

Contact: Andrea Anania

ANNUAL REPORT ON COMPETITION WITH PRIVATE ENTERPRISE

Action Requested: Receive the annual report.

Executive Summary: State laws prohibit government entities from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation. The Iowa Administrative Code and Board Policy Manual state that Regent institutions shall not engage in competition with private enterprise unless the activity will assist in the education, research, extension, or service mission of the institutions.

Each institution has a committee to review potential situations that may compete with private enterprise.

During the past year, the University of Iowa approved one proposal, Iowa State University approved 18 proposals, and the University of Northern Iowa approved one proposal. (See pages 3-9.)

The Iowa School for the Deaf, and the Iowa Braille and Sight Saving School did not receive any proposals for consideration.

Background:

Iowa Code Chapter 23A (Noncompetition by Government) prohibits a public entity from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation and authorizes the Board of Regents to provide, by administrative rule, exemptions to this prohibition for the institutions under the control of the Board.

Iowa Code §23A.2(2) lists exemptions and §23A.2(10)k lists items for which the chapter does not apply. Both lists may be found on page 2.

Iowa Administrative Code (IAC) §681-9.4 and Board Policy Manual §2.2(8)(D) specify the Board's rules and requirements regarding competition with private enterprise by Regents institutions.

Each institution has established written policies regarding competition with private enterprise to ensure that:

- ◆ Activities provided by the institutions are consistent with Board policy;
- ◆ Processes are identified to handle inquiries about activities carried out by the institution; and
- ◆ There is a means for community businesses to interact with the institutions including discussion of complaints.

Exemptions from Competition with Private Enterprise

**Iowa Code
§23A.2(2)**

The state Board of Regents or a school corporation may, by rule, provide for exemption from the application of this chapter for any of the following:

- a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.
- b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.
- c. Use of vehicles owned by the institution or school for charter trips offered to the public, or to full, part-time, or temporary students.
- d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or University of Iowa Hospitals or Clinics.
- e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.
- f. Telecommunications other than radio or television stations.
- g. Sponsoring or providing facilities for fitness and recreation.
- h. Food service and sales.
- i. Sale of books, records, tapes, software, educational equipment, and supplies.

**Iowa Code
§23A.2(10)k**

This chapter does not apply to the following on-campus activities of an institution or school under the control of the state Board of Regents or a school corporation:

- (1) Residence halls.
- (2) Student transportation, except as specifically listed in §23A.2(2)(c).
- (3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.
- (4) Sponsoring or providing facilities for cultural and athletic events.
- (5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.
- (6) Souvenirs and programs relating to events sponsored by or at the institution or school.
- (7) Radio and television stations.
- (8) Health care and related services to patients and visitors by the University of Iowa.
- (9) Goods, products, or professional services provided to the public in furtherance of the institution's or school's mission.
- (10) Services to the public at the Iowa State University College of Veterinary Medicine.

Analysis:

UNIVERSITY OF IOWA

DEPARTMENT OF HEALTH AND HUMAN PHYSIOLOGY (DHHP)

DHHP submitted a proposal to offer additional fee-for-service health testing through its Community Outreach Lab (COL). The lab is housed in the Field House on SUI's campus.

The proposed testing is a "functional exercise test" utilizing a treadmill or stationary cycle ergometer, which is increased in speed, incline, or workload every two to three minutes until the participant reaches a point of physical exhaustion. The goal of the test is for the participant to reach maximal or volitional fatigue within 8-12 minutes for an accurate test.

Information collected during and following the test include heart rate, blood pressure, oxygen consumption and carbon dioxide expiration, subjective rating of perceived exertion (RPE) and ECG patterns. A software program uses this data to estimate oxygen consumption and to calculate the participant's aerobic level of fitness, also known as "VO2 Max".

This test will only be offered to adults identified as having a low to moderate risk for cardiovascular disease as determined by established American College of Sports Medicine (ACSM) criteria, which includes males under the age of 40 and females under the age of 50, all who report no history of cardiopulmonary disease.

An approved safety protocol will be used during the testing. This includes a written protocol, a portable defibrillator just outside the lab, and CPR/AED training of all students and staff. Men over the age of 40 and women over the age of 50 will not be denied the testing but must have a physician present for all tests per ACSM/American Heart Association recommendations.

This testing is popular among athletes, fitness enthusiasts, and individuals working in labor-intensive jobs who are injured and need to complete return-to-work tests, such as police officers and firefighters. Initially, DHPP proposes to provide body composition testing primarily for the campus community and potentially as requested by employers in the area.

