

Red Tape Review Rule Report (Due: September 1, 2023)

Department Name:	Department of Insurance and Financial Services- Insurance Division	Date:	8/31/2023	Total Rule Count:	36
IAC #:	191	Chapter/ SubChapter/ Rule(s):	2.2-2(6); 2.9-2.12	Iowa Code Section Authorizing Rule:	CH. 17A CH. 22
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PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

Chapter 2 provides rules about public records and fair information practices. The Division proposes removing duplicative language.

Is the benefit being achieved? Please provide evidence.

Yes. This rule making is proposed pursuant to Executive Order 10.

What are the costs incurred by the public to comply with the rule?

There are no known costs.

What are the costs to the agency or any other agency to implement/enforce the rule?

There are no known costs.

Do the costs justify the benefits achieved? Please explain.

The proposed rules remove duplicative language.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

The Division did not find any less restrictive alternatives.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

191—2.1
191—2.2
191—2.3
191—2.4
191—2.5
191—2.6
191—2.9
191—2.10
191—2.11
191—2.12

RULES PROPOSED FOR REPEAL (list rule number[s]):

None.

RULES PROPOSED FOR RE-PROMULGATION (list rule number[s] or include rule text if available):

The following rulemaking action proposed:

ITEM 1. Amend rule 191—2.1(17A,22) as follows:

191—2.1(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound division determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This division is committed to the policies set forth in Iowa Code chapter 22. The division’s website provides access to all public records. Division staff will cooperate with members of the public in implementing the provisions of that chapter.

ITEM 2. Amend rule 191—2.2(17A,22) as follows:

191—2.2(17A,22) Definitions. The definitions in Iowa Code section 22.1 are incorporated into this chapter by this reference. In addition to the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Confidential record*” means a record that is not available as a matter of right for inspection and copying by members of the public under applicable provisions of law. Confidential records ~~include records or information contained in records that the division is prohibited by law from making available for inspection by members of the public, and records or information contained in records that are~~ may be specified as confidential by Iowa Code section 22.7, or other provisions of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Division*” means the insurance division of the department of ~~commerce~~ insurance and financial services, created by Iowa Code section 505.1. The division is both the “government body” and the “lawful custodian” as defined in Iowa Code sections 22.1(1) and 22.1(2). The division is also the “state agency” as defined in Iowa Code chapter 17A and referenced in Iowa Code chapter 22. For purposes of this chapter, “division” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“*File*,” “*filed*,” or “*filing*,” when used as a verb, means submitting or having submitted to the division a record or information. “File” or “filing,” when used as a noun, means a record or information.

“Inspect” or *“inspection”* means the same as “examine” or “examination” in Iowa Code chapter 22.

The term “examination” in this chapter does not mean the same as “examination” as used in Iowa Code chapter 22.

“Lawful custodian,” as used in Iowa Code section 22.1(2), is the division, the division’s record officer, or an employee lawfully delegated authority by the division to act for the division in implementing Iowa Code chapter 22.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” means all or part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the division.

“Record system” means any group of records under the control of the division from which a record may be retrieved by a personal identifier ~~such as the name of the individual, number, symbol or other unique retriever assigned to the individual.~~

ITEM 3. Amend rule 191—2.3(17A,22) as follows:

191—2.3(17A,22) General provisions.

2.3(1) *Entities holding division records covered by this rule.* This rule applies to records belonging to, required by, or created by the division; ~~as well as, This rule applies to~~ records held by third parties, including other state agencies, that do any of the following:

- a. Perform division functions on behalf of the division;
- b. Store records for the division;
- c. Perform services for the division; or
- d. Otherwise handle records that would be governed by this rule if they were in the possession of the division.

2.3(2) Existing records. A request for access shall apply only to records that exist at the time the request is made and access is provided. The division is not required to create, compile or procure a record solely for the purpose of making it available except as described in Iowa Code section 22.3A and subrule 2.4(~~65~~).

2.3(3) Public records. All of the division's records are open records available to the public except for records that are confidential under rule 191—2.12(17A,22) or redactable under rule 191—2.11(17A,22).

2.3(4) Availability of open records. Open records of the division are available to the public for examination and copying unless otherwise provided by state or federal law, regulation or rule.

