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The Iowa Administrative Code (IAC) Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement is a compilation of updated Iowa Administrative Code chapters that reflect rule changes which have been adopted by agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4, and 17A.5 and published in the Iowa Administrative Bulletin bearing the same publication date as the one for this Supplement. To determine the specific changes to the rules, refer to the Iowa Administrative Bulletin. To maintain a loose-leaf set of the IAC, insert the chapters according to the instructions included in the Supplement.

In addition to the rule changes adopted by agencies, the chapters 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(6); an effective date delay or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone 515.281.3355 or 515.242.6873

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Replace Chapter 40 with Reserved Chapter 40
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Insert Reserved Chapters 42 to 45

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Replace Reserved Chapters 217 to 300
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Insert Reserved Chapters 407 to 410 and Chapters 411 to 416

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Revenue Department[701]

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Transferred to 261—Chapter 415, IAC Supplement 2/7/24

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[Created by 1986 Iowa Acts, chapter 1245]
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Rescinded **ARC 1573C**, IAB 8/20/14, effective 9/24/14

CHAPTER 411
INVESTMENT TAX CREDIT PROGRAM

[Prior to 2/7/24, see Historical Division[223] Ch 37]

261—411.1(303) Purpose. Property owners desiring federal income tax benefits for rehabilitation of historic buildings may apply for certification to the Secretary of the Interior through the state historic preservation officer of the state in which the property is located.

Applications are reviewed and commented on by the state historic preservation officer, and recommendations are made to the Secretary of the Interior for final approval. Upon completion, the work is certified by the Secretary of the Interior for the taxpayer to receive benefits under rules established by the Department of the Treasury, and the Internal Revenue Service. Historical properties may also be qualified for federal income and estate tax deductions for charitable contributions of partial interests in real property.

[Editorial change: IAC Supplement 2/7/24]

261—411.2(303) Regulations. The Investment Tax Credit Program shall operate in accordance with the National Historic Preservation Act of 1966; Tax Reform Act of 1986, Public Law 99-514, Sections 48(g) and 170(h); 36 CFR Part 60, the National Register of Historic Places, November 16, 1981, and October 2, 1983; 36 CFR Part 67, Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976 and the Economic Recovery Tax Act of 1981, March 12, 1984; and 26 CFR Parts 1 and 602, Investment Tax Credit for Qualified Rehabilitation Expenditures, October 11, 1988; and 26 CFR Parts 20 and 25, Charitable Contribution for Conservation purposes in accordance with the Tax Treatment Extension Act of 1980. Additional interpretive information may also be found in Historic Preservation Tax Incentives, Certification of Rehabilitation Workbook, Department of the Interior, National Park Service; National Register Programs Guidelines, NPS-49; Preservation Briefs Series; National Register Bulletins; and 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, Vol. 48, No. 190, Thursday, September 29, 1983.

[Editorial change: IAC Supplement 2/7/24]

261—411.3(303) Eligibility. A taxpayer, who is a fee simple owner or with the written approval of the owner and who elects to rehabilitate a certified historic structure, may apply for tax benefits as a result of the certified historic rehabilitation.

[Editorial change: IAC Supplement 2/7/24]

261—411.4(303) Certification of historic structures.

411.4(1) Buildings listed individually on the National Register of Historic Places are by definition certified historic structures.

411.4(2) Applications for certification of a particular building located within a registered historic district shall request a certification of significance using Part 1 of the Historic Preservation Certification Application (NPS Form 10-168, Part 1).

411.4(3) Applications for properties which are not individually listed or are within potential historic districts, or outside the period or area of significance of registered historic districts may request preliminary determinations as certified historic structures when and if nominated and listed. These applications shall be made using Part 1 of the Historic Preservation Certification Applications (NPS Form No. 10-168, Part 1).

411.4(4) The taxpayer shall also complete a rehabilitation description (NPS Form 10-168A, Part 2). Part 2 shall include a written description of the proposed rehabilitation and photographic materials adequate to document conditions inside and outside the building and the site prior to the rehabilitation. Additional documentation, such as window condition surveys or cleaning specifications, may be required for some projects.

411.4(5) Certification forms shall be provided by the National Park Service or the authority. Certification review is normally 30 days maximum at the state and 30 days maximum at the federal

level. Inquiries may be directed to Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 515.348.6200.
[Editorial change: IAC Supplement 2/7/24]

261—411.5(303) Review and evaluation.

411.5(1) All elements of a rehabilitation project such as interior and exterior of the building(s) site and environment as determined by the Secretary of the Interior, and all phases of demolition, construction, and rehabilitation shall meet the Secretary of the Interior's Standards for Rehabilitation. Portions of the project not in conformance shall not be exempted.

411.5(2) The staff shall review the application and materials, request additional materials or clarification, if needed, and provide a recommendation to the state historic preservation officer within 30 days of receipt of all materials from the applicant. The state historic preservation officer shall submit the state's recommendation to the National Park Service in a timely fashion.

411.5(3) Review by the National Park Service requires an initial plan review fee. Reviews by the National Park Service are generally completed within 30 days. All approvals of applications and amendments are conveyed only in writing by the duly authorized officials of the National Park Service. Owners who undertake rehabilitation projects without prior approval from the Secretary of the Interior do so at their own risk.

411.5(4) Decisions with respect to certification shall be made on the basis of the application form. If a discrepancy exists between the application form and other submitted material, the application form shall take precedence.
[Editorial change: IAC Supplement 2/7/24]

261—411.6(303) Certification of completion of work.

411.6(1) Upon receipt of an application requesting certification of completed work, the staff shall review the application and accompanying photographic documentation for conformance with the Secretary of the Interior's Standards for Rehabilitation, Guidelines for Rehabilitation of Historic Buildings, 36 CFR Part 67, March 12, 1984. The state historic preservation officer shall provide recommendations to the National Park Service for their decision.

411.6(2) Applicants shall receive notification of project status from the National Park Service. If the National Park Service finds that a project does not meet the Standards, the Secretary notifies the owner in writing, and if possible, advises the owner of necessary revisions to meet the Standards.

In the case of a denial of significance of the proposed rehabilitation project or the completed work, the owner may appeal in writing to the Chief Appeals Officer, Cultural Resources, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C. 20013-7127. Appeals shall be filed within 30 days of receipt of the decision which is subject to appeal.

411.6(3) Completed, approved projects shall be subject to recapture of tax credits during the following five-year period, due to sale (on a pro rata basis) or further unapproved alterations inconsistent with the Secretary of the Interior's Standards.

411.6(4) Any previous approval by federal, state or local agencies and organizations shall not ensure certification by the Secretary for tax purposes. Any certifications made by the Secretary of the Interior shall not be considered binding upon the Internal Revenue Service or the Secretary of the Treasury with respect to the tax consequences under the Internal Revenue Code. Nor does the certification of significance for tax benefits substitute for or bind the National Register of Historic Places nomination and listing process.
[Editorial change: IAC Supplement 2/7/24]

These rules are intended to implement Iowa Code section 15.121.

[Filed without Notice 5/12/89—published 5/31/89, effective 7/5/89]
[Filed emergency 12/2/93—published 12/22/93, effective 12/2/93]
[Filed 1/27/94, Notice 12/22/93—published 2/16/94, effective 3/23/94]
[Editorial change: IAC Supplement 2/7/24]

CHAPTER 412
NATIONAL REGISTER OF HISTORIC PLACES

[Prior to 5/31/89, see Historical Department [490] Ch 17]
[Prior to 2/7/24, see Historical Division[223] Ch 38]

261—412.1(303) Purpose. The National Register of Historic Places is a listing of the nation's cultural resources worthy of preservation. National Register listing serves as a basic standard for providing historic preservation program support.
[Editorial change: IAC Supplement 2/7/24]

261—412.2(303) Regulations. The National Register of Historic Places Program shall operate in accordance with National Register of Historic Places, 36 CFR 60, November 16, 1981, and October 2, 1983; Determination of Eligibility for Inclusion in the National Register of Historic Places, 36 CFR 63, September 21, 1977; and Historic Preservation Certification, 36 CFR Part 67, March 12, 1984.
[Editorial change: IAC Supplement 2/7/24]

261—412.3(303) Nomination procedure.

412.3(1) Individuals wishing to nominate a cultural resource to the National Register of Historic Places may contact the National Register Coordinator, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 515.348.6200 to secure a preliminary nomination packet.

412.3(2) Preliminary nominations shall be returned to the national register coordinator for evaluation. Within 30 days the staff shall evaluate the preliminary nomination and advise the applicant of the need for additional information, that the cultural resource is not eligible, or that the application may proceed. If the cultural resource is believed to be eligible, a final nomination packet shall be forwarded to the applicant.
[Editorial change: IAC Supplement 2/7/24]

261—412.4(303) Review of nominations.

412.4(1) Completed final nominations shall be reviewed by the staff prior to submission to the Iowa state nominations review committee for approval.

412.4(2) Property owners shall be notified of pending review of a potential nomination by the Iowa state nominations review committee. Property owners objecting to consideration may notify the national register coordinator to terminate nomination. Inquiries and objections may be directed to the National Register Coordinator, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 515.348.6200.

412.4(3) The Iowa state national register review committee shall review and recommend action to the state historic preservation officer or designee.

412.4(4) Nominations signed by the state historic preservation officer shall be forwarded to the National Park Service for consideration. The National Park Service has a 45-day response period, which includes a 15-day period for public comment. The National Park Service may take three actions—listing of the resource on the National Register of Historic Places; return of the nomination for further preparation; or rejection of nomination. Appeals of National Park Service decision may be directed to the National Park Service, Department of the Interior, National Register Office, Box 37127, Washington, D.C. 20013-7127.

412.4(5) Owners and all interested parties shall be notified by the state historic preservation officer of the formal listing. A commemorative certificate shall be forwarded to the property owner.
[Editorial change: IAC Supplement 2/7/24]

261—412.5(303) Delisting of properties. Alterations to a property may result in delisting of a property. Delisting of a property is automatic if the property is completely demolished. Initiative to delist is the responsibility of the national register coordinator. Inquiries may be directed to the National Register

Coordinator, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 515.348.6200.
[Editorial change: IAC Supplement 2/7/24]

These rules are intended to implement Iowa Code section 15.121.

[Filed 4/13/78, Notice 3/8/78—published 5/3/78, effective 6/12/78]
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[Filed 1/27/94, Notice 12/22/93—published 2/16/94, effective 3/23/94]
[Editorial change: IAC Supplement 2/7/24]

CHAPTER 413
PRESERVATION PARTNERSHIP PROGRAM
[Prior to 2/7/24, see Historical Division[223] Ch 40]

261—413.1(303) Purpose. The Preservation Partnership Program provides preservation education and technical assistance for a one-year period to a competitively selected multicounty area which has not been the subject of a cultural resources survey and does not participate in the Certified Local Government Program.
[Editorial change: IAC Supplement 2/7/24]

261—413.2(303) Regulations. The Preservation Partnership Program is designed to meet the priorities of the state historic preservation office annual workplan. The contracts shall be competitively bid.
[Editorial change: IAC Supplement 2/7/24]

261—413.3(303) Application procedure and selection.

413.3(1) Selection criteria. The criteria considered in the selection of a preservation partner are:

a. The breadth of organizations represented in the application for the purpose of maximizing nontraditional audiences and economic development;

b. Amount of match available;

c. An identified cultural resource that merits preservation and which is central to the region;

d. Identification of a range of potential projects; and

e. Relationship to the planning priorities of the program.

413.3(2) Applications shall be filed prior to April 15.

413.3(3) Selection shall be made by the staff with final approval by the state historic preservation officer.

413.3(4) Inquiries concerning the program may be directed to the State Historic Preservation Officer, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 515.348.6200.
[Editorial change: IAC Supplement 2/7/24]

These rules are intended to implement Iowa Code section 15.121.

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[Editorial change: IAC Supplement 2/7/24]

CHAPTER 414
REVIEW AND COMPLIANCE PROGRAM

[Prior to 2/7/24, see Historical Division[223] Ch 42]

261—414.1(303) Purpose. The review and compliance program implements state historic preservation program activities to advise and assist public (federal, state, and local government) agencies in carrying out their historic preservation responsibilities broadly described and established under the National Historic Preservation Act, particularly Sections 106 and 110, as well as other state and federal historic preservation laws and regulations.

[**ARC 0268C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 2/7/24]

261—414.2(303) Federal regulations and requirements. The Iowa review and compliance program shall operate in accordance with the following requirements:

414.2(1) The National Historic Preservation Act (16 U.S.C. 470 et seq.).

414.2(2) Title 36 of the Code of Federal Regulations Part 60 (36 CFR 60).

414.2(3) Title 36 of the Code of Federal Regulations Part 61 (36 CFR 61).

414.2(4) Title 36 of the Code of Federal Regulations Part 63 (36 CFR 63).

414.2(5) Title 36 of the Code of Federal Regulations Part 800 (36 CFR 800).

414.2(6) Contract requirements outlined in the state of Iowa's Historic Preservation Fund grant agreement with the National Park Service, including requirements described in the Historic Preservation Fund Grants Manual, special conditions attached to the grant agreement, and any other National Park Service requirement considered a condition of receiving the annual federal grant.

414.2(7) Nationwide Programmatic Agreements and other federal program alternatives executed or issued by the Advisory Council on Historic Preservation under 36 CFR §800.14, as applicable.

414.2(8) State-level programmatic agreements and memoranda of agreements executed under 36 CFR §§800.6 and 800.14.

414.2(9) Easements and covenants granted pursuant to the implementation of state historic preservation program activities.

414.2(10) Iowa Code chapter 15.

[**ARC 0268C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 2/7/24]

261—414.3(303) Professional qualifications. In keeping with federal Historic Preservation Fund grant requirements, the authority shall employ a professionally qualified staff that meets the requirements set forth in 36 CFR §61.4(e).

[**ARC 0268C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 2/7/24]

261—414.4(303) Definitions. Unless the context requires otherwise, the definitions provided in the National Historic Preservation Act and its implementing regulations at 36 CFR Part 60, 36 CFR Part 61, and 36 CFR Part 800 shall apply to terms as they are used through this chapter. In addition, the following definitions apply:

"Act" means the National Historic Preservation Act (16 U.S.C. §470 et seq.).

"Agency" means federal agency.

"Agreement" means any agreement executed in accordance with the regulations implementing Section 106 at 36 CFR Part 800 and any agreement authorized by Iowa Code section 28E.4.

"Area of potential effects" or *"APE"* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR §800.16(d)).

"Historic property" means "historic property" as defined in Section 301(5) of the National Historic Preservation Act as amended through December 22, 2006 (16 U.S.C. §470w(5)).

"Recommendations and decisions" means the actions taken by the SHPO to advise and assist federal agencies in carrying out their Section 106 responsibilities.

"Undertaking" means, as defined in Section 301 of the National Historic Preservation Act, a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (1) those carried out by or on behalf of the federal agency; (2) those carried out with federal financial assistance; (3) those requiring a federal permit, license or approval; and (4) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.
[**ARC 0268C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 2/7/24]

261—414.5(303) Procedures.