This service, which is a support service for fitness, will also meet a demand for the campus and the community that is not otherwise available. An assessment of the local area found that cardiorespiratory fitness testing is only performed at the Cardiovascular Rehabilitation Program at UIHC and the Pulmonary and Exercise Physiology Lab in SUI's Institute for Clinical and Translational Science Clinical Research Unit. These tests are strictly for research and diagnostic purposes and are not available to members of the campus community.

DHHP is not aware of any private businesses or organizations that offer this service.

The Committee on Competition with Private Enterprise and Community Concerns met with representatives of DHHP to discuss the proposal. The Committee's recommendation to the Senior Vice President was to allow DHHP to move forward to provide the fee-for-service health testing service through its COL.

The recommendation included the understanding that should DHHP wish to add additional fee-for-service health testing services, they were to contact the Committee to discuss potential competition with private enterprise concerns. Rod Lehnertz, Senior Vice President, concurred with the Committee's recommendation.

IOWA STATE UNIVERSITY

1. Ag & Biosystems Engineering Machinery Testing Facility
2. Animal Science – Dong Ahn Lab
3. Animal Science – Karl Kerns Lab
4. Apparel, Events and Hospitality Management – Café
5. Apparel, Events and Hospitality Management – Retail Store
6. Carrie Chapman Catt Center for Women and Politics
7. Center for Statistics and Applications in Forensic Evidence
8. College of Ag and Life Sciences – Enviratron Facility
9. College of Ag and Life Sciences – Apiary
10. College of Veterinary Medicine – BSL3 Lab
11. Cryo-Electron Microscopy Facility
12. Food Science & Human Nutrition – Fortes-Da-Silva
13. Food Science & Human Nutrition - Mellata Lab
14. Food Science & Human Nutrition - Watrelot Lab
15. Food Science & Human Nutrition/Midwest Grape and Wine Industry Institute – Research Winery
16. Microelectronics Research Center Photonic Services
17. Recreation Services
18. Veterinary Microbiology & Preventive Medicine – McGill Lab

AG & BIOSYSTEMS ENGINEERING (ABE) MACHINERY TESTING FACILITY

ABE requested approval to provide services to manufacturers seeking the unique set of testing expertise and equipment acquired in support of ABE's teaching and research programs. Services include performance testing of agricultural and other off-highway vehicles and attachments using the off-highway vehicle chassis dynamometer. Wear testing of ground-engaging tillage tools will also be provided.

The facility is located at ISU's Ag Engineering and Agronomy Research Farm and includes the following: (1) Soil-Machine Dynamics Laboratory; (2) Off-highway Vehicle Chassis Dynamometer Laboratory; and (3) Single Tire Tester Equipment.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service functions, provides an integral service that is not reasonably available in the community, and is important to maintaining the quality of the institution.

The Committee approved the request.

ANIMAL SCIENCE – DONG AHN LAB (DAL)

DAL requested approval to sell chemical analyses of volatile compounds in food and environmental samples and the compounds' impact on the quality, composition, taste, storage, etc. of meat, poultry, and eggs.

Other ISU researchers are the primary users of these services, but a few industry contacts have requested the ability to acquire these services as well.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational and research activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

ANIMAL SCIENCE – KARL KERNS LAB (KKL)

KKL requested approval to provide bull and other livestock fertility (sperm) and andrology (diseases and conditions specific to male species) analysis to livestock producers and veterinarians.

High throughput, single cell phenomics will be conducted utilizing image-based flow cytometry. Services may expand to avian and aquaculture species longer term. There are no private-sector sellers that offer high-throughput, single cell bioimage phenomics with a focus on livestock sperm analysis, especially with focus on fertility prediction.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational and research activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

APPAREL, EVENTS AND HOSPITALITY MANAGEMENT (AEHM) - CAFÉ

AEHM requested approval to operate a student-run café in the new Student Innovation Center. The café will tie in to the AEHM curriculum (HSPM 170, 270, and 470) and provide students with real-world experiences through the merchandising and retailing of food and beverage items.

The Competition with the Private Sector Review Committee reviewed the request and concluded the activity is an integral part of the institution's education functions and activities. Additionally, the food services and sales are located on campus and will be initiated and maintained primarily for the benefit of students, faculty, staff, and guests of the institution.

The Committee approved the request.