~~**2.3(5) Internet access.** The division provides public access to many public records, with no request for access necessary, on the division's website.~~

2.3(~~65~~) Office hours. Open records are available for inspection during customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

~~**2.3(7) Data processing system.** Some agency data processing systems that have common data elements can match, collate and compare personally identifiable information.~~

2.3(~~86~~) Scope. This chapter does not:

a. Require the division to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the division which are governed by the regulations of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled 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, the Code of Professional Responsibility, and applicable regulations.~~

- f.* Make any warranty of the accuracy or completeness of a record.

ITEM 4. Amend rule 191—2.4(17A,22) as follows:

191—2.4(17A,22) Requests for access to records.

2.4(1) Request for access. Requests for access to open records not available on the division’s website may be made in writing, ~~or in person. A request may be made~~ by mail, email, or online as instructed on the division’s website. Requests must identify the particular records sought by name or description in order to facilitate the location of the record. Requests must include the name, address, email address if available, and telephone number of the person requesting the information. A person is not required to give a reason for requesting an open record. If the division has records in its possession that may be public records but that are copies of materials from another agency or public organization, the division may refer ~~persons seeking inspection of those records~~ individuals to the originating ~~agency or public organization~~ entity.

2.4(2) Response to requests.

a. Access. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the division must comply with the request as soon as feasible. ~~The division requests that members of the public make appointments for the in-person inspection of public records because the division needs time to locate stored records and office space is limited.~~

b. Delay. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4), for redaction by the division of confidential information, or for search and review of requested records. The division must promptly give written notice to the requester of the reason for any delay and an estimate of the length of that delay.

c. *Deny.* The division may deny access to the record by members of the public when warranted under Iowa Code chapter 22 or other applicable law or when the record's disclosure is prohibited by a court order.

2.4(3) Security of record. No person may, without permission from the division, search or remove any record from division files. Inspection and copying of division records must be supervised by the division or a designee of the division in order for the records to be protected from damage and disorganization.

~~**2.4(4) Copying.** A reasonable number of copies of an open record may be made in the division's office. If photocopy equipment is not available in the division office where an open record is kept, the division must permit the record's inspection in that office and arrange to have copies promptly made elsewhere.~~

2.4(5) Fees. The division may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether electronic or hard copy, or mailing shall not exceed the cost of providing the service. An hourly fee may be estimated in advance, and charged for actual division expenses in the inspection, reviewing, and copying of requested records when the total staff time dedicated to fulfilling the request requires an excess of two hours. ~~When the open records request will cause time required in excess of the allotted two hours, the division may require a requester to make an advance payment to cover all of the estimated fee.~~

2.4(6) Information released. If a person is provided access to less than an entire record, the division shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released or a copy of the record from which the information not to be released has been otherwise redacted.

ITEM 5. Amend rule 191—2.5(17A,22) as follows:

191—2.5(17A,22) Access to confidential records.

2.5(1) Procedure. The following provisions are in addition to those specified in rule 191—2.4(17A,22) and are minimum requirements. A statute or another administrative rule may impose additional requirements for access to certain classes of confidential records. A confidential record may, due to its nature or the way it

is compiled or stored, contain a mixture of confidential and nonconfidential information. The division shall not refuse to release the nonconfidential information simply because of the manner in which the record is compiled or stored.

a. Form of request. The division shall ensure that there is sufficient information to provide reasonable assurance that access to a confidential record may be granted. Therefore, the division may require the requester to:

- (1) Submit the request in writing.
- (2) Provide proof of identity and authority to secure access to the record.

b. Response to request. The division must notify the requester of approval or denial of the request for access. The notice must include:

- (1) The name and title or position of the person responding on behalf of the division; and
- (2) A brief statement of the grounds for denial, including a citation to the applicable statute or other provision of law.

~~*c. Request granted.* When the division grants a request for access to a confidential record to a particular person, the division must notify that person and indicate any lawful restrictions imposed by the division on that person's inspection and copying of the record.~~

d. Reconsideration of denial. A requester whose request is denied by the division may apply to the commissioner of insurance for reconsideration of the request.