414.5(1) *Technical assistance.* The state historic preservation office (SHPO) shall advise and assist federal agencies in carrying out their responsibilities under the Act (and other federal historic preservation laws) and shall cooperate with federal agencies, state agencies, local governments, or their applicants; organizations; and individuals to ensure historic properties are taken into consideration at all levels of planning and development.

414.5(2) *SHPO review of federal undertakings.*

a. In accordance with applicable federal and state laws and regulations, agency officials and agency program applicants or recipients requesting the views of the SHPO on an undertaking shall submit documentation regarding the undertaking and potential effects to historic properties.

b. The SHPO shall make available forms intended to assist agency officials and agency program applicants and recipients in organizing information and to allow the review and compliance program staff and other consulting parties to render informed advice on an undertaking. Forms will be made available on the authority website. Submittals shall be directed to Review and Compliance Coordinator, Iowa Economic Development Authority, Des Moines, Iowa 50315.

c. The SHPO shall respond to initial determinations submitted by an applicant or groups of applicants authorized to initiate consultation by the agency pursuant to 36 CFR §800.2(c)(4) or to a final agency determination of eligibility.

d. The SHPO shall apply the National Register Criteria for Evaluation when opining on determinations of National Register eligibility.

e. With respect to the determination of whether a property is eligible for listing, in the event that the SHPO and the agency official do not agree as to the determination of eligibility, the SHPO shall include an explanation of its opinion which shall be based on the National Register criteria and relevant National Park Service guidelines for evaluation of historic properties.

f. The SHPO may respond to agency determinations and findings of effect.

g. A SHPO nonconcurrence with an agency finding of effect shall include an explanation based upon the Advisory Council's criteria of adverse effect in accordance with 36 CFR §800.5(a).

h. If the SHPO elects to consult, the SHPO shall respond within 30 calendar days of receipt of an agency's request for review of a finding or determination in accordance with 36 CFR §800.3(c)(4) and the National Park Service's applicable requirements. The SHPO shall base any recommendations upon consideration of all of the factors enumerated in 36 CFR §800.4(b)(1).

i. The recommendations and decisions of the SHPO are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in rule 223—42.7(303). To facilitate this opportunity for review, the SHPO will generally submit its recommendation to the director within 14 calendar days of receipt.

j. If the director is unable to make a determination regarding the request for review within the federally mandated 30-day consultation period, the director may, upon advising the applicant, request that the federal agency extend the consultation period for such time as the director requires to make such a determination.

414.5(3) *Resolution of adverse effects.* The SHPO shall participate in the consultation to develop and evaluate alternatives or modifications to undertakings that could avoid, minimize, or mitigate adverse effects on historic properties in accordance with the provisions of 36 CFR §800.6 or the terms of executed agreements, easements and covenants.

414.5(4) *Emergency procedures.* The SHPO shall abide by the procedures that govern an agency's historic preservation responsibilities during any disaster or emergency in lieu of 36 CFR §§800.3 through 800.6.

[**ARC 0268C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 2/7/24]

261—414.6(303) Level of effort required to identify historic properties.

414.6(1) The level of effort required to meet the "reasonable and good faith" standard in Section 106 review is set forth in 36 CFR §800.4. The level of effort required shall be based on past planning, research and studies; the magnitude and nature of the undertaking and the degree of federal involvement; the nature and extent of potential effects on historic properties; and the likely nature and location of historic properties within the APE and may consist of any combination of background research, consultations, oral history interviews, sample field investigations and field surveys. In order to balance the mission and needs of a federal agency and its proposed project, the SHPO shall balance the level of effort and resources necessary to identify and preserve archaeological sites with the project benefits, costs, schedules and local issues that, in part, comprise the broader public interest.

414.6(2) In response to the agency's request for consultation, the SHPO shall base any recommendation for the identification of historic properties upon a review of the documentation provided by an agency pursuant to the reasonable and good-faith standard in conformance with the factors set forth in 36 CFR §800.4(b)(1).

414.6(3) It is the statutory obligation of the federal agency to fulfill the requirements of Section 106.

414.6(4) The level of effort required of rural electric cooperatives and municipal utilities shall be consistent with the requirements set forth in Iowa Code section 15.122.

[**ARC 0268C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 2/7/24]

261—414.7(303) Review and appeal of the recommendations and decisions of the state historic preservation officer.

414.7(1) In addition to any other review or appeal process afforded under federal or state law and regulations, the recommendations and decisions of the state historic preservation officer are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in this rule.

414.7(2) A person, as defined in Iowa Code section 4.1(20), requesting the review of a recommendation or decision of the state historic preservation officer directly affecting that person shall provide the director with the following information, orally or in writing:

a. Name and address of the requester.

b. A description of the action of the SHPO requested to be reviewed.

c. A short and plain statement of the reasons the review is requested.

414.7(3) Within 15 days following receipt of a request for review, the director shall notify the requester of the disposition of the request or of the need for additional information. Within 30 days following the receipt of the requested additional information, the director will notify the requester in writing of the disposition of the request for review.

414.7(4) A decision of the director is final. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A.

[**ARC 0268C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 2/7/24]

These rules are intended to implement Iowa Code section 15.121.

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[Editorial change: IAC Supplement 2/7/24]

CHAPTER 415
TECHNICAL ASSISTANCE PROGRAM
[Prior to 2/7/24, see Historical Division[223] Ch 43]

261—415.1(303) Purpose. The Technical Assistance Program provides professional consultation in the areas of planning, project monitoring, local ordinance review, local historic district organizations, and general preservation consulting.
[Editorial change: IAC Supplement 2/7/24]

261—415.2(303) Regulations. Technical assistance is provided as resources permit. First priority is given to projects relating to the National Register of Historic Places, the Certified Local Government program or a local preservation commission, and the preservation partnership program.
[Editorial change: IAC Supplement 2/7/24]

261—415.3(303) Services. The technical assistance program provides service in these four areas:

1. Planning assistance. This program provides on-site or other forms of consultation in the preparation and review of a community or county historic preservation plan.
2. Project monitoring. The staff provides on-site or other forms of project monitoring and facilitation.
3. Local ordinance review and local historic district organization. In accordance with Iowa Code section 15.459(4), the local commission shall submit the draft or final ordinance for review and approval by the staff. An existing commission shall similarly submit proposed local historic district designations for review and approval to the staff. Comments by the appropriate staff shall be supplied within 45 days from the receipt of complete documentation.
4. General technical assistance. Technical assistance in the physical preservation of properties is provided by staff. This service is provided on an individual request and time available basis. The services provided by the staff shall not substitute for private professional services.

All inquiries and requests may be directed to the State Historic Preservation Officer, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 515.348.6200.
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CHAPTER 416
STATE REGISTER OF HISTORIC PLACES PROGRAM

[Prior to 5/31/89, see Historical Department[490] Ch 17]
[Prior to 2/7/24, see Historical Division[223] Ch 44]

261—416.1(303) Purpose. The State Register of Historic Places recognizes properties of historical significance to Iowa.
[Editorial change: IAC Supplement 2/7/24]

261—416.2(303) Regulations and procedures. All regulations and procedures of 261—Chapter 412, Iowa Administrative Code, pertaining to the National Register of Historic Places shall pertain to the state register of historic places.
[Editorial change: IAC Supplement 2/7/24]

These rules are intended to implement Iowa Code section 15.121.

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HOSPITALS

[Prior to 12/14/88, see Health Department[470] Ch 51]
[Prior to 8/8/90, see Public Health[641] Ch 51]

481—51.1(135B) Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

"Critical access hospital" means any hospital located in a rural area and certified by the Iowa department of health and human services as being a necessary provider of health care services to residents of the area. A "critical access hospital" makes available 24-hour emergency care, is a designated provider in a rural health network, and meets the criteria specified pursuant to rule 481—51.53(135B).

"Governing board" means the board of trustees, the owner, or person(s) designated by the owner as the governing authority. The governing board has supreme authority in the hospital and is responsible for the management, control, and appointment of the medical staff.

"Hospital" or *"general hospital"* means an institution, place, building, or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the diagnosis or treatment, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, infirmity or deformity, or other physical or mental condition for which medical, surgical and obstetrical care services are provided.

"Long-term acute care hospital" means any hospital that has an average inpatient length of stay greater than 25 days and that provides extended medical and rehabilitative care for patients who are clinically complex and who may suffer from multiple acute or chronic conditions. Services provided by a long-term acute care hospital include but are not limited to comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management.

"Medical staff" means an organized body that is composed of individuals appointed by the hospital governing board, that operates under bylaws approved by the governing board and that is responsible for the quality of medical care provided to patients by the hospital. All members of the medical staff, one of whom shall be a licensed physician, shall be licensed to practice in the state of Iowa.

"Premises" means any or all designated portions of a building or structure, enclosures or places in the building, or real estate when the distinct and clearly identifiable parts provide separate care and services. "Premises" is not to be construed to permit the existence of a separately licensed specialty hospital within the physical structure of a general hospital.

"Rural emergency hospital" means the same as defined by Iowa Code section 135B.1.

"Specialized hospital" means any hospital devoted primarily to the specialized care and treatment of persons with chronic or long-term illness, injury, or infirmity. "Specialized hospital" does not include a specialty hospital.

"Specialty hospital" means the same as defined by 42 CFR Section 411.351 as amended to November 7, 2023.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.2(135B) Classification, compliance and license.

51.2(1) All hospitals subject to licensure under this chapter will be classified as a critical access hospital, general hospital, long-term acute care hospital, rural emergency hospital, or specialized hospital. The license issued by the department will clearly identify the classification of the hospital, and such designation will be set forth on the hospital's license.

51.2(2) A hospital shall comply with all of the general regulations for hospitals and any rules pertaining to specialized services, if specialized services are provided in the hospital.

51.2(3) A separate license is required for each hospital even though more than one is operated under the same management. A separate license is not required for separate buildings of a hospital located on separate parcels of land, which are not adjoining but provide elements of the hospital's full range of services for the diagnosis, care, and treatment of human illness, including convalescence and rehabilitation, and which are organized under a single owner or governing board with a single designated administrator and medical staff.

51.2(4) The license shall be conspicuously posted on the main premises of the hospital.

51.2(5) The department shall recognize, in lieu of its own licensure inspection, the comparable inspections and findings of an accrediting organization approved by the Centers for Medicare and Medicaid Services (CMS) for federal certification if the department is provided with copies of all requested materials relating to the inspection process. In cases of the initial licensure, the department may require its own inspection when needed in addition to comparable accreditations to allow the hospital to begin operations. The department may also initiate its own inspection when it is determined that the inspection findings of the accrediting organization are insufficient to address concerns identified as possible licensure issues.

51.2(6) The department may recognize, in lieu of its own licensure inspection, the comparable inspection and inspection findings of a Medicare conditions of participation survey of a hospital certified by CMS. Hospitals that are not federally certified will be inspected utilizing the requirements of this chapter.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.3(135B) Quality improvement program.

51.3(1) There shall be an ongoing hospitalwide quality improvement program. This program is to be designed to improve, as needed, the quality of patient care by:

a. Assessing clinical patient care;

b. Assessing nonclinical and patient-related services within the hospital;

c. Developing remedial action as needed; and

d. Ongoing monitoring and evaluating of the progress of remedial action taken.

51.3(2) The governing body shall ensure there is an effective hospitalwide patient-oriented quality improvement program.

51.3(3) The quality improvement program shall involve active participation of physician members of the hospital's medical staff and other health care professionals, as appropriate. Evidence of this participation will include ongoing case review and assessment of other patient care problems, which have been identified through the quality improvement process.

51.3(4) The quality improvement plan may include external, state, local, federal, and regional benchmarking activities designed to improve the quality of patient care. The quality improvement plan shall be written and may address the following:

a. The program's objectives, organization, scope, and mechanisms for overseeing the effectiveness of monitoring, evaluation, and problem-solving activities;

b. The participation from all departments, services (including services provided both directly and under contract), and disciplines;

c. An assessment of participation through a quality improvement committee meeting on an established periodic basis;

d. The coordination of quality improvement activities;

e. The communication, reporting and documentation of all quality improvement activities on a regular basis to the governing board, the medical staff, and the hospital administrator;

f. An annual evaluation by the governing board of the effectiveness of the quality improvement program; and

g. The accessibility and confidentiality of materials relating to, generated by or part of the quality improvement process.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.4(135B) Long-term acute care hospital located within a general hospital.

51.4(1) A long-term acute care hospital shall meet the requirements for a general hospital, including emergency services, except that obstetrical facilities are not required, and, if the long-term acute care hospital is located within a separately licensed hospital and does not provide its own emergency services, the long-term acute care hospital shall contract for emergency services with the host general hospital.

51.4(2) If a long-term acute care hospital occupies the same premises of a general hospital, all treatment facilities and administrative offices for each hospital shall be clearly marked and separated

from each other and located within the licensed premises of each licensee. Treatment facilities shall be sufficient to meet the medical needs of the patients. Administrative offices include, but are not limited to, record rooms and personnel offices. Nothing prohibits a long-term acute care hospital that is occupying the same premises as a general hospital from utilizing the entrance, hallway, stairs, elevators or escalators of the general hospital to provide access to the long-term acute care hospital's separate entrance, but there should be clearly identifiable and distinguishable signs for each hospital.

51.4(3) A long-term acute care hospital located within a general hospital shall have sufficient staff to meet the patients' needs. No nursing services staff can be simultaneously assigned patient duties in both licensed hospitals.

51.4(4) Each long-term acute care hospital located within a general hospital and the general hospital shall have a separate and distinct governing board in control of the respective hospital. No more than one board member shall serve in a common capacity on the governing board of each licensed hospital. For the purposes of this rule, control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

51.4(5) A long-term acute care hospital located within a general hospital may contract with the host general hospital for the provision of services. All contracts shall clearly delineate the responsibilities of and services provided by the long-term acute care hospital and the general hospital and be executed by the respective governing boards.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.5(135B) Medical staff.

51.5(1) A roster of medical staff members shall be kept.

51.5(2) All hospitals shall have one or more licensed physicians designated for emergency call service at all times.

51.5(3) A hospital shall not deny clinical privileges as set forth in Iowa Code section 135B.7(2).

51.5(4) A hospital shall establish and implement written criteria for the granting of clinical privileges that include but are not limited to consideration of the:

a. Ability of the applicant to provide patient care services independently or appropriately in the hospital;

b. License held by the applicant to practice;

c. Training, experience, and competence of the applicant;

d. Relationship between the applicant's request for privileges and the hospital's current scope of patient care services;

e. Applicant's ability to provide comprehensive, appropriate and cost-effective services.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.6(135B) Patient rights and responsibilities. The hospital governing board shall adopt a statement of principles relating to patient rights and responsibilities that is made available to patients of the hospital and addresses, at a minimum:

51.6(1) Access to treatment regardless of age, race, creed, ethnicity, religion, culture, language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity or expression, diagnosis, or source of payment for care;

51.6(2) Preservation of individual dignity and protection of personal privacy in receipt of care;

51.6(3) Confidentiality of medical and other appropriate information;

51.6(4) Assurance of reasonable safety within the hospital;

51.6(5) Knowledge of the identity of the physician or other practitioner primarily responsible for the patient's care as well as identity and professional status of others providing services to the patient while in the hospital;

51.6(6) Nature of patient's right to information regarding the patient's medical condition unless medically contraindicated, to consult with a specialist at the patient's request and expense, and to refuse treatment to the extent authorized by law;

51.6(7) Access to and explanation of patient billings;

51.6(8) Process for patient pursuit of grievances; and

51.6(9) Patient responsibilities, including to provide accurate and complete information regarding the patient's health status; to follow recommended treatment plans; to abide by hospital rules and regulations affecting patient care and conduct and be considerate of the rights of other patients and hospital personnel; and to fulfill the patient's financial obligations as soon as possible following discharge.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.7(135B) Abuse.