APPAREL, EVENTS AND HOSPITALITY MANAGEMENT (AEHM) – RETAIL STORE

AEHM requested approval to operate a student-run retail store in the new Student Innovation Center. The store will tie in to AEHM curriculum (AMD 275 & 377; AESHM 342 & 474; AMD 475; new entrepreneurial studio course) and provide students with real-world experiences through the merchandising and retailing of products in the store.

The Competition with the Private Sector Review Committee reviewed the request and concluded the activity is an integral part of the institution's education functions and activities. Additionally, the items offered will be a limited and specialized array of goods offered only to students, employees, or guests of the institution.

The Committee approved the request.

CARRIE CHAPMAN CATT CENTER FOR WOMEN AND POLITICS (CCCCWP)

CCCCW requested approval to offer a traveling display to public entities such as museums, schools, and public libraries as part of the state's commemoration of the 19th Amendment. The display features six African American suffragists from Iowa who worked for suffrage and civil rights. The primary purpose of the exhibit is to educate Iowans of all ages about the role African American women played in the suffrage movement in Iowa.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

CENTER FOR STATISTICS AND APPLICATIONS IN FORENSIC EVIDENCE (CSAFE)

CSAFE requested approval to offer a continuing education statistics course designed for forensic practitioners. The course prepares practitioners for a career in the forensic sciences by addressing the core concepts related to probability, statistics, and their application to today's forensics issues. The program is an integral service for forensic practitioners who work in crime labs and is not reasonably available in the forensic science community. In July 2020, the Texas Forensic Science Commission requested this service from CSAFE. This class was previously taught annually by Dr. Cliff Spiegelman, a distinguished professor at Texas A&M. He passed away in 2020 and Texas A&M will not be continuing the course.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational and public service activities and provides an integral good or service that is not reasonably available.

The Committee approved the request.

COLLEGE OF AGRICULTURE AND LIFE SCIENCES - ENVIRATRON FACILITY

The Enviratron Facility requested approval to provide clients fee-for-service access to conduct climate change experiments in the Enviratron Facility, a unique, one-of-a-kind facility for robotic imaging of plants that are growing under different environmental conditions during an experiment.

Located at ISU's Field Extension Education Laboratory, the facility will assist clients with experimental design and setup; the resulting image data and other data related to the experiments will be provided to the client/user. The primary purpose is to support ISU research and training. External sales are expected to be relatively minor.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

COLLEGE OF AGRICULTURE AND LIFE SCIENCES (CAL S) – APIARY

The CALS Apiary requested approval to sell honey. The Apiary was started in 2020 at the ISU Horticulture Station north of Ames. The Apiary is a research/extension/teaching/production enterprise that will be involved in all aspects of beekeeping, honey production, and honey marketing and sales.

The Apiary is used in an experimental course across multiple departments/colleges and has potential to serve as a teaching and demonstration space for ISU Extension and Outreach activities.

ISU Dining Services is interested in purchasing honey for use in their food production. Other sales anticipated include the ISU Alumni Association, ISU Book Store, or directly to ISU staff and students through the ISU Horticulture Station. All proceeds will offset program costs. Food safety plans, arranged in consultation with ISU food scientists, are in place.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service activities.

The Committee approved the request.

COLLEGE OF VETERINARY MEDICINE – BSL3 LAB

The BSL3 Lab requested approval to sell research services related to SARS_CoV2 (the causative agent of COVID-19), specifically research of inactivated viral products and viral testing services for antiviral efficacy. Intended clients are those who lack access to other BSL3 (biosafety level 3) laboratories.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service activities and provides an integral good or service that is not reasonably available in the community. Only two other BSL3 labs exist in Iowa (The University of Iowa Laboratories and USDA National Veterinary Services Laboratories), neither of which is privately owned.

The Committee approved the request.

CRYO-ELECTRON MICROSCOPY FACILITY (CEMF)

CEMF requested approval to provide training, resources, and education in the cryo-electron microscopy field. The facility will support research infrastructure and interdisciplinary research in structural biology in basic and health sciences.