2.5(2) Release of confidential records by the division. The division may release a confidential record or a portion of it to:

- a.* The legislative services agency pursuant to Iowa Code section 2A.3.
- b.* The ombudsman pursuant to Iowa Code section 2C.9.
- c.* Other governmental officials and employees only as needed to enable them to discharge their duties.
- d.* The public information board pursuant to Iowa Code section 23.6.

ITEM 6. Amend rule 191—2.6(17A,22) as follows:

191—2.6(17A,22) Requests for confidential treatment. The division may treat a record as a confidential record and withhold it from inspection or refuse to disclose that record to members of the public only to the extent that the division is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order. All other information submitted to the division shall be treated as if that person has no objection to its disclosure to members of the public.

2.6(1) Request. A person may request that all or a portion of a record be confidential. The request for confidential treatment must be submitted in writing to the division and:

- a. Identify the information for which confidential treatment is sought.
- b. Cite the legal and factual basis that justifies confidential treatment.
- c. Identify the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.
- d. Specify the precise period of time for which the confidential treatment is requested should the request be only for a limited time period.

2.6(2) Additional information. The division may request additional factual information from the person to justify treatment of the record as a confidential record.

2.6(3) Decision. The division must notify the requester in writing of the granting or denial of the request and, if the request is denied, the reasoning for the denial.

2.6(4) Request denied. If the request for confidential treatment of a record is denied, the requester may apply to the commissioner for reconsideration of the request. ~~However, the record shall not be withheld from public inspection for any period of time if the division determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record.~~

2.6(5) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the division from treating it as a confidential record. ~~However, if a person who has submitted~~

~~information to the division does not request that it be withheld from public inspection, the division may proceed as if that person has no objection to its disclosure to members of the public.~~

ITEM 7. Amend rule 191—2.9(17A, 22) as follows:

191—2.9(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may consent to have a copy of the portion of that record that concerns the subject disclosed to a third party. A request for such a disclosure must be in writing and ~~must identify the particular record or records that may be disclosed and the particular person or class of persons to whom the record may be disclosed.~~ The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the division on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the division to disclose records about that person to the person's attorney.

ITEM 8. Amend rule 191—2.10(17A,22) as follows:

191—2.10(17A,22) Notice to suppliers of information. When the division requests a person to supply information about that person, the division must notify the person by reasonable means of the use that will be made of the information, which persons outside the division might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. ~~This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.~~

2.10(1) Notice. The notice shall generally be given at the first contact with the division and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or when it would compromise the purpose of a department investigation.

2.10(2) License and examination applicants. License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by division statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as social security numbers, home addresses, examination scores, and criminal histories, is confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

2.10(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, ~~including continuing education information, criminal history and disciplinary actions, as provided by division statutes, rules and application forms,~~ both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information may be confidential under state or federal law.

2.10(4) Investigations. Persons and entities regulated by the division are required to respond to division requests for information as part of the investigation of a complaint or inquiry. Failure to timely respond may result in disciplinary action against the person or entity to which the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code, including but not limited to Iowa Code section 502.607(2), 505.8(8)“a,” 507E.5, or 523A.803, but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

2.10(5) Discovery request, subpoenas, and investigations. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law or similar demands for information.

2.10(6) Other requested information. In general, pursuant to state or federal law, the division requests information necessary for its regulation of insurance, securities, and regulated industries that is required to be provided to the division. This required information may be shared outside the division when required by state

or federal law or division rules. Failure of a regulated entity or person to provide this information may result in the denial of the licensure or regulatory approval, as appropriate, for which the information was requested.

ITEM 9. Amend rule 191—2.11(17A,22) as follows:

191—2.11(17A,22) Personally identifiable information collected by the division. The division collects and maintains open records, some of which may contain personally identifiable information, and some of which may be shared with other state or federal agencies or organizations or vendors. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the division. Unless otherwise stated, the authority for the collection of the record is provided by Iowa Code chapter 502 or 505. Some personally identifiable information is protected by Iowa Code sections 502.607(2)“e” and 505.8(9).