51.7(1) *Definitions.*

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment, with resulting physical harm, pain or mental anguish. Neglect is a form of abuse and is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Child abuse" means the same as defined in Iowa Code section 232.68.

"Dependent adult abuse" means the same as defined in Iowa Code section 235E.1 and 481—Chapter 52.

"Domestic abuse" means the same as defined in Iowa Code section 236.2.

"Elder abuse" means the same as defined in Iowa Code section 235F.1.

"Family or household members" means the same as defined in Iowa Code section 236.2.

51.7(2) *Abuse prohibited.* Each patient shall receive kind and considerate care at all times and shall be free from all forms of abuse or harassment.

a. Restraints shall be applied only when they are necessary to prevent injury to the patient or to others and shall be used only when alternative measures are not sufficient to accomplish their purposes.

b. There must be a written order signed by the attending physician approving the use of restraints either at the time they are applied or as soon thereafter as possible.

c. Careful consideration shall be given to the methods by which the restraints can be speedily removed in case of fire or other emergency.

51.7(3) *Hospital response to elder abuse.*

a. Each hospital shall establish and implement policies and procedures with respect to victims of elder abuse that, at a minimum, provide for:

(1) An interview with the victim in a place that ensures privacy;

(2) Confidentiality of the person's treatment and information; and

(3) Education of appropriate emergency department staff to assist in the identification of victims of elder abuse.

b. The treatment records of victims of elder abuse shall include:

(1) An assessment of the extent of abuse to the victim specifically describing the location and extent of the injury and reported pain;

(2) A record of the treatment and intervention by health care provider personnel;

(3) A record of the need for follow-up care and specification of the follow-up care to be given (e.g., X-rays, surgery, consultation, similar care); and

(4) The victim's statement of how the injury occurred.

51.7(4) *Hospital response to domestic abuse.* Each hospital shall establish and implement policies and procedures with respect to victims of domestic abuse that, at a minimum, meet the requirements of paragraph 51.7(3)*"a,"* and also provide for sharing information regarding the domestic abuse hotline and programs. The treatment records of victims of domestic abuse shall meet the requirements of paragraph 51.7(3)*"b"* and also include evidence that the victim was informed of the telephone numbers for the domestic abuse hotline and domestic abuse programs and the victim's response.

51.7(5) *Mandatory reporting of child abuse and dependent adult abuse.* Each hospital shall establish and implement policies and procedures with respect to the mandatory reporting of abuse pursuant to the Iowa Code. The treatment records of victims of child abuse or dependent adult abuse shall indicate that the department of health and human services' protective services was contacted.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.8(135B) Organ, tissue and eye procurement. Each hospital shall have written policies and protocols for organ, tissue and eye donation consistent with Iowa Code chapter 142C and 42 CFR 482.45 as amended to November 7, 2023, or 42 CFR 485.643 as amended to November 7, 2023.
[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.9(135B) Nursing services.

51.9(1) The hospital shall have an organized nursing service that provides complete and efficient nursing care to each patient. The authority, responsibility and function of each nurse shall be clearly defined.

51.9(2) Registered nurses shall utilize the nursing process in the practice of nursing, consistent with accepted and prevailing practice. The nursing process is ongoing and includes:

a. Nursing assessments about the health status of an individual or group.

b. Formulation of a nursing diagnosis based on analysis of the data from the nursing assessment.

c. Planning of nursing care, which includes determining goals and priorities for actions that are based on the nursing diagnosis.

d. Nursing interventions implementing the plan of care.

e. Evaluation of the individual's or group's status in relation to established goals and the plan of care.

51.9(3) A licensed practical nurse(s) may participate in the nursing process as described in subrule 51.9(2) consistent with accepted practice by assisting the registered nurse or physician.

51.9(4) All nurses employed in a hospital who practice nursing as a registered nurse or licensed practical nurse shall hold an active Iowa license or hold an active license in another state and be recognized for licensure in this state pursuant to the nurse licensure compact in Iowa Code section 152E.1.

51.9(5) There shall be a director of nursing service with administrative and executive competency who holds an active Iowa license or holds an active license in another state and is recognized for licensure in this state pursuant to the nurse licensure compact in Iowa Code section 152E.1.

51.9(6) Nursing management shall have had preparation courses and experience in accordance with hospital policy commensurate with the responsibility of the specific assignment.

51.9(7) All unlicensed personnel performing patient-care service shall be under the supervision of a registered nurse, have duties defined in writing by the hospital, and be instructed in all duties assigned to them.

51.9(8) The nursing service shall have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care essential for the proper treatment, well-being, and recovery of the patient.

51.9(9) Written policies and procedures shall be established for the administrative and technical guidance of the personnel in the hospital. Each employee shall be familiar with these policies and procedures.

51.9(10) Each hospital shall have a minimum of one registered nurse on duty at all times.
[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.10(135B) Records and reports.

51.10(1) *Medical records.* Accurate and complete medical records shall be maintained for all patients and signed by the appropriate provider. These records shall be filed and stored in an accessible manner and in accordance with the statute of limitations as specified in Iowa Code chapter 614.

51.10(2) *Hospital records.* A hospital shall maintain the following records:

a. *Admission records.* A register of all admissions to the hospital.

b. *Death records.* A record of all deaths in the hospital, including all information on a standard death certificate as specified in Iowa Code chapter 144.

c. *Birth records.* A record of all births in the hospital, including all information on a standard birth certificate as specified in Iowa Code chapter 144.

d. *Controlled substance records.* Controlled substance records in accordance with state and federal laws, rules and regulations.

51.10(3) *Electronic records.* In addition to the access provided in 481—subrule 50.10(2), an authorized representative of the department shall be provided unrestricted access to electronic records pertaining to the care provided to the patients of the hospital.

a. If access to an electronic record is requested by the authorized representative of the department, the hospital may provide a tutorial on how to use its particular electronic system or may designate an individual who will, when requested, access the system, respond to any questions or assist the authorized representative as needed in accessing electronic information in a timely fashion.

b. The hospital shall provide a terminal where the authorized representative may access records.

c. If the hospital is unable to provide direct print capability to the authorized representative, the hospital shall make available a printout of any record or part of a record on request in a time frame that does not intentionally prevent or interfere with the department's survey or investigation.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.11(135B) Pharmaceutical service.

51.11(1) *General requirements.* Hospital pharmaceutical services shall be licensed in accordance with Iowa board of pharmacy rules.

51.11(2) *Medication administration.* All drugs and biologicals must be administered by, or under the supervision of, nursing or other trained personnel in accordance with hospital policies and procedures. The person assigned the responsibility of medication administration must complete the entire procedure by personally preparing the dose from a multiple-dose container or using a prepackaged unit dose, personally administering it to the patient, and observing the act of the medication being taken.

51.11(3) *Standing orders.* Standing orders for drugs may be used for specified patients when authorized by the prescribing practitioner. These standing orders shall be in accordance with policies and procedures established by the appropriate committee within each hospital. At a minimum, the standing orders shall:

a. Specify the clinical situations under which the drug is to be administered;

b. Specify the types of medical conditions of the patients for whom the standing orders are intended;

c. Be reviewed and revised by the hospital's pharmacy and therapeutics or similar committee on a regular basis as specified by hospital policies and procedures;

d. Be specific as to the drug, dosage, route, and frequency of administration; and

e. Be dated, authorized by signature or other secure electronic method by the prescribing practitioner within a period not to exceed 30 days following a patient's discharge, and included in the patient's medical record.

51.11(4) *Self-administration of medications.* Patients shall only be permitted to self-administer medications when specifically ordered by the prescribing practitioner and the prescribing practitioner has determined this practice is safe for the specific patient. The hospital shall develop policies and procedures regarding storage and documentation of the administration of drugs.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.12(135B) Verbal orders. All verbal orders must be authenticated by the prescribing or ordering practitioner within a period not to exceed 30 days following a patient's discharge. When verbal or electronic mechanisms are used to transmit orders, the orders must be accepted only by personnel who are authorized to do so by hospital policies and procedures in a manner consistent with federal and state law.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.13(135B) Radiological services.

51.13(1) The hospital must maintain, or have available, radiological services to meet the needs of the patients.

51.13(2) All radiological services shall be furnished in compliance with any applicable state law or state rules, including 641—Chapters 38 through 42.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.14(135B) Laboratory service.

51.14(1) The hospital must maintain, or have available, adequate laboratory and pathology services and facilities to meet the needs of its patients. The medical staff determine which laboratory tests are necessary to be performed on site to meet the needs of the patients.

51.14(2) Emergency laboratory services must be available 24 hours a day.

51.14(3) Laboratory services must be performed in a laboratory certified and operating in accordance with 42 CFR Part 493 as amended to November 7, 2023.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.15(135B) Food and nutrition service.

51.15(1) *Food and nutrition service definition.* "Food service" means providing safe, satisfying, and nutritionally adequate food for patients through the provision of appropriate staff, space, equipment, and supplies. "Nutrition service" means providing assessment and education to ensure that the nutritional needs of the patients are met.

51.15(2) *General requirements.*

a. All food will be handled, prepared, served, and stored in accordance with the Food Code adopted under provisions of Iowa Code section 137F.2.

b. The food and dietetic services shall be of a quality and quantity to meet the patient's needs in accordance with any qualified health practitioner's orders and meet the standards set forth in 42 CFR 482.28 as amended to November 7, 2023. Patient food preferences should be respected as much as possible, and substitutes offered through use of appropriate food groups.

c. Policies and procedures shall be developed and maintained.

d. Not less than three meals will be served daily unless contraindicated, and not more than 14 hours will elapse between the evening meal and breakfast of the following day. Nourishment between meals will be available to all patients unless contraindicated by the qualified health care practitioner.

e. The hospital will maintain adequate space, equipment, and staple food supplies to provide patient food service in emergencies.

f. Menus for regular and therapeutic diets will be available and standardized recipes with nutritional analysis adjusted to number of portions will be maintained and used in food preparation.

g. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance. Food shall be served attractively at appropriate and safe temperatures and in a form to meet individual needs.

h. Nutrition screening will be conducted by qualified hospital staff to determine the patient's need for a comprehensive nutrition assessment by the licensed dietitian. Nutritional care will be integrated in the patient care plan, as appropriate, based upon the patient's diagnosis and length of stay. The licensed dietitian will record in the patient's medical record any observations and information pertinent to medical nutrition therapy, and any pertinent dietary records will be included in the patient's transfer discharge record to ensure continuity of nutritional care. Upon discharge, nutrition counseling and education will be provided to the patient and family as ordered by the qualified health care practitioner, requested by the patient or deemed appropriate by the licensed dietitian.

i. In-service training, in accordance with hospital policies, will be provided for all food and nutrition service personnel.

j. On the nursing units, a separate patient food storage area will be maintained that ensures proper temperature control.

51.15(3) *Food and nutrition service staff.*

a. A licensed dietitian will be employed on a full-time, part-time or consulting basis, with any part-time or consultant services provided on the premises at appropriate times on a regularly scheduled basis. These services shall be of sufficient duration and frequency to provide continuing liaison with medical and nursing staff, advice to the administrator, patient counseling, guidance to the supervisor and staff of the food and nutrition service, approval of all menus, and participation in the development or revision of departmental policies and procedures and in planning and conducting in-service education programs.

b. If a licensed dietitian is not employed full-time, then one must be employed on a part-time or consultation basis with an additional full-time person who has completed a certified dietary manager course and is employed to be responsible for the operation of the food service.

c. Sufficient food service personnel will be employed, oriented, trained, and their working hours scheduled to provide for the nutritional needs of the patients and to maintain the food service areas.

51.15(4) *Food service equipment and supplies.* Equipment necessary for preparation and maintenance of menus, records, and references will be provided. At least one week's supply of staple foods and a reasonable supply of perishable foods shall be maintained on the premises. Supplies will be appropriate to meet the requirements of the menu.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.16(135B) Equipment for patient care. Hospital equipment shall be selected, maintained and utilized in accordance with the manufacturer's specifications and the needs of the patients.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.17(135B) Infection control. There shall be proper policies and procedures for the prevention and control of communicable diseases, including compliance with the current rules for the control of communicable disease as provided by the Iowa department of health and human services and current Centers for Disease Control and Prevention (CDC) guidelines for isolation precautions.

51.17(1) *Segregation.* There shall be proper arrangement of areas, rooms and patients' beds to provide for the prevention of cross-infections and the control of communicable diseases. There shall also be proper cleansing of rooms and surgeries immediately following the care of a communicable case and utilization of proper isolation techniques for patients and staff to prevent cross-infection.

51.17(2) *Visitors.* The hospital shall establish proper policies and procedures for the control of visitors to all services in the hospital.

51.17(3) *Health assessments.* Health assessments for all contracted or employed personnel who provide direct services shall be required at the commencement of employment and thereafter at least every four years.

a. "Direct services" means services provided through person-to-person contact. "Direct services" excludes services provided by individuals such as building contractors, repair workers, or others who are in the hospital for a very limited purpose, who are not in the hospital on a regular basis, and who do not provide any treatment or services for the patients of the hospital.

b. The health assessment may be performed by the person's primary care provider.

c. The health assessment shall include, at a minimum, vital signs and an assessment for infectious or communicable diseases.

d. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59.

51.17(4) *Notification.* Prior to removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.18(135B) Surgical services. All hospitals providing surgical services shall be properly organized and equipped to provide for the safe and aseptic treatment of surgical patients.

51.18(1) Written policies and procedures governing surgical services shall be developed and implemented in consultation with the hospital's medical staff and, at a minimum, provide for:

a. Surgical services under the direction of a qualified doctor of medicine or osteopathy.

b. Delineation of the privileges and qualifications of individuals authorized to provide surgical services as set forth in the hospital's medical staff bylaws and in accordance with subrule 51.5(4), including a periodic review and update of surgical privileges not to exceed every three years or other term permitted by an accrediting organization approved by CMS for federal certification, whichever is longer. The surgical service must maintain a roster of these individuals specifying the surgical privileges of each.

c. Immediate availability of at least one registered nurse for the operating room suites to respond to emergencies.

d. The qualifications and job descriptions of nursing personnel, surgical technicians, and other support personnel and continuing education required.

e. Appropriate staffing for surgical services, including physician and anesthesia coverage and other support personnel.

f. Availability of ancillary services for surgical patients, including but not limited to blood banking, laboratory, radiology, and anesthesia.

g. Infection control and disease prevention, including aseptic surveillance and practice, identification of infected and noninfected cases, sterilization and disinfection procedures, and ongoing monitoring of infections and infection rates.

h. Housekeeping requirements.

i. Safety practices.

j. Ongoing quality assessment, performance improvement, and process improvement.

k. The pathological examination of tissue specimens either directly or through contractual arrangements.

l. Appropriate preoperative teaching and discharge planning.

