional licensing and regulation division of the department of commerce.

*“Utilities board”* means the board composed of three persons, who are appointed by the governor subject to confirmation by the senate, and who serve as the policymaking body for the utilities division. The chairperson of the utilities board shall be the administrator of the utilities division.

**181—1.6(546,17A) Central offices and communications.** Correspondence and communications with the department of commerce shall be addressed or directed to the department’s central office located at the Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319, (515)281-7405. The central office is the principal custodian of departmental orders, statements of law or policy issued by the department, legal documents, and other public documents on file with the department.

**1.6(1)** Correspondence and communications with the banking division shall be addressed or directed to its central office located at 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309, (515)281-4014.

**1.6(2)** Correspondence and communications with the professional licensing and regulation division shall be addressed or directed to its central office located at 1918 S.E. Hulsizer, Ankeny, Iowa 50021, (515)281-3183.

**1.6(3)** Correspondence and communications with the alcoholic beverages division shall be addressed or directed to its central office located at 1918 S.E. Hulsizer, Ankeny, Iowa 50021, (515)281-7400.

**1.6(4)** Correspondence and communications with the insurance division shall be addressed or directed to its central office located at the Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319, (515)281-5705.

**1.6(5)** Correspondence and communications with the utilities division shall be addressed or directed to its central office located at the Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319, (515)281-5979.

**1.6(6)** Correspondence and communications with the savings and loan division shall be addressed to 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

**1.6(7)** Correspondence and communications with the credit union division shall be addressed or directed to its central office located at 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309, (515)281-6514.

**181—1.7(546,17A) Custodians of records, filings and requests for public information.** Unless otherwise specified by the department or the rules of its various divisions, each division is the principal custodian of its own divisional orders, statements of law or policy issued by the respective divisions, legal documents and other public documents on file with the department or its respective divisions. This is true in particular for the Iowa fair information practices Act. The responsibility for complying with

that Act shall be upon the individual divisions. Each division shall promulgate rules pursuant to Iowa Code chapter 17A governing the manner in which documents may be filed with the respective divisions. Each division shall promulgate rules pursuant to Iowa Code chapters 17A, 21, and 22 governing the manner in which interested persons may obtain public information regarding that division.

**1.7(1)** An interested party may examine all public records promulgated or maintained by the department of commerce in the discharge of its function at its central office during regular business hours. The department's central office is open from 8 a.m. until 4:30 p.m., Monday through Friday; the office is closed on Saturdays, Sundays, and official state holidays, designated according to state law.

**1.7(2)** All pleadings, petitions for rule making, petitions for declaratory rulings, and other documents filed with the department of commerce shall be filed with the director and shall be officially filed upon receipt of the document. All such documents shall be filed within the time limits established by law or these rules.

**181—1.8(546,17A) Division administrators' responsibilities.**

**1.8(1)** *Rule making.* Except to the extent that rule-making authority is vested in a policy-making commission, each division administrator has the authority to promulgate rules pursuant to Iowa Code chapter 17A to implement the duties of the division. Such rules are not subject to review by the department director. All applicable rules previously promulgated by the divisions shall remain in effect until amended by the divisions.

**1.8(2)** *Decision making.* Except to the extent that decision-making authority is vested in a licensing and regulation commission or other body, decisions of the division administrator with respect to duties assigned to the division under the law are final agency actions pursuant to chapter 17A. Decisions by either the commissions or division administrators are not subject to review by the department director.

**1.8(3)** *Supervision.* Each division administrator has the authority to hire, allocate, develop, and direct employees and other resources assigned to the division by law.

**1.8(4)** *Establish fees.* Except to the extent otherwise vested in a policy-making commission, each division administrator has the authority to establish fees assessed to the regulated industry. The fees so established are not reviewable by the department director.

**1.8(5)** *Expenditure authorization.* Each division administrator may authorize expenditures from any appropriation or trust fund established on the behalf of the division.

These rules are intended to implement Iowa Code sections 17A.3 and 546.2.

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CHAPTER 2  
PETITIONS FOR RULE MAKING

**181—2.1(17A,546) Petition for rule making.** Any person or agency may file a petition for rule making with the agency at the Department of Commerce, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency 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:

DEPARTMENT OF COMMERCE

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

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 2.4(1).

**2.1(1)** The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone numbers of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**2.1(2)** The agency may deny a petition because it does not substantially conform to the required form.

**181—2.2(17A,546) Briefs.** The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

**181—2.3(17A,546) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the Director, Department of Commerce, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319.

**181—2.4(17A,546) Agency consideration.**

**2.4(1)** Within 14 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the

substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

**2.4(2)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

**2.4(3)** Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 546.

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CHAPTER 3  
DECLARATORY RULINGS

**181—3.1(17A,546) Petition for declaratory ruling.** Any person or agency may file a petition with the agency for a declaratory ruling concerning the applicability of any statute, rule, policy, decision, or order, administered by the agency, at the Department of Commerce, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency 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:

DEPARTMENT OF COMMERCE

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the ruling 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 petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory ruling and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 3.4(17A,546).

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 numbers of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**181—3.2(17A,546) Briefs.** The petitioner may attach a brief to the petition in support of the position urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the questions raised in the petition.

**181—3.3(17A,546) Inquiries.** Inquiries concerning the status of a petition for a declaratory ruling may be made to the Director, Department of Commerce, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319.

**181—3.4(17A,546) Agency consideration.** Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may solicit comments

from any person on the questions presented in the petition. Also, comments on those questions may be submitted to the agency by any person.

Within 30 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, issue a ruling on the petition or refuse to do so. An agency is deemed to have issued a ruling or to have refused to do so on the date the ruling or refusal is mailed or delivered to petitioner.

**181—3.5(17A,546) Refusal to issue ruling.** The agency may refuse to issue a declaratory ruling for good cause. Good cause includes, but is not limited to, 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 agency to issue a ruling.
3. The agency does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a ruling.
7. There is no need to issue a ruling because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory ruling that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose petition on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

**3.5(1)** A refusal to issue a declaratory ruling must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**3.5(2)** Refusal to issue a declaratory ruling pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the agency's refusal to issue a ruling.

**181—3.6(17A,546) Contents of declaratory ruling—effective date.** In addition to the ruling itself, a declaratory ruling must contain the date of its issuance, the name of the petitioner, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for the agency's conclusion.

A declaratory ruling is effective on the date of issuance.

**181—3.7(17A,546) Effect of a declaratory ruling.** A declaratory ruling is binding on the agency and the petitioner and is applicable only in circumstances where the relevant facts and law involved are indistinguishable from those contained in the petition. As to all other persons, a declaratory ruling serves only as precedent and is not binding on the agency. The issuance of a declaratory ruling constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 546.

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