While the primary purpose is to serve the ISU community (SIU faculty, staff, and students), the facility may have minimal external sales. There are no known private companies in Iowa that offer cryo-electron microscopy services; there are two companies in the US (California and New York) and one in Germany.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

FOOD SCIENCE & HUMAN NUTRITION – PAULO FORTES-DA-SILVA

Paulo Fortes-Da-Silva requested approval to sell testing, analysis, and reporting services on per- and poly-fluorinated alkyl substances (PFAS) in materials (mainly used for food packaging) to food packaging researchers and manufacturers. PFAS is a group of man-made chemicals persistent in the environment and the human body that do not break down and can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

FOOD SCIENCE & HUMAN NUTRITION - MELLATA LAB

Mellata Lab requested approval to provide testing services using specialized equipment (microaerophilic chamber) to grow fastidious bacteria (bacteria that grow only in certain conditions) in a controlled environment to industry clients.

The particular bacteria do not tolerate high levels of oxygen, requiring the Mellata Lab's expertise and facilities to grow and maintain them. Anticipated clients are scientists from ISU and other research institutions as well as industry companies who need a controlled environment to grow or study fastidious bacteria. Clients using the lab's services will pay a cost-recovery fee for staff time and machine consumables.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational and research activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

FOOD SCIENCE & HUMAN NUTRITION - WATRELOT LAB

The Watrelot Lab requested approval to sell chemical analyses (particularly polyphenol characterization), data analysis, and associated reporting on grapes, fruits, and wine.

Polyphenol characterization has research implications in winemaking, which is a growing industry in the Midwest. This work primarily will be in cooperation with the Midwest Grape and Wine Industry Institute, Iowa State University Extension, and other research collaborators.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

FOOD SCIENCE & HUMAN NUTRITION/MIDWEST GRAPE & WINE INDUSTRY INSTITUTE - RESEARCH WINERY

ISU requested approval to open a research winery. Wine production in the Research Winery (RW) will be focused on research and testing of new grape varieties, fermentation approaches, wine production methodology and other technologies. The overall goal of the RW is to advance the understanding of grape varieties available in the Midwest for wine production and creative approaches to enhance wine quality.

The RW will host workshops and training courses, teach students wine making skills, and conduct wine and grape production research. Limited sales are anticipated and will help recover production costs. The amount of wine sold will be substantially less than commercial wine producers due to the equipment's small capacity and the winery's focus on innovative production testing.

ISU expects wine sales to be limited to mainly within the ISU community, perhaps as a special offering to alumni, or for special occasions. There is no intent to produce wine at a capacity that would compete with the local wine industry.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public service activities.

The Committee approved the request.

MICROELECTRONICS RESEARCH CENTER (MRC) PHOTONIC SERVICES

The MRC has established expertise in modelling and simulation of metal mesh grids to simulate the amount of light transmitted or reflected through a metal grid at each relevant wavelength. It also has developed, through past research projects, computational programs to perform said modeling.

The intent of this fee-for service program is to provide these specialized techniques and computational modelings to those seeking such services, for example, small fabrication companies who do not have skilled personnel or computing resources to perform such technical tasks in order to evaluate and improve their products

The Competition with the Private Sector Review Committee reviewed the request and determined the activity provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

RECREATION SERVICES

Recreation Services requested approval to rent outdoor equipment to the Ames community, including kayaks, canoes, and paddle boards.

The Competition with the Private Sector Review Committee reviewed the request and concluded ISU Recreation Services offers a certain selection of outdoor equipment (e.g., camping equipment [tents, sleeping gear, packs, kitchen gear], outdoor wear, game equipment) that is not reasonably available for rent in the community.

Because there currently is another business entity in Ames that rents kayaks, canoes, and paddle boards, the Committee approved this activity only if these particular items are rented to the Ames community when they also are renting other items that are not otherwise reasonably available for rent.

VETERINARY MICROBIOLOGY & PREVENTIVE MEDICINE (VMPPM) - MCGILL LAB

The VMPPM McGill Lab requested approval to sell immunologic testing services on blood and tissue samples from production animals (swine, cattle, poultry) to other researchers, veterinarians, and industry partners. Tests to be performed include cytokine ELISPOT assays, ELISA assays, and flow cytometry-based assays.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational and research activities and provides an integral good or service that is not reasonably available in the community.

The Committee approved the request.

UNIVERSITY OF NORTHERN IOWA

A marketing strategy course in the UNI Marketing Department includes an in-class project whereby students start and close a business during the semester. In this business, students sell a product, service, or hold an event in order to gain actual hands-on experience.

The Competition with the Private Sector Review Committee approved the request concluding that it is consistent with the exemption in Iowa Code §23A.2.2.a "Goods and services that are directly and reasonably related to the educational mission of an institution or school."