51.18(2) Policies and procedures may be adjusted as appropriate to reflect the provision of surgical services in inpatient, outpatient or one-day surgical settings.

51.18(3) There must be an appropriate history and physical workup documented and a properly executed consent form in the chart of each patient prior to surgery, except in the event of an emergency.

51.18(4) A full operative report must be written or dictated within 24 hours following surgery and signed by the individual conducting the surgery.

51.18(5) Equipment available in the operating room, recovery room, outpatient surgical areas, and for postsurgical care must be consistent with the needs of the patient.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.19(135B) Anesthesia services.

51.19(1) There shall be written policies and procedures governing anesthesia services that are consistent with the needs and resources of the hospital. Written policies and procedures governing anesthesia services shall be developed and implemented in consultation with the hospital's medical staff and, at a minimum, provide for:

a. Anesthesia services under the direction of a qualified doctor of medicine or osteopathy.

b. The qualifications of individuals authorized to administer anesthesia as set out in the hospital's medical staff bylaws or medical staff rules and regulations.

c. Preanesthesia evaluation, appraisal of a patient's current condition, preparation of an intraoperative anesthesia record, and discharge criteria for patients.

d. Equipment functioning and safety, including ensuring that a qualified medical doctor, osteopathic physician and surgeon or anesthetist checks, prior to the administration of anesthesia, the readiness, availability, cleanliness, and working condition of all equipment to be used in the administration of anesthetic agents and minimizing electrical hazard in anesthesia areas.

e. Quality assurance, including infection control procedures; integration of anesthesia services into various areas of the hospital; and ongoing monitoring, review, and evaluation of anesthesia services, processes, and procedures.

51.19(2) Policies and procedures may be adjusted as appropriate to reflect provision of anesthesia services in inpatient or outpatient settings.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.20(135B) Emergency services.

51.20(1) All hospitals shall provide for emergency services that offers reasonable care within the medical capabilities of the facility in determining whether an emergency exists, renders care appropriate to the facility and, at a minimum, renders lifesaving first aid and makes appropriate referral to a facility that is capable of providing needed services.

51.20(2) The hospital shall have written policies and procedures specifying the scope and conduct of patient care to be provided in the emergency service. The policies shall:

a. Provide for training of all personnel providing patient care in the emergency service.

b. Require that a medical record be kept on every patient given treatment in the emergency service and establish the medical record documentation. The documentation should include, at a minimum, appropriate information regarding the medical screening provided, except where the person refuses, then notation of patient refusal; physician documentation of the presence or absence of an emergency medical condition or active labor; physician documentation of transfer or discharge, stating the basis for transfer or discharge; and, where transfer occurs, identity of the facility of transfer, acceptance of the patient by the facility of transfer, and means of transfer of the patient.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.21(135B) Obstetric and neonatal services. All hospitals providing obstetrical care shall be properly organized and equipped to provide accommodations for mothers and newborn infants. The supervision of the maternity area shall be under the direction of a qualified registered nurse.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.22(135B) Pediatric services. All hospitals providing pediatric care shall be properly organized and equipped to provide appropriate accommodations for children. The supervision of the pediatric area shall be under the direction of a qualified registered nurse.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.23(135B) Psychiatric services.

51.23(1) *General requirements.* Any hospital operating as a psychiatric hospital or operating a psychiatric unit shall:

a. Be a hospital or unit primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of persons with psychiatric illnesses/disorders;

b. Comply with the requirements of this chapter applicable to hospitals. If medical and surgical diagnostic and treatment services are not available within the hospital, the hospital shall have an agreement with an outside source of these services to ensure they are immediately available;

c. Have policies and procedures for informing patients of their rights and responsibilities and for ensuring the availability of a patient advocate; and

d. Have sufficient numbers of qualified professionals and support staff to evaluate patients, formulate written individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.

51.23(2) *Personnel.*

a. Director of inpatient psychiatric services. The director of inpatient psychiatric services shall be a doctor of medicine or osteopathy qualified to meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

b. Director of psychiatric nursing services. The director of psychiatric nursing services shall:

(1) Be a registered nurse who has a master's degree in psychiatric or mental health nursing;

(2) Be an advanced registered nurse practitioner certified in psychiatric or mental health nursing; or

(3) Be qualified by education and two years' experience in the care of persons with mental disorders.

c. Psychological services. Psychological services shall be provided or available that are in compliance with Iowa Code chapter 154B.

d. Social services. Social services shall provide, or have available by contract, at least one staff member who has:

(1) A master's degree from an accredited school of social work; or

(2) A bachelor's degree in social work with two years' experience in the care of persons with mental disorders.

e. Therapeutic services. Therapeutic activities shall be provided by qualified therapists. The activities shall be appropriate to the needs and interests of the patients.

51.23(3) *Individual written plan of care.* An individual written plan of care shall be developed by an interdisciplinary team of a physician and other personnel who are employed by, or who provide service under contract to patients in, the facility. The plan of care shall:

a. Be based on a diagnostic and psychiatric evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the patient. The initial diagnostic and psychiatric evaluation shall be completed within 60 hours of admission;

b. Be developed by an interdisciplinary team in consultation with the patient, the patient's legal guardian, and others who are currently providing services or who will provide care upon discharge;

c. State treatment objectives through measurable and obtainable outcomes;

d. Prescribe an integrated program of therapies, activities, and experiences designed to meet those objectives;

e. Include an appropriate postdischarge plan with coordination of services to provide continuity of care following discharge; and

f. Be reviewed as needed by the interdisciplinary team for the continued appropriateness of the plan and for a determination of needed changes.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.24(135B) Long-term care service.

51.24(1) *Long-term care service definition.* Long-term care service means any building or distinct part of a building utilized by the hospital for the provision of a service that would fall within the definition of a health care facility in Iowa Code chapter 135C if it was not operating as part of a hospital licensed under Iowa Code chapter 135B.

51.24(2) *Long-term care service general requirements.* The general requirements for the hospital's long-term care service are the same as required by Iowa Code chapter 135C or rules promulgated thereunder for the category of health care facility involved. Exceptions to those rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long-term care resident and of no detriment to the patients in the hospital. Requests for waivers to other applicable rules may be made in accordance with the appropriate health care facility rules.

51.24(3) *Long-term care service staff.* Where a hospital operates a freestanding nursing care facility, it shall be under the administrative authority of a licensed nursing home administrator who will be responsible to the hospital's administrator. Where a hospital operates a distinct part long-term care unit under the hospital license, a licensed nursing home administrator is not required. Other staffing requirements for the hospital's long-term care service are the same as required by Iowa Code chapter 135C or rules promulgated thereunder.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.25(135B) Criminal, dependent adult abuse, and child abuse record checks. The requirements for criminal, dependent adult abuse, and child abuse records checks applicable to health care facilities set forth in rule 481—50.9(135C) are applicable to hospitals.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.26(135B) Minimum standards for construction.

51.26(1) *Minimum standards.* The following construction standards are applicable to hospitals and off-site premises licensed under this chapter:

a. Construction shall be in accordance with the standards set forth in the Guidelines for Design and Construction of Hospitals, 2018 edition, published by the Facility Guidelines Institute.

b. Existing hospitals and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception

of any new structural renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.

c. The design and construction of a hospital or off-site premises shall be in conformance with 661—Chapter 205.

d. In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.

e. If an applicable requirement of 661—Chapter 205 is inconsistent with an applicable requirement of the state building code, the hospital or off-site premises is deemed to be in compliance with the state building code requirement if the requirement of 661—Chapter 205 is met.

51.26(2) *Submission of construction documents.* Submissions shall comply with rule 661—300.4(103A). The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.26(1), unless a waiver has been granted pursuant to subrule 51.26(3).

51.26(3) *Waivers.* Requests for waiver may be submitted to the department in accordance with 481—Chapter 6. Any waiver granted is limited to the specific project under consideration and does not establish a precedent for similar acceptance in other cases. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the waiver. In determining whether a waiver request will be granted, the director will consider the following:

a. Whether the design and planning for the specific property offers improved or compensating features to provide equivalent desirability and utility;

b. Whether alternate or special construction methods, techniques, and mechanical equipment offer equivalent durability, utility, health, and safety;

c. Whether the health, safety or welfare of any patient is endangered;

d. Occupancy and function of the building; and

e. The type of licensing.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.27(135B) Critical access hospitals. Critical access hospitals shall meet the federal conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as amended to November 7, 2023, and any federal interpretive guidelines. The requirements of this chapter applicable to hospitals are generally applicable to critical access hospitals unless compliance would be inconsistent with 42 CFR Part 485, Subpart F, as amended to November 7, 2023, and any interpretive guidelines. If swing-bed approval has been granted, all 25 beds may be used interchangeably for acute or skilled nursing facility level of care services.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.28(135B) Rural emergency hospitals. Rural emergency hospitals shall meet the federal conditions of participation for rural emergency hospitals, as set forth in 42 CFR Part 485, Subpart E, as amended to January 1, 2023, and any federal interpretive guidelines. The requirements of this chapter applicable to hospitals are generally applicable to rural emergency hospitals unless compliance would be inconsistent with 42 CFR Part 485, Subpart E, as amended to January 1, 2023, and any federal interpretive guidelines.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

481—51.29(135B) Specialized hospitals. A specialized hospital shall meet the requirements for a general hospital. The diagnosis, treatment or care at a specialized hospital shall be administered by or performed under the direction of persons especially qualified in the diagnosis and treatment of the particular illness, injury, or infirmity.

[**ARC 7573C**, IAB 2/7/24, effective 1/18/24]

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◊ Two or more ARCs

1 Hospital Protocol for Donor Requests as it appeared in IAC 641—Chapter 180 prior to 4/4/90.

2 January 16, 2013, effective date of 51.24(3) [ARC 0484C] delayed 70 days by the Administrative Rules Review Committee at its meeting held January 8, 2013.

CHAPTER 10
CONTROLLED SUBSTANCES

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 8]

657—10.1(124) Purpose and scope. This chapter establishes the minimum standards for any activity that involves controlled substances. Any person or business that manufactures; distributes; dispenses; prescribes; conducts instructional activities, research, or chemical analysis with; or imports or exports controlled substances listed in Schedules I through V of Iowa Code chapter 124 in or into the state of Iowa, or that proposes to engage in such activities, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 657—10.8(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business. A registration is not transferable to any person or business.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.2(124) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Authorized collection program" means a program administered by a registrant that has modified its registration with DEA to collect controlled substances for the purpose of disposal. Federal regulations for such programs can be found at www.deadiversion.usdoj.gov/drug_disposal/. Modification to the registrant's Iowa controlled substances Act registration shall not be required.

"Board" means the Iowa board of pharmacy.

"CSA" means the Iowa uniform controlled substances Act.

"CSA registration" or *"registration"* means the registration issued by the board pursuant to the CSA that signifies the registrant's authorization to engage in registered activities with controlled substances.

"DEA" means the United States Department of Justice, Drug Enforcement Administration.

"Individual practitioner" means a physician or surgeon (M.D.), osteopathic physician or surgeon (D.O.), dentist (D.D.S. or D.M.D.), doctor of veterinary medicine (D.V.M.), podiatric physician (D.P.M.), optometrist (O.D.), physician assistant (P.A.), resident physician, advanced registered nurse practitioner (A.R.N.P.), or prescribing psychologist.

"Prescription monitoring program," "PMP," or *"program"* means the program established pursuant to 657—Chapter 37 for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.3(124) Who shall register. The following persons or businesses shall register on forms provided by the board:

1. Manufacturers, distributors, importers, and exporters located in Iowa. Effective January 1, 2018, nonresident manufacturers, distributors, importers, and exporters distributing controlled substances into Iowa.
2. Reverse distributors located in Iowa. Effective January 1, 2018, nonresident reverse distributors engaging in the transfer of controlled substances with registrants located in Iowa.
3. Individual practitioners located in Iowa who are administering, dispensing, or prescribing controlled substances and individual practitioners located outside of Iowa who are dispensing or prescribing controlled substances via telehealth services to patients located in Iowa.
4. Pharmacies located in Iowa that are dispensing controlled substances. Effective January 1, 2018, pharmacies located outside of Iowa that are delivering controlled substances to patients located in Iowa.
5. Hospitals located in Iowa that are administering or dispensing controlled substances. Effective January 1, 2018, hospitals located outside of Iowa that are administering or dispensing controlled substances to patients located in Iowa.
6. Emergency medical service programs that are administering controlled substances to patients located in Iowa.
7. Care facilities that are located in Iowa.

8. Researchers, analytical laboratories, and teaching institutions that are located in Iowa.
9. Animal shelters and dog training facilities that are located in Iowa.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.4(124) Who may register. On a case-by-case basis, the board may issue a registration to a business location not listed in rule 657—10.3(124) if it would be impractical to require each individual practitioner who administers or dispenses controlled substances to separately register at the business location. Examples of business locations that may be eligible for a registration pursuant to this rule include, but are not limited to, ambulatory surgical centers as defined in Iowa Code section 147.163, dialysis centers, federally qualified health centers, and standalone clinics associated with a hospital system.

[**ARC 7025C**, IAB 5/31/23, effective 7/5/23]

657—10.5(124) Application. Applicants for initial registration, registration renewal pursuant to rule 657—10.6(124), or modifications pursuant to rule 657—10.9(124) shall complete the appropriate application and shall include all required information and attachments.

10.5(1) *Signature requirements.* Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

a. If the applicant is an individual practitioner, the practitioner shall sign the application and supporting documents.

b. If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location. If the applicant is a pharmacy, the responsible individual shall be the pharmacist in charge, unless the applicant petitions the board for an alternate responsible individual.

10.5(2) *Prescribing practitioner PMP registration required.* A prescribing practitioner, except for a licensed veterinarian, shall register for the PMP at the same time the prescribing practitioner applies for registration.

10.5(3) *Registration fee exemptions.* The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties. In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall maintain a registration to conduct chemical analysis (analytical laboratory). Such laboratories shall be exempt from any registration fee. Exemption from payment of any fees as provided in this subrule does not relieve the entity of registration or of any other requirements or duties prescribed by law.

10.5(4) *Fees.* Each application shall include a nonrefundable registration fee, except as provided in subrule 10.5(3), of $90 per biennium, which may be prorated to the expiration date of the applicant's underlying professional license or other board license if applicable, and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.6(124) Registration renewal. Each registration shall be renewed prior to its expiration. A registrant may renew its registration up to 60 days prior to the registration expiration. The nonrefundable fee for registration renewal shall be $90 per biennium and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

10.6(1) *Delinquent registration grace period.* A registration renewal application that is submitted after expiration but within 30 days following expiration shall be considered delinquent and shall require the nonrefundable payment of the application fee plus a nonrefundable late penalty fee of $90 and may require payment of a surcharge of not more than 25 percent of the applicable fees for deposit into the program fund. A registrant that submits a completed registration renewal application, nonrefundable late application fee, and nonrefundable late penalty fee within 30 days following expiration shall not be subject to disciplinary action for continuing to operate in the 30 days following expiration.

10.6(2) *Delinquent registration reactivation beyond grace period.* If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following the registration's expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation. The nonrefundable fee for reactivation shall be $360 and may include a nonrefundable surcharge of not more than 25 percent of the applicable fee for deposit into the program fund. As part of the reactivation application, the registrant shall disclose the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.7(124) Separate registration for independent activities; coincident activities. The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

10.7(1) *Manufacturing controlled substances.* A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

10.7(2) *Distributing controlled substances.* This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

10.7(3) *Dispensing, administering, prescribing, or instructing with controlled substances.* These independent activities include, but are not limited to, prescribing, administering, and dispensing by individual practitioners; dispensing by pharmacies and hospitals; and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for these independent activities may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law. If an entity that engages in the distribution, administration, dispensing, or storing of controlled substances maintains multiple licenses, such as a hospital that has both inpatient and outpatient pharmacies, a separate registration shall be maintained for each license.

10.7(4) *Conducting research with controlled substances listed in Schedule I.* A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal DEA registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

10.7(5) *Conducting research with controlled substances listed in Schedules II through V.* A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code section 124.302(3), and may conduct instructional activities with controlled substances.

10.7(6) *Conducting chemical analysis with controlled substances.* A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances

to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code section 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

10.7(7) *Importing or exporting controlled substances.* A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.8(124) Separate registrations for separate locations; exemption from registration. A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, dispensed, stored, or collected for the purpose of disposal unless the person or business is exempt from registration pursuant to Iowa Code section 124.302(3), this rule, or federal regulations.

10.8(1) *Warehouse.* A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

a. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to registered locations other than the registered location from which the substances were delivered to the warehouse.

b. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to persons exempt from registration pursuant to Iowa Code section 124.302(3).

10.8(2) *Sales office.* An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

10.8(3) *Prescriber's office.* An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

10.8(4) *Prescriber in hospital.* A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration at the location of the hospital.

10.8(5) *Affiliated interns, residents, or foreign physicians.* An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the practitioner is employed provided that:

a. The hospital or other institution by which the individual practitioner is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the appropriate licensing board.

b. Such individual practitioner is acting only in the scope of employment or practice in the hospital, institution, internship program, or residency program.

c. The hospital or other institution authorizes the intern, resident, or foreign physician to dispense or prescribe under the hospital registration and designates a specific internal code number, letters, or combination thereof which shall be appended to the institution's DEA registration number, preceded by a hyphen (e.g., AP1234567-10 or AP1234567-12).

d. The hospital or institution maintains a current list of internal code numbers identifying the corresponding individual practitioner, available for the purpose of verifying the authority of the prescribing individual practitioner.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.9(124) Modification or termination of registration. A registered individual or business shall apply to modify a current registration as provided by this rule. When submission of an application and fee is required, such application and fee shall be timely submitted pursuant to rule 657—10.5(124). A registrant which has timely submitted an application for registration modification and fee may continue to service Iowa patients while the registration modification is pending final approval. A registrant which has submitted an application for registration modification after the required date of submission pursuant to this rule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of $90 in addition to the application fee. A registrant which has submitted an application for registration modification 31 days or later following the required date of submission pursuant to this rule shall be assessed a nonrefundable late penalty fee of $360.

10.9(1) *Change of substances authorized.* Any registrant shall apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

10.9(2) *Change of address of registered location.*

a. Individual practitioner or researcher. An entity registered as an individual practitioner or researcher shall apply to change the address of the registered location by submitting a written request to the board. The request shall include the registrant's name, current address, new address, telephone number, effective date of the address change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the address of the registered location by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of address.

10.9(3) *Change of registrant's name.*

a. Individual practitioner or researcher. An entity registered as an individual practitioner or researcher shall apply to change the registrant's name by submitting a written request to the board. The request shall include the registrant's current name, new name, address, telephone number, effective date of the name change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification. Change of name, as used in this paragraph, refers to a change of the legal name of the registrant and does not authorize the transfer of a registration issued to an individual practitioner or researcher to another individual practitioner or researcher.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the registrant name by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's name.

10.9(4) *Change of ownership of registered business entity.* A change of immediate ownership of a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the submission of a completed application

and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's ownership.

10.9(5) *Change of responsible individual.* Any registrant, except an individual practitioner or researcher or a pharmacy or hospital, shall apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, and telephone number; the name and title of the current responsible individual and of the new responsible individual; the effective date of the change; and the registration number and shall be signed by the new responsible individual. No fee shall be required for the modification.

a. Individual practitioners and researchers. Responsibility under a registration issued to an individual practitioner or researcher shall remain with the named individual practitioner or researcher. The responsible individual under such registration may not be changed or transferred.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration within ten days of the identification of a new responsible individual.

10.9(6) *Termination of registration.* A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice. A registration issued to an individual shall terminate upon the death of the individual.

10.9(7) *Cancellation of registration.* An individual registrant who no longer needs a registration due to discontinuation of practice in Iowa or discontinuation of possessing, administering, dispensing, or prescribing controlled substances shall contact the board to request cancellation of the registration. An individual registrant may renew the registration upon a return to practice in Iowa or a return to possessing, administering, dispensing, or prescribing controlled substances by submitting an application and a nonrefundable fee for registration renewal of $90 per biennium and a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19; **ARC 5096C**, IAB 7/15/20, effective 8/19/20]

657—10.10(124) Denial of application or discipline of registration.

10.10(1) *Grounds for denial or discipline.* The board may deny any application or discipline any registration upon a finding that the applicant or registrant:

a. Has furnished false or fraudulent material information.

b. Has had the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended, revoked, or otherwise sanctioned.

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even if entry of the judgment or sentence has been withheld and the applicant or registrant has been placed on probation.

d. Has committed such acts as would render the applicant's or registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section.

e. Has been subject to discipline by the applicant's or registrant's respective professional licensing board and the discipline revokes or suspends the applicant's or registrant's professional license or otherwise disciplines the applicant's or registrant's professional license in a way that restricts the applicant's or registrant's authority to handle or prescribe controlled substances. A copy of the record of

licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

f. Has failed to obtain or maintain active registration while engaged in activities which require registration.

10.10(2) *Considerations in denial of application or discipline of registration.* In determining the public interest, the board shall consider all the following factors:

a. Maintenance of effective controls against diversion of controlled substances into channels other than legitimate medical, scientific, or industrial channels.

b. Compliance with applicable state and local law.

c. Any convictions of the applicant or registrant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's or registrant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

h. Failure of a prescribing practitioner, except a licensed veterinarian, to register with the PMP pursuant to subrule 10.5(2).

10.10(3) *Proceedings.*

a. Prior to denying an application for registration, the board shall serve upon the applicant a notice of intent to deny the application. An applicant has 30 days to appeal a notice of intent to deny the application. If the notice of intent to deny the application is timely appealed, a notice of hearing shall be issued, initiating a contested case proceeding governed by 657—Chapter 35. Proceedings to refuse renewal of a registration shall not abate the existing registration, which shall remain in effect pending the outcome of the contested case proceeding. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

b. Prior to sanctioning a registration, the board shall serve upon the registrant a notice of hearing and statement of charges. The notice shall contain a statement of the basis therefore and shall call upon the registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the notice. The notice shall also contain a statement of the legal basis for such hearing and for the sanction of registration and a summary of the matters of fact and law asserted. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

10.10(4) *Disposition of controlled substances.* Upon service of an order of the board suspending or revoking a registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for filing an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

[**ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.11(124,147,155A) Registration verification. The board may require a nonrefundable fee of $15 for completion of a request for written verification of any registration.

[**ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.12(124) Inspection. The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.13(124) Security requirements. All registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the board shall use the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

10.13(1) *Physical security.* Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

a. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet or safe.

b. Controlled substances listed in Schedules II through V may be stored in a securely locked, substantially constructed cabinet or safe. However, pharmacies and hospitals may disperse these substances throughout the stock of noncontrolled substances in a manner so as to obstruct the theft or diversion of the controlled substances.

c. Controlled substances collected via an authorized collection program for the purpose of disposal shall be stored pursuant to federal regulations, which can be found at www.deadiversion.usdoj.gov/drug_disposal/.

10.13(2) *Factors in evaluating physical security systems.* In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

a. The type of activity conducted.

b. The type, form, and quantity of controlled substances handled.

c. The location of the premises and the relationship such location bears to security needs.

d. The type of building construction comprising the facility and the general characteristics of the building or buildings.

e. The type of vault, safe, and secure enclosures available.

f. The type of closures on vaults, safes, and secure enclosures.

g. The adequacy of key control systems or combination lock control systems.

h. The adequacy of electronic detection and alarm systems, if any.

i. The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas.

j. The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any.

k. The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel.

l. The availability of local police protection or of the registrant's or applicant's security personnel.

m. The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

10.13(3) *Manufacturing and compounding storage areas.* Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.14(124) Accountability of controlled substances. The registrant shall maintain ultimate accountability of controlled substances and records maintained at the registered location.

10.14(1) *Records.* Pursuant to rule 657—10.36(124,155A), records shall be available for inspection and copying by the board or its authorized agents for two years from the date of the record.

10.14(2) *Policies and procedures.* The registrant shall have policies and procedures that identify, at a minimum:

a. Adequate storage for all controlled substances to ensure security and proper conditions with respect to temperature and humidity.

b. Access to controlled substances and records of controlled substances by employees of the registrant.

c. Proper disposition of controlled substances.

d. To the extent possible, a separation of duties related to the purchasing, receiving, stocking, dispensing, and reconciling of controlled substance inventory.

e. The reconciliation of controlled substances in Schedule II pursuant to subrule 10.18(4).

f. The accountability measures for controlled substances in Schedules III through V pursuant to rule 657—10.20(124).

g. A controlled substance accountability program to document review of controlled substance inventory adjustments, review patterns of controlled substance loss, and create an action plan following a report of theft or loss pursuant to subrule 10.21(5).

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.15 Reserved.

657—10.16(124) Receipt and disbursement of controlled substances. Each transfer of a controlled substance between two registrants, to include a transfer between two separately registered locations regardless of any common ownership, except as provided in subrule 10.16(2), shall require a record of the transaction. Each registrant shall maintain a copy of the record for at least two years from the date of the transfer. Records of the transfer of Schedule II controlled substances shall be created and maintained separately from records of the transfer of Schedules III through V controlled substances pursuant to rule 657—10.36(124,155A). Upon receipt of a controlled substance, the individual responsible for receiving the controlled substance shall date and sign the receipt record.

10.16(1) *Record.* The record, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

a. The name of the substance.

b. The strength and dosage form of the substance.

c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from which the substances were acquired.

d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to which the substances were distributed.

e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to which the substances were distributed for disposal, if appropriate.

10.16(2) *Distribution of samples and other complimentary packages.* Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items provides to the practitioner a record that contains the information found in this subrule. The individual responsible for receiving the controlled substances shall sign and date the record.

a. The name, address, and DEA registration number of the supplier.

b. The name, address, and DEA registration number of the practitioner.

c. The name, strength, dosage form, and quantity of the specific controlled substances delivered.

d. The date of delivery.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.17(124) Ordering or distributing Schedule I or II controlled substances. A registrant authorized to order or distribute Schedule I or II controlled substances shall do so only pursuant to and in compliance with DEA regulations via a DEA Form 222 or via the DEA Controlled Substances Ordering System (CSOS).
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 5349C**, IAB 12/30/20, effective 2/3/21]

657—10.18(124) Schedule II perpetual inventory. Each registrant located in Iowa that maintains Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to this rule. All records relating to the perpetual inventory shall be maintained at the registered location and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record. The perpetual inventory shall accurately reflect the on-hand inventory of Schedule II substances, and the registrant is responsible for ensuring that the perpetual inventory record is accurate and matches the actual on-hand inventory at all times.

10.18(1) *Record format.* The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

10.18(2) *Information included.* The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each receipt, disbursement, and current balance of each individual drug or NDC number. The record shall also include incident reports and reconciliation records pursuant to subrules 10.18(3) and 10.18(4).

10.18(3) *Changes to a record.* If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

10.18(4) *Reconciliation.* The registrant shall be responsible for reconciling or ensuring the completion of a reconciliation of the perpetual inventory balance with the physical inventory of all Schedule II controlled substances at least annually. Any discrepancies discovered during reconciliation shall be investigated and reported to the pharmacist in charge or responsible individual immediately but no later than one business day following the discovery. The registrant shall determine the need for further investigation, and significant losses shall be reported to the board pursuant to rule 657—10.21(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or its authorized agents for a period of two years from the date of the record. The reconciliation process shall be completed using the following procedures or a combination thereof:

a. The individual responsible for a disbursement shall verify that the physical inventory matches the perpetual inventory following each transaction and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If any Schedule II controlled substances in the registrant's current inventory have been disbursed and verified in this manner within the year and there are no discrepancies noted, no additional reconciliation action is required. A perpetual inventory record for a drug that has had no activity within the year shall be reconciled pursuant to paragraph 10.18(4)*"b."*

b. A physical count of each Schedule II controlled substance stocked by the registrant that has not been reconciled pursuant to paragraph 10.18(4)*"a"* shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures

that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 5349C**, IAB 12/30/20, effective 2/3/21; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.19(124) Physical count and record of inventory. Each registrant shall be responsible for taking a complete and accurate inventory of all stocks of controlled substances under the control of the registrant pursuant to this rule. The responsible individual may delegate the actual taking of any inventory.

10.19(1) *Record and procedure.* Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.18(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of two years from the date of the inventory.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

b. Each inventory shall be maintained in a handwritten, typewritten, or electronically printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

c. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. Controlled substances on hand shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical service programs, care facility or hospice emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant. Controlled substances obtained through an authorized collection program for the purpose of disposal shall not be examined, inspected, counted, sorted, inventoried, or otherwise handled.

d. A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

e. The inventory shall be taken either prior to opening or following the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

f. The inventory record, unless otherwise provided under federal law, shall include the following information:

(1) The name of the substance.

(2) The strength and dosage form of the substance.

(3) The quantity of the substance, which shall be an exact count or measure of the substance and may not be an estimated count or measure, except for liquid products packaged in nonincremented containers, which may be estimated to the nearest one-fourth container.

(4) Information required of authorized collection programs pursuant to federal regulations for such collection programs.

(5) The signature of the person or persons responsible for taking the inventory.

(6) The date and time (opening or closing) of the inventory.

10.19(2) *Initial inventory.* A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, storage, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

10.19(3) *Annual inventory.* After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least annually. The annual inventory may be taken on any date that is within 372 days after the date of the previous annual inventory.

10.19(4) *Change of ownership, pharmacist in charge, or registered location.*

a. When there is a change in ownership or location for a registration, an inventory shall be taken of all controlled substances in compliance with subrule 10.19(1). The inventory shall be taken following the close of business on the last day under terminating ownership or at the location being vacated. The

inventory shall serve as the ending inventory for the terminating owner or location being vacated, as well as a record of the beginning inventory for the new owner or location.

b. When there is a change of pharmacist in charge, including when the incoming pharmacist in charge is temporary or interim pursuant to 657—paragraph 8.35(6)*"d,"* an inventory shall be taken of all controlled substances in compliance with subrule 10.19(1). An inventory shall be taken following the close of business on the last day of duty of the outgoing pharmacist in charge. The inventory may serve as the beginning inventory for the incoming pharmacist in charge, unless the incoming pharmacist in charge did not immediately assume the duties of pharmacist in charge following the outgoing pharmacist in charge. Any lapse in time between the outgoing pharmacist in charge and the incoming pharmacist in charge shall cause an inventory to be taken prior to the opening of business on the first day of duty of the incoming pharmacist in charge. An inventory count shall not be required in the case of an interim pharmacist in charge if the pharmacy maintains perpetual inventory logs for all controlled substances pursuant to rule 657—10.20(124).

10.19(5) *Discontinuing registered activity.* A registrant shall take an inventory of controlled substances at the close of business the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to which the substances are transferred.

10.19(6) *New or rescheduled controlled substances.* On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances or the rescheduling of a previously controlled substance to another schedule, any registrant who possesses the newly scheduled or rescheduled controlled substance shall take an inventory of all stocks of the substance on hand. That inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the controlled substance shall be included in the appropriate schedule of each inventory made by the registrant.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.20(124) Schedule III through V accountability. A registrant shall ensure accountability of Schedule III through V controlled substances through one or more of the measures identified herein.

1. Perpetual inventory log, which may be maintained by electronic means, so long as the system complies with the perpetual inventory requirements in rule 657—10.18(124).
2. Documented audit and reconciliation of all controlled substances every six months.
3. Routine documented cycle counts of substances, so long as all controlled substances are counted every 90 days and identified discrepancies are investigated and documented.
4. Other measure preapproved by the board.

[**ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.21(124) Report of theft or loss. A registrant shall report to the board and the DEA any theft or significant loss of controlled substances when the loss is attributable to other than inadvertent error. Thefts or other losses of controlled substances shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them.

10.21(1) *Immediate notice to board.* If the theft was committed by a registrant or licensee of the board, or if there is reason to believe that the theft was committed by a registrant or licensee of the board, the registrant from which the controlled substances were stolen shall notify the board immediately upon discovery of the theft and shall identify to the board the registrant or licensee suspected of the theft.

10.21(2) *Immediate notice to DEA.* A registrant shall deliver notice, immediately upon discovery of a reportable theft or loss of controlled substances, to the Des Moines DEA field office via telephone, facsimile, or a brief written message explaining the circumstances of the theft or loss.

10.21(3) *Timely report submission.* Within 14 calendar days of discovery of the theft or loss, a registrant shall submit directly to the DEA a Form 106 or alternate required form via the DEA website at www.deadiversion.usdoj.gov/. A copy of the report that was completed and submitted to the DEA shall be immediately submitted to the board via facsimile, email attachment, or personal or commercial delivery.

10.21(4) *Record maintained.* A copy of the report shall be maintained in the registrant's files for a minimum of two years following the date the report was completed.

10.21(5) *Action plan following loss.* Within seven days following the report of theft or loss, a registrant shall develop and initiate implementation of an action plan to address the conditions which contributed to the theft or loss. The action plan shall include any directives, including, but not limited to, inventory counts, audits, and perpetual inventory counts provided by a board compliance officer.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.22(124) Disposal of registrant stock. A registrant shall dispose of controlled substances pursuant to the requirements of this rule. Disposal records shall be maintained by the registrant for at least two years from the date of the record.

10.22(1) *Registrant stock supply.* Controlled substances shall be removed from current inventory and disposed of by one of the following procedures.

a. The registrant shall utilize the services of a DEA-registered and Iowa-licensed reverse distributor.

b. The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

(1) By delivery to an agent of the board or to the board office.

(2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual.

(3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

10.22(2) *Waste resulting from administration or compounding.* Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant, a certified paramedic, or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the wastage. The record shall include the following:

a. The controlled substance wasted.

b. The date of wastage.

c. The quantity or estimated quantity of the wasted controlled substance.

d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance.

e. The reason for the waste.

f. The signatures of both individuals involved in the wastage.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.23(124) Disposal of previously dispensed controlled substances.

10.23(1) *Registrant disposal.* Except as provided in 657—Chapter 23 for care facilities, a registrant may not dispose of previously dispensed controlled substances unless the registrant has modified its registration with DEA to administer an authorized collection program. A registrant shall not take possession of a previously dispensed controlled substance except for reuse for the same patient or except as provided in paragraph 10.23(2)*"b."*

10.23(2) *Hospice disposal.*

a. An employee of a hospice program, acting within the scope of employment, may dispose of a controlled substance of a hospice program patient following the death of the patient or the expiration of the controlled substance pursuant to and in compliance with federal law.

b. A physician of a hospice program patient may dispose of a patient's controlled substance which is no longer required due to a change in the patient's care plan.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.24(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled. Beginning January 1, 2020, all prescriptions for controlled substances shall be transmitted electronically to a pharmacy pursuant to rule 657—21.6(124,155A), except as provided in rule 657—21.8(124,155A).

10.24(1) *Form of prescription.* All prescriptions for controlled substances shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions for controlled substances issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's written or electronic signature. A prescription for a controlled substance issued prior to January 1, 2020, or a prescription for a controlled substance that is exempt from the electronic prescription mandate pursuant to rule 657—21.8(124,155A), may be transmitted via nonelectronic methods as described in this rule.

a. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions.

b. A prescriber's agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber, but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription.

c. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by the prescriber in compliance with DEA regulations.

d. A prescriber shall securely maintain the unique authentication credentials issued to the prescriber for utilization of the electronic prescription application and authentication of the prescriber's electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other prescriber, agent, or individual.

e. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

10.24(2) *Verification by pharmacist.*

a. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in each case when a written or oral prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

b. A pharmacist who receives a written, oral, or facsimile prescription shall not be required to verify that the prescription is subject to an exception to the electronic prescription mandate provided in rule 657—21.8(124,155A) and may dispense a prescription drug pursuant to an otherwise valid written, oral, or facsimile prescription pursuant to this rule.

10.24(3) *Intern, resident, foreign physician.* An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.8(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the prescribing intern, resident, or foreign physician as well as the prescriber's signature.

10.24(4) *Valid prescriber/patient relationship.* Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

10.24(5) *Facsimile transmission of a controlled substance prescription.* With the exception of an authorization for emergency dispensing as provided in rule 657—10.26(124), a prescription for a controlled substance in Schedules II, III, IV and V may be transmitted via facsimile from a prescriber to a pharmacy only as provided in rule 657—21.7(124,155A).

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4580C**, IAB 7/31/19, effective 9/4/19]

657—10.25(124) Dispensing records. Each registrant shall create a record of controlled substances dispensed to a patient or research subject.

10.25(1) *Record maintained and available.* The record shall be maintained for two years from the date of dispensing and be available for inspection and copying by the board or its authorized agents.

10.25(2) *Record contents.* The record shall include the following information:

a. The name and address of the person to whom dispensed.

b. The date of dispensing.

c. The name or NDC number, strength, dosage form, and quantity of the substance dispensed.

d. The name of the prescriber, unless dispensed by the prescriber.

e. The unique identification of each technician, pharmacist, pharmacist-intern, prescriber, or prescriber's agent involved in dispensing.

f. The serial number or unique identification number of the prescription.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.26(124) Schedule II emergency prescriptions.

10.26(1) *Emergency situation defined.* For the purposes of authorizing an oral or facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term "emergency situation" means those situations in which the prescribing practitioner determines that all of the following apply:

a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.

b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.

c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance, or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

10.26(2) *Requirements of emergency prescription.* In the case of an emergency situation as defined in subrule 10.26(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The

pharmacist shall record the manner by which the authorization was verified and include the pharmacist's name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the first and last names and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the facsimile transmission shall not be obscured or rendered illegible due to such security features.

e. Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of rule 657—10.24(124,126,155A), the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph 10.26(2)*"c."*

f. The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

g. Pursuant to federal law and subrule 10.27(3), the pharmacist may fill a partial quantity of an emergency prescription so long as the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed and that the remaining portions are filled no later than 72 hours after the prescription is issued.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.27(124) Schedule II prescriptions—partial filling. The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule and federal regulations.

10.27(1) *Insufficient supply on hand.* If the pharmacist is unable to supply the full quantity authorized in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

10.27(2) *Long-term care or terminally ill patient.* A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

b. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient." For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

d. Information pertaining to current Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.5(124,155A).

10.27(3) *Patient or prescriber request.* At the request of the patient or prescriber, a prescription for a Schedule II controlled substance may be partially filled pursuant to this subrule and federal law. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed. Except as provided in paragraph 10.26(2)*"g,"* the remaining portion of a prescription partially filled pursuant to this subrule may be filled within 30 days of the date the prescription was issued.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.28(124) Schedule II medication order. Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3859C**, IAB 6/20/18, effective 7/25/18]

657—10.29(124) Schedule II—issuing multiple prescriptions. An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

10.29(1) *Refills prohibited.* The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

10.29(2) *Legitimate medical purpose.* Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber's professional practice.

10.29(3) *Dates and instructions.* Each prescription issued pursuant to this rule shall be dated as of and manually or electronically signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

10.29(4) *Authorized fill date unalterable.* Regardless of the provisions of rule 657—10.30(124), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

10.29(5) *Number of prescriptions and authorized quantity.* An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

10.29(6) *Prescriber's discretion.* Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4580C**, IAB 7/31/19, effective 9/4/19]

657—10.30(124) Schedule II—changes to a prescription. With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription.

10.30(1) *Changes prohibited.* A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber.

10.30(2) *Changes authorized.* After consultation with the prescriber or the prescriber's agent and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

a. The drug strength.
b. The dosage form.
c. The drug quantity.
d. The directions for use.
e. The date the prescription was issued.
f. The prescriber's address or DEA registration number.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 5346C**, IAB 12/30/20, effective 2/3/21]

657—10.31 Reserved.

657—10.32(124) Schedule III, IV, or V prescription. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times. Beginning January 1, 2020, all prescriptions for controlled substances shall be transmitted electronically to a pharmacy pursuant to rule 657—21.6(124,155A), except as provided in rule 657—21.8(124,155A).

10.32(1) *Record.* Each filling and refilling of a prescription shall be entered in a uniformly maintained and readily retrievable record in accordance with rule 657—10.25(124). If the pharmacist merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

10.32(2) *Oral refill authorization.* The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to an authorized individual at the pharmacy provided the following conditions are met:

a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

b. The pharmacist, pharmacist-intern, or technician who obtains the oral authorization from the prescriber who issued the original prescription documents, on or with the original prescription, the date authorized, the quantity of each refill, the number of additional refills authorized, and the unique identification of the authorized individual.

c. The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

10.32(3) *Partial fills.* The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill pursuant to subrule 10.32(1). The total quantity dispensed in all partial fills shall not exceed the total quantity prescribed.

10.32(4) *Medication order.* A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4580C**, IAB 7/31/19, effective 9/4/19]

657—10.33(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug, and Cosmetic Act, and excepting products containing ephedrine,

pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.33(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.33(2) *Frequency and quantity.* Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

a. 240 cc (8 ounces) of any controlled substance containing opium.

b. 120 cc (4 ounces) of any other controlled substance.

c. 48 dosage units of any controlled substance containing opium.

d. 24 dosage units of any other controlled substance.

10.33(3) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.33(4) *Identification.* The pharmacist shall require every purchaser under this rule who is not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

10.33(5) *Record.* A bound record book (i.e., with pages sewn or glued to the spine) for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the substance to the purchaser.

10.33(6) *Prescription not required under other laws.* No other federal or state law or regulation requires a prescription prior to distributing or dispensing the Schedule V controlled substance.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.34(124) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by an authorized dispenser pursuant to 657—Chapter 100 to a purchaser at retail pursuant to the conditions of this rule.

10.34(1) *Who may dispense.* Dispensing shall be by an authorized dispenser pursuant to 657—Chapter 100. This subrule does not prohibit, after the dispenser has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by another pharmacy employee.

10.34(2) *Packaging of nonliquid forms.* A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

10.34(3) *Frequency and quantity.* Dispensing without a prescription to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing without a prescription to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.34(4) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.34(5) *Identification.* The dispenser shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The dispenser shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.34(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor’s office of drug control policy

pursuant to 657—Chapter 100. If the PTS is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. Alternate record contents. The alternate record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the dispenser who approved the dispensing of the product.

b. Alternate record format. The record shall be maintained using one of the following options:

(1) A hard-copy record.

(2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.

(3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.

c. PTS records retrieval. Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.34(7) *Notice required.* The pharmacy shall ensure that the following notice is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and visible to the public:

"Warning: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned not more than five years, or both."

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4701C**, IAB 10/9/19, effective 11/13/19]

657—10.35 Reserved.

657—10.36(124,155A) Records. Every record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes the receipt and distribution of all controlled substances. Original records more than 12 months old may be maintained in a secure remote storage area unless such remote storage is prohibited under federal law. If the secure storage area is not located within the same physical structure as the registrant, the records must be retrievable within 48 hours of a request by the board or its authorized agent.

10.36(1) *Schedule I and II records.* Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

10.36(2) *Schedule III, IV, and V records.* Records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

10.36(3) *Date of record.* The date on which a controlled substance is actually received, imported, distributed, exported, disposed of, or otherwise transferred shall be used as the date of receipt, importation, distribution, exportation, disposal, or transfer.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.37 Reserved.

657—10.38(124) Revision of controlled substances schedules.

10.38(1) *Designation of new controlled substance.* The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201(4).

10.38(2) *Objection to designation of a new controlled substance.* The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board's decision on the new designation as provided in Iowa Code section 124.201(4).

10.38(3) *Cannabis-derived products.* If a cannabis-derived product or investigational product approved as a prescription drug medication by the United States Food and Drug Administration is added to, eliminated from or revised in the federal schedule of controlled substances by the DEA and notice of the addition, elimination or revision is given to the board, the board shall similarly add, eliminate or revise the prescription drug medication in the schedule of controlled substances. Such action by the board shall be immediately effective upon the date of publication of the final regulation containing the addition, elimination or revision in the Federal Register.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3743C**, IAB 4/11/18, effective 5/16/18; **ARC 5346C**, IAB 12/30/20, effective 2/3/21]

657—10.39(124) Temporary designation of controlled substances.

10.39(1) Amend Iowa Code section 124.204(2) by adding the following new paragraphs:

bt. N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide. Other name: beta-methyl fentanyl.

bu. N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide. Other names: beta-phenyl fentanyl, 3-phenylpropanoyl fentanyl.

bv. N-(1-(2-flourophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide. Other name: 2'-Fluoro ortho-fluorofentanyl, 2'-fluoro 2-fluorofentanyl.

bw. N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide. Other name: 4'-Methyl acetyl fentanyl.

bx. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide. Other names: ortho-Fluorbutyryl fentanyl, 2-fluorobutyryl fentanyl.

by. N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. Other names: ortho-Methyl acetylfentanyl, 2-methyl acetylfentanyl.

bz. 2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. Other names: ortho-Methyl methoxyacetyl fentanyl, 2-methyl methoxyacetyl fentanyl.

ca. N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide. Other names: para-Methylfentanyl, 4-methylfentanyl.

cb. N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide. Other names: Phenyl fentanyl, benzoyl fentanyl.

cc. N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide. Other names: Thiofuranyl fentanyl, 2-thiofuranyl fentanyl, thiophene fentanyl.

cd. Ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate. Other name: fentanyl carbamate.

ce. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide. Other name: ortho-Fluoroacryl fentanyl.

cf. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide. Other name: ortho-Fluoroisobutyryl fentanyl.

cg. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide. Other name: para-Fluoro furanyl fentanyl.

10.39(2) Amend Iowa Code section 124.204(9) by adding the following new paragraphs:

j. 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thienol[3,2-f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: etizolam.

k. 8-chloro-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: flualprazolam.

l. 6-(2-chlorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: clonazolam.

m. 8-bromo-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: flubromazolam.

n. 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2H-benzo[e][1,4]diazepin-2-one, its salts, isomers, and salts of isomers. Other name: diclazepam.

10.39(3) Amend Iowa Code section 124.206(2)*"a"* by rescinding and replacing the introductory text as follows:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, naldemedine, nalmefene, naloxegol, naloxone, 6beta-naltrexol, naltrexone, and samidorphan, and their respective salts, but including the following:

10.39(4) Amend Iowa Code section 124.210(6) by adding the following new paragraph:

n. Serdexmethylphenidate.

10.39(5) Amend Iowa Code section 124.212(5) by adding the following new paragraph:

g. Ganaxolone (3alpha-hydroxy-3beta-methyl-5alpha-pregnan-20-one).

10.39(6) Amend Iowa Code section 124.204(4) by adding the following new paragraphs:

cl. 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one. Other names: methoxetamine, MXE.

cm. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one. Other names: eutylone, bk-EBDB.

10.39(7) Amend Iowa Code section 124.204(6) by adding the following new paragraphs:

j. Amineptine (7-[(10,11-dihydro-5H-dibenzo[alpha,delta]cyclohepten-5-yl)amino]heptanoic acid).

k. Mesocarb (N-phenyl-N'-(3-(1-phenylpropan-2-yl)-1,2,3-oxadiazol-3-ium-5-yl)carbamimidate).

l. Methiopropamine (N-methyl-1-(thiophen-2-yl)propan-2-amine).

10.39(8) Amend Iowa Code section 124.210(3) by adding the following new paragraph:

bg. Daridorexant.

10.39(9) Amend Iowa Code section 124.206(2)*"d"* by adding the following new subparagraph:

(3) [\18\F]FP-CIT.

10.39(10) Amend Iowa Code section 124.204(2) by adding the following new paragraph:

cn. 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol. Other name: Zipeprol.

[**ARC 5914C**, IAB 9/22/21, effective 10/27/21; **ARC 6074C**, IAB 12/15/21, effective 1/19/22; **ARC 6255C**, IAB 3/23/22, effective 4/27/22; **ARC 6521C**, IAB 9/21/22, effective 10/26/22; **ARC 6689C**, IAB 11/30/22, effective 1/4/23; **ARC 6843C**, IAB 2/8/23, effective 3/15/23; **ARC 7026C**, IAB 5/31/23, effective 7/5/23; **ARC 7128C**, IAB 12/13/23, effective 1/17/24; **ARC 7617C**, IAB 2/7/24, effective 3/13/24]

657—10.40(124) Excluded and exempt substances. The Iowa board of pharmacy hereby excludes from all schedules the current list of "Excluded Nonnarcotic Products" identified in Title 21, CFR Part 1308, Section 22. With the exception of listed butalbital products, the board hereby excludes from all schedules the current list of "Exempted Prescription Products" described in Title 21, CFR Part 1308, Section 32. Copies of such lists may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.41(124) Anabolic steroid defined. Anabolic steroid, as defined in Iowa Code section 126.2(2), includes any substance identified as such in Iowa Code section 124.208(6) or 126.2(2).

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.42(124B) Additional precursor substances. Rescinded **ARC 5346C**, IAB 12/30/20, effective 2/3/21.

657—10.43(124) Reporting discipline and criminal convictions. A registrant shall provide written notice to the board of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the registrant no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A registrant shall provide written notice to the board of any criminal conviction of the registrant or of any owner that is related to the operation of the registered location no later than 30 days after the conviction. The term criminal conviction includes instances when the judgment of conviction or sentence is deferred.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.44(124) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a registration for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act.
2. Any conviction of a crime related to controlled substances committed by the registrant, or if the registrant is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusing access to the registered location or registrant records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10.
5. Any violation of Iowa Code chapter 124, 124B, 126, 155A, or 205, or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3857C**, IAB 6/20/18, effective 7/25/18]

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

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REVENUE DEPARTMENT[701]

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CHAPTER 200
DEFINITIONS

[Prior to 9/7/22, see Revenue Department[701] Ch 211]

701—200.1(423) Definitions. The definitions set out in this chapter are applicable wherever the terms they define appear in this title unless the context indicates otherwise.

"Agricultural production" is limited to what would ordinarily be considered a farming operation undertaken for profit. The term "agricultural production" refers to the raising of crops or livestock for market on an acreage. Included within the meaning of the phrase "agricultural production" is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. "Agricultural production" includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. "Agricultural production" also includes any kind of aquaculture, silviculture, commercial greenhouses, and raising catfish. Beekeeping and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term "agricultural production." The above list of exclusions and inclusions within the term "agricultural production" is not exhaustive. "Agricultural products" includes flowering, ornamental, or vegetable plants and those products of aquaculture and silviculture.

"Aquaculture" means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

"Chemical" means a substance that is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

"Domesticated fowl" means any domesticated bird raised as a source of food, either eggs or meat. "Domesticated fowl" includes, but is not limited to, chickens, ducks, turkeys, pigeons, ostriches, rheas, and emus that are raised for meat rather than for racing or as pets. Excluded from the meaning of "domesticated fowl" are nondomesticated birds, such as pheasants, raised for meat or any other purpose.

"Livestock" means domestic animals that are raised on a farm as a source of food or clothing. "Livestock" includes cattle, sheep, hogs, goats, chickens, ducks, turkeys, ostriches, rheas, emus, bison, and farm deer. "Farm deer" means the same as defined in Iowa Code section 170.1 and commonly includes animals belonging to the Cervidae family, such as fallow deer, red deer or elk and sika. However, "farm deer" does not include unmarked free-ranging elk. Fish and any other animals that are products of aquaculture are considered to be "livestock" as well.

Excluded from the term "livestock" are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term "livestock" are mink, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded from "livestock" is any animal raised for racing.

"Plants" means fungi such as mushrooms and crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term "plants" are flowers, shrubs, and fruit trees. Excluded from the meaning of the term "plants" are products of silviculture, such as trees raised for Christmas trees and any trees raised to be harvested for wood.

"Reagent" means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances; in preparing materials; in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purposes of the exemption, a substance must be primarily used as a reagent.

"Silviculture" means the establishment, growth, care, and cultivation of trees. "Silvicultural activities" includes logging. "Silvicultural products" includes trees raised and offered for sale for Christmas trees and any trees raised to be harvested for wood.

"Solvent" means a substance in which another substance can be dissolved and that is primarily used for that purpose.

"Sorbent" means a solid material, often in a powder or granular form, that acts to retain another substance, usually on the sorbent's surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

"Tax" means the tax imposed upon retail sales or use of tangible personal property, specified digital products, or taxable services.

[**ARC 7618C**, IAB 2/7/24, effective 3/13/24]

This rule is intended to implement Iowa Code chapter 423.

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CHAPTER 204
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES AND USE TAX AGREEMENT

[Prior to 9/7/22, see Revenue Department[701] Ch 240]

701—204.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used. Any database maintained by the department that displays tax rates and tax jurisdictional boundaries based on either a five-digit or nine-digit zip code system shall, if an area encompassing one zip code has two or more rates of tax, provide to retailers a means of identifying and applying the lowest rate within the area for use in computing tax due. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the lowest rate for the five-digit zip code area.

This rule is intended to implement Iowa Code section 423.55.

[**ARC 7619C**, IAB 2/7/24, effective 3/13/24]

701—204.2(423) Permissible categories of exemptions.

204.2(1) *Definitions.*

"Entity-based exemption" means an exemption based on who purchases the product or who sells the product.

"Product-based exemption" means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

"Use-based exemption" means an exemption based on the purchaser's use of the product.

204.2(2) *Product-based exemptions.* Iowa will enact a product-based exemption without restriction only if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, Iowa will exempt all items included within the definition but will not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

204.2(3) *Entity-based and use-based exemptions.* Iowa will enact an entity-based or a use-based exemption without restriction only if the agreement has no definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, Iowa will enact an entity-based or a use-based exemption that applies to that product only if the exemption utilizes the agreement's definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, Iowa has the power to enact an entity-based or a use-based exemption for the product without restriction.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

[**ARC 7619C**, IAB 2/7/24, effective 3/13/24]

701—204.3(423) Requirement of uniformity in the filing of returns and remittance of funds. Any model 1, 2, or 3 seller may submit its sales or use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The department will require only one remittance for each return except as otherwise allowed by the agreement. If any additional remittance is required, it will only be required from sellers that have collected more than $30,000 in sales and use taxes in Iowa during the preceding calendar year. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

[**ARC 7619C**, IAB 2/7/24, effective 3/13/24]

701—204.4(423) Allocation of bad debts. If a seller is entitled under Iowa Code section 423.21 to deduct bad debts owed to the seller and those bad debts consist of any sales price or purchase price upon which tax has been paid to the state of Iowa as well as a state or states other than Iowa, then allocation

of the bad debt is allowed. The seller must support an allocation of the bad debts between Iowa and the other state or states through the proper accounting of its books and records.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

[**ARC 7619C**, IAB 2/7/24, effective 3/13/24]

701—204.5(423) Purchaser refund procedures. Iowa law allows a purchaser to seek a return of overcollected sales or use taxes from the seller who collected them. More information is contained in Iowa Code section 423.45(2). In connection with any purchaser's request of a seller that the seller return sales or use tax alleged to have been overcollected, the seller to whom the request is directed shall be rebuttably presumed to have a reasonable business practice if, in the collection of such sales or use tax, the seller uses either a provider or a system, including a proprietary system, which is certified by this state and has remitted all taxes collected by the use of that provider system to the department, less any deductions, credits, or collection allowances.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

[**ARC 7619C**, IAB 2/7/24, effective 3/13/24]

701—204.6(423) Relief from liability for reliance on taxability matrix. Iowa provides and maintains a taxability matrix in a database that is in a downloadable format approved by the governing board. All sellers and certified service providers are relieved from liability to Iowa and any jurisdiction imposing a local option tax under Iowa Code chapter 423B or 423E for having charged and collected the incorrect amount of sales or use tax resulting from the seller's or certified service provider's reliance on erroneous data provided by that taxability matrix.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

[**ARC 7619C**, IAB 2/7/24, effective 3/13/24]

701—204.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring on or after the effective date of the rate increase. If the rate of taxation has been decreased, the new rate shall apply to bills rendered on or after the effective date of the rate decrease.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

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CHAPTER 205
SOURCING OF TAXABLE SERVICES, TANGIBLE PERSONAL PROPERTY, AND SPECIFIED DIGITAL PRODUCTS

[Prior to 9/7/22, see Revenue Department[701] Ch 223]

701—205.1(423) Definitions. For purposes of this chapter, the following terms shall have the same definition as in Iowa Code section 423.1:

"Agreement" means the same as defined in Iowa Code section 423.1.

"Department" means the same as defined in Iowa Code section 423.1.

"First use of a service" means the same as defined in Iowa Code section 423.1.

"First use of a service performed on tangible personal property" means receiving, with the ability to use, whether or not actually used, the tangible personal property on which the taxable service was performed.

"Governing board" means the same as defined in Iowa Code section 423.1.

"Receive" or *"receipt,"* with regard to sales of services, means making "first use of services" pursuant to this chapter. For purposes of receipt of services performed on tangible personal property under rule 701—205.3(423), the location (or locations) where the purchaser (or the purchaser's donee) regains possession or can potentially make first use of the tangible personal property on which the seller performed the service is the location (or locations) of the receipt of the service. The location where the seller performs the service is not determinative of the location where the purchaser receives the service. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser; this is treated as though the retailer delivered to the purchaser the tangible personal property on which the service was performed. When a shipping company delivers tangible personal property on which the service was performed, the service is deemed "received" where the shipping company delivers the tangible personal property to the purchaser. For the purposes of sales of personal care services, the location (or locations) where the service is performed on the purchaser (or the purchaser's donee) is the location where the purchaser receives the service.

"Retailer" means the same as defined in Iowa Code section 423.1.

"Seller" means the same as defined in Iowa Code section 423.1.

[**ARC 7620C**, IAB 2/7/24, effective 3/13/24]

701—205.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services using the destination sourcing requirements described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the result of the service is received, is first used, or could potentially be first used by the purchaser or the purchaser's donee. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

205.2(1) *Determining the result of a service.* Determining the location where the result of a service is received by a purchaser requires a fact-based inquiry on a case-by-case basis.

EXAMPLE 1: Company Z is a photography business located in Mason City, Iowa. Company Z enters into an agreement with Customer Y, a resident of the state of Illinois, to take a photoshoot in Okoboji, Iowa. Company Z charges Customer Y $2,000 for the photoshoot itself and $1,000 for printed photos once they are finalized. Customer Y pays Company Z $3,000 in advance for the photoshoot and photographs. The photoshoot takes place as planned in Okoboji, and three weeks later Company Z sends Customer Y a package containing the photographs to Customer Y's Illinois address.

The photoshoot is the result of Company Z's service, which occurs in Okoboji, Iowa—the location where the performance of the photoshoot begins. Company Z must therefore charge Iowa sales tax and any applicable local option tax on the $2,000 charge for the photoshoot. The $1,000 charge for the photographs is a sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the $1,000 but may be responsible for collecting and remitting Illinois tax.

EXAMPLE 2: Same facts as in Example 1, except that Company Z charges Customer Y a one-time, flat $3,000 charge without any itemization or breakdown of the cost. This $3,000 charge represents the sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the $3,000 but may be responsible for collecting and remitting Illinois tax.

205.2(2) *Subsequent use in Iowa.* If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (More information can be found in Iowa Code section 423.5.)

205.2(3) *Measurement of use tax due.* If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (More information can be found in Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state's 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa's use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state's sales tax rate is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

[**ARC 7620C**, IAB 2/7/24, effective 3/13/24]

701—205.3(423) First use of services performed on tangible personal property.

205.3(1) *First use of services performed on tangible personal property defined.* A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

205.3(2) *Sourcing of taxable services performed on tangible personal property as applied to local option sales and services tax.* A local option sales and services tax shall be imposed on the same basis as the state sales and services tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and services tax sourcing rules shall be the same as the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rules 701—205.1(423) and 701—205.2(423) and subrule 205.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

205.3(3) *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

a. Alteration and garment repair;
b. Vehicle repair and vehicle wash and wax;
c. Boat repair;
d. Carpentry;
e. Roof, shingle, and glass repair;
f. Dry cleaning, pressing, dyeing, and laundering;

g. Electrical and electronic repair and installation;
h. Farm implement repair of all kinds;
i. Furniture, rug, carpet, and upholstery repair and cleaning;
j. Gun and camera repair;
k. Household appliance, television, and radio repair;
l. Jewelry and watch repair;
m. Machine repair of all kinds, including office and business machine repair;
n. Motor repair;
o. Motorcycle, scooter, and bicycle repair;
p. Pet grooming;
q. Wood preparation;
r. Sewing and stitching;
s. Shoe repair and shoeshine; and
t. Taxidermy services.

205.3(4) *Examples of sourcing rules for motor and machine repair.* The following examples are intended to clarify when motor and machine repair services are deemed "received."

EXAMPLE 1: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown's subsequent use of the repair services performed on the lawnmower obliges her to remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Illinois on lawnmower repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 2: Same facts as in subrule 205.3(4), Example 1, except that the Illinois repair shop delivers the repaired lawnmower to the owner's residence in Iowa. In this case, the potential first use is at Ms. Brown's residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE 3: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho's home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 4: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer's location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa. Iowa sales tax is due.

EXAMPLE 5: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory's location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa's use tax rate exceeds Minnesota's tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 6: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges from the test laboratory and deliver them to the manufacturer's location in Iowa. Since the terms

"receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer's location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

205.3(5) *Examples of sourcing rules for the painting of tangible personal property.* The following examples are intended to clarify when the service of painting of tangible personal property is deemed "received."

EXAMPLE 1: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter's shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa. Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter's shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter's location in Illinois where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 2: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

205.3(6) *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska. Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(7) *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(8) *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE 1: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE 2: Mr. Marx, who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois and the transaction is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(9) *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed "received."

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob's Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob's Camera Shop dispatches a repairperson to Mr. Pagano's studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

205.3(10) *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed "received."

EXAMPLE 1: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama Repair Shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards' bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards' potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax imposed by Slater is due even though Bike-o-rama is located in Ankeny. Iowa sales tax is also due.

EXAMPLE 2: Same facts as in subrule 205.3(10), Example 1, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny and Bike-o-rama must collect state sales tax and any local option sales tax imposed by Ankeny.

EXAMPLE 3: Same facts as in subrule 205.3(10), Example 1, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards' bike to his home in Slater, Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater's local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

[**ARC 7620C**, IAB 2/7/24, effective 3/13/24]

701—205.4(423) Sourcing rules for personal care services.

205.4(1) *Definition.* "Personal care services" means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

a. Barber and beauty services;

b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;

c. Reflexology;

d. Reducing salons; and

e. Tanning beds and salons.

205.4(2) *Sourcing of personal care services.* Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of subrule 205.4(1) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser's donee). The services will be received by the purchaser (or the purchaser's donee) either at the seller's location, pursuant to Iowa Code section 423.15(1)*"a,"* or at the purchaser's (or the purchaser's donee) location, pursuant to Iowa Code section 423.15(1)*"b."*

205.4(3) *Examples of sourcing of personal care services.* The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE 1: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 2: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa's use tax rate, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 3: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow's residence in Iowa. The therapist travels to Ms. Zastrow's residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa. Iowa sales tax is due.

[**ARC 7620C**, IAB 2/7/24, effective 3/13/24]

701—205.5(423) Sourcing of tickets or admissions to places of amusement, fairs, and athletic events. Sales of tickets or admissions to places of amusement, fairs, and athletic events are sourced in the same manner as services, using the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rule 701—205.2(423). Generally, the sale of a service is sourced to the location where the purchaser makes first use of the service. In the case of an event that the purchaser attends at a physical location, first use would occur at the location of the event.

EXAMPLE: X makes retail sales of tickets to music concerts in Iowa. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48) and therefore is required to collect Iowa sales tax and local option sales tax on retail sales of these tickets. More information can be found in Iowa Code section 423.2(3). Y is a resident of Marshalltown, Iowa. Y purchases two tickets to attend a concert in Ames, Iowa. The sale is sourced to Ames, the location of the event. The result is the same regardless of how or where Y's tickets are delivered. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Ames, Iowa.

205.5(1) *Sales of admissions to virtual events.* First use of a ticket of admission to a virtual event occurs at the location where the attendee first participates in or accesses the event, if known to the seller. If this location is unknown, the sale is sourced pursuant to Iowa Code section 423.15(1).

EXAMPLE: X is hosting a virtual video game tournament. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48). Y purchases admission to participate in the virtual video game tournament from a residence in Council Bluffs, Iowa. Y's access to the tournament begins immediately upon purchase, and Y's location is known to X. Therefore, X must source the admission to Council Bluffs, Iowa. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Council Bluffs, Iowa.

205.5(2) *Sales of admissions that can be used at multiple locations.* Admissions that may be used at multiple locations should be sourced to the location where the admission is purchased if the purchaser picks it up in person and it can be used at that location. If the service cannot be used at that location or the sale is made online, the sale should be sourced using the provisions of Iowa Code section 423.15 and these rules that apply when the location of first use is unknown.

EXAMPLE 1: X is a movie theater located in West Des Moines, Iowa. X sells movie passes that can be used at its location and other locations across Iowa. Y purchases a movie pass at X's location in West

Des Moines. Y's purchase is sourced to West Des Moines. X must collect Iowa sales tax and any local option sales tax that applies to sales sourced to West Des Moines, Iowa.

EXAMPLE 2: X is a health club with locations across Iowa. X has a website where memberships can be purchased. Memberships can be used at any of X's locations. Y purchases a membership through X's website. Y is required to provide an address when the membership purchase information is filled out. Y provides an address in Clive, Iowa. Therefore, the sale is sourced to Clive. More information can be found in Iowa Code section 423.15(1)*"c."* X must therefore collect Iowa sales tax and any local option sales tax imposed in the city of Clive.

[**ARC 7620C**, IAB 2/7/24, effective 3/13/24]

701—205.6(423) Sourcing rules for tangible personal property and specified digital products. All sales of tangible personal property and specified digital products by sellers obligated to collect sales and use tax, except those enumerated in Iowa Code section 423.16, shall be sourced using the destination sourcing requirements described in Iowa Code section 423.15. Products received by a purchaser at a seller's business location shall be sourced to that business location. When the retailer has the address to which the retailer or a shipping company will deliver a product to the purchaser, Iowa Code section 423.15(1)*"b"* applies and the sale is sourced to the delivery address. The sale of a product delivered to a shipping company is not sourced to the location of the shipping company. The terms of a sale as F.O.B. (origin) are irrelevant for purposes of sourcing a sale. More information can be found in Iowa Code section 423.1(43)*"b."*

205.6(1) *General examples of sourcing of tangible personal property.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to sales, but not leases or rentals, of tangible personal property.

EXAMPLE 1: Item received at retail store of the seller. X purchases a product at a retail store in Waterloo, Iowa. X takes the product home from the retail store that day. The sale is sourced to the retail store in Waterloo, Iowa, because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1)*"a."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waterloo.

EXAMPLE 2: Item received at warehouse of the seller. X purchases a product at a retail store in Waterloo, Iowa, but X has to pick up the product at a warehouse in Cedar Falls, Iowa. The sale is sourced to the warehouse in Cedar Falls because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1)*"a."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Cedar Falls.

EXAMPLE 3: Item received at alternate location. X purchases a product at a retail store in Waterloo, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The retail store's delivery truck delivers the product to X's home in Waverly, Iowa. The sale is sourced to X's home in Waverly, Iowa, because that is the location where X receives the product and the location is known to the seller. More information can be found in Iowa Code section 423.15(1)*"b."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waverly. The outcome in this example is the same regardless of whether the retail store delivered the product with its own truck or by common carrier.

EXAMPLE 4: Sale by Iowa seller, product received by buyer in Iowa, but product delivered from outside of Iowa. X lives in Maxwell, Iowa. X purchases a product online from an Iowa seller with a retail location in Des Moines, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The seller sends the product to X via a common carrier from its shipping facility in Lincoln, Nebraska, and X receives the product at X's home in Maxwell. The sale is sourced to Maxwell because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)*"b."* The outcome in this example is the same regardless of the fact that the product was delivered by a third party and regardless of the fact that the product was delivered from out of state. More information can be found in Iowa Code section 423.15(1)*"b."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 5: Sale by remote seller, product delivered into Iowa. X lives in Maxwell, Iowa. X purchases a product online from a remote seller (a seller who has no physical presence in Iowa) located in Kansas City, Missouri, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the product, X inputs X's home address as the delivery address. The product is shipped via common carrier. The sale is sourced to Maxwell, Iowa, because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)*"b."* It is irrelevant that the product was delivered by a third-party common carrier. More information can be found in Iowa Code section 423.15(1)*"b."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 6: Location of receipt by a purchaser's donee. X lives in Omaha, Nebraska. X purchases a birthday gift for Y, who lives in Davenport, Iowa. X purchases the gift from a remote seller (a seller who has no physical presence in Iowa) located in Chicago, Illinois, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the gift, X inputs Y's Davenport, Iowa, address as the delivery address. The sale is sourced to Davenport, Iowa. Y is the purchaser's donee. The gift is received by Y in Davenport, Iowa, and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)*"b."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Davenport.

EXAMPLE 7: Location of receipt unknown to the seller, but purchaser's address available from seller's business records. X purchases a product at a retail store in Waterloo, Iowa. X provides a billing address located in Fort Dodge, Iowa, with X's payment information. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide the retailer a shipping address. Even though the retailer does not know the delivery address, the retailer's business records indicate that the purchaser's address is in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1)*"c."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 8: Location of receipt unknown to the seller, but purchaser's address only indicated on a payment instrument used in the transaction. X purchases a product at a retail store in Waterloo, Iowa. X pays with a check that lists a Fort Dodge, Iowa, address for X. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address to the retail store. Even though the retail store does not have a shipping address or other address for X on file, the check lists an address for the purchaser in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1)*"d."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 9: Location from which the item was shipped, if location of receipt is unknown to the seller and the seller has no other record or indication of buyer's address. X orders a product at a retail store in Adel, Iowa. X pays in cash and indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address or a billing address, and the retail store does not have an address on file for X. Because X paid in cash, X's address is not indicated on a payment instrument. The retail store may source the sale to its location in Adel, Iowa. More information can be found in Iowa Code section 423.15(1)*"e."* The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Adel.

205.6(2) *General examples of sourcing of specified digital products.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to specified digital products.

EXAMPLE 1: Specified digital product purchased at seller's business location. Y owns and operates a restaurant in Sioux City, Iowa. Y provides guests access to an on-site electronic device on which guests may purchase access to video games to play while they wait to receive their food. Guests' access to the games ends once they pay their bill, and the charge for the access is included on the final bill. All sales of video games from Y's on-site electronic devices are sourced to Sioux City, the location at which guests receive access to the video games. More information can be found in Iowa Code section 423.15(1)*"a."* Y must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux City.

EXAMPLE 2: Location of receipt by purchaser known to seller. X purchases and receives a specified digital product on X's smart phone through an online application marketplace. The marketplace knows

X is in Ames, Iowa, when X purchases and downloads the specified digital product. The sale is sourced to Ames because the product is received at that location (more information can be found in Iowa Code section 423.1(43)) and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)*"b."* If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

EXAMPLE 3: Location of receipt by purchaser unknown, but purchaser's address is available from seller's business records. X purchases a specified digital product from C's website. Prior to purchasing the specified digital product, X creates a user account through C's website and lists X's home address in Jefferson, Iowa. When X purchases the specified digital product, C does not know where X received the specified digital product. Even though C does not know where the specified digital product is received by X, C's business records that are maintained in the ordinary course of business indicate that X's address is in Jefferson, Iowa. More information can be found in Iowa Code section 423.15(1)*"c."* If C meets the thresholds described in Iowa Code section 423.14A(3), C must collect state sales tax and any local option sales tax imposed in the city of Jefferson.

EXAMPLE 4: Location of receipt by purchaser unknown, but purchaser's address only indicated on a payment instrument used in the transaction. X downloads a mobile video game application on X's phone through an online application marketplace. X pays for the video game with X's credit card. The marketplace saves the Ames, Iowa, home address associated with X's credit card. However, the marketplace does not know X's location when X downloads and purchases the video game. The marketplace may rely on the Ames address associated with X's payment information to source the sale. More information can be found in Iowa Code section 423.15(1)*"d."* If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

205.6(3) *Examples of sourcing of leases and rentals of tangible personal property other than transportation equipment or products described in Iowa Code section 423.16.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(2) as applied to leases or rentals of tangible personal property, other than transportation equipment as defined in Iowa Code section 423.15(3). This rule does not cover products described in Iowa Code section 423.16.

EXAMPLE 1A: Lease that requires recurring periodic payments. X resides in Indianola, Iowa. X enters into a rental agreement with Y, a furniture rental company located in Des Moines, Iowa, for the rental of a couch. The agreement specifies that X will pay to Y a $50 down payment and $20 each month thereafter until the rental is terminated.

In exchange for possession of the couch, X makes the required $50 down payment to Y at Y's office in Des Moines, Iowa. X receives the couch at Y's office in Des Moines, and X takes the couch to X's home in Indianola, Iowa. While purchasing the couch, X provides Y with X's Indianola address, which Y keeps on file. For the remainder of the rental period, X's primary address remains the same.

The first periodic payment—the down payment—is sourced the same as sales under Iowa Code section 423.15(1). More information can be found in Iowa Code section 423.15(2)*"a."* In this case, the down payment was made and the product was received at the seller's business location. Iowa Code section 423.15(1)*"a"* governs the sourcing of the down payment. More information can be found in subrule 205.5(1). Therefore, in this case, the down payment is sourced to Des Moines. Y must collect state sales tax and any local option sales tax imposed in the city of Des Moines on the down payment.

Because X's home address is on file with Y for the remainder of the rental period, X's address is the "primary property location" of the couch during those periods. More information can be found in Iowa Code section 423.15(2)*"a."* Therefore, the subsequent monthly payments are sourced to X's Indianola address that is contained in the records maintained by Y in the ordinary course of business. More information can be found in Iowa Code section 423.15(2)*"a."* Y must collect state sales tax and any local option sales tax imposed in the city of Indianola on the monthly payments.

EXAMPLE 1B: Assume the same facts as Example 1A. In this example, however, X provides the $50 down payment, gives Y X's home address in Indianola, Iowa, and arranges to have Y deliver the couch to X's home in Indianola, Iowa. The $50 down payment constitutes the "first periodic payment