2.11(1) Nature and extent. The following records may contain personally identifiable information:

a. Confidential records. Records listed as confidential records are described in rule 191—2.12(17A,22).

b. Rule-making records. Rule-making records may contain information about people who make written or oral comments about proposed rules.

c. Contested case records. Contested case records contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a contested case are contained in contested case records.

d. Licensing records. Licensing records of individuals and entities regulated by the division contain names and identifying numbers of the regulated individual or individuals designated as responsible for the regulated entity.

e. Complaint, inquiry, investigation, and examination records. Complaint, inquiry, investigation, and examination records contain names and identifying numbers of the people who submit, are the subject of, or are otherwise involved in the complaint, inquiry, investigation or examination.

f. Personnel files. The division maintains files containing information about employees of the division and applicants for positions with the division. ~~The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.~~

2.11(2) Redaction. To the extent that the division finds it necessary to allow inspection of records containing personally identifiable information, the division must, when allowed by law, redact the personally identifiable information prior to allowing the inspection.

2.11(3) Means of storage. Paper and various electronic means of storage are used to store records containing personally identifiable information. ~~Some information is stored electronically by third parties on behalf of the division.~~

ITEM 10. Amend rule 191—2.12(17A,22) as follows:

191—2.12(17A,22) Confidential records. This rule describes the types of agency information or records that are confidential. This rule is not exhaustive. The following records shall be kept confidential. ~~Records are listed by category and include a citation to the legal basis for withholding that category from public inspection.~~

2.12(1) Records which are exempt from disclosure under Iowa Code section 22.7.

2.12(2) Records which constitute attorney work product, or 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.

2.12(3) Those portions of the division's staff manuals, instructions or other statements issued by the division which set forth criteria or guidelines to be used by division staff in auditing, making inspections,

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 enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the division, pursuant to Iowa Code sections 17A.2 and 17A.3.

2.12(4) All information obtained and prepared in the course of an inquiry, complaint, or investigation, including but not limited to communications, insurer documents, data, reports, analysis, and notes, pursuant to Iowa Code section 505.8 and chapters 502, 502A, 505, 507A, 507E, 522B, 523C, and 523I.

2.12(5) Information of insurers designated as confidential by applicable law, including but not limited to information and reports that are part of an examination, pursuant to Iowa Code sections 505.17 and 507.14.

2.12(6) Information of the Iowa life and health guaranty association, pursuant to Iowa Code chapters 508C and 515B.

2.12(7) Insurance holding company systems registration and holding company examinations, pursuant to Iowa Code section 522.7.

2.12(8) Information related to the uniform securities Act that is designated nonpublic pursuant to Iowa Code section 502.607.

2.12(9) Information filed with the division related to preneed sellers and sales agents of cemetery and funeral merchandise and funeral services pursuant to Iowa Code chapter 523A.

2.12(10) Information obtained in the course of an examination of a cemetery pursuant to Iowa Code chapter 523I.

2.12(11) All records relating to prearranged funeral contracts, except upon approval by the commissioner of insurance or the attorney general, pursuant to Iowa Code section 523A.204(3).

2.12(12) 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)“e.”

2.12(13) Sealed bids received prior to the time set for public opening of bids, pursuant to Iowa Code section 72.3.

2.12(14) Information related to external review of health care coverage decisions, pursuant to Iowa Code chapter 514J.

2.12(15) Information related to automobile insurance cancellation, pursuant to Iowa Code chapter 515D.

2.12(16) Determination of any suspension of an insurance producer's or other licensee's pending application for licensure, pending request for renewal, or current license, when the suspension is related to failure to pay child support, foster care, or state debt, pursuant to rule 191—10.21(252J). ~~Notwithstanding any statutory confidentiality provision, the division may share information with the child support recovery unit or the centralized collection unit of the department of revenue, through manual or automated means, for the sole purpose of identifying registrants, applicants or licensees subject to enforcement under Iowa Code chapter 252J or 272D, respectively.~~

~~**2.12(17)** Information which is confidential under the law governing a person providing information to the division and pursuant to a written sharing agreement referencing that law and how it applies to allow the division to share the information.~~

2.12(1817) All other information or records that by law are or may be confidential.

****For rules being re-promulgated with changes, you may attach a document with suggested changes.***

METRICS

Total number of rules repealed:	0
Proposed word count reduction after repeal and/or re-promulgation	595
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	5

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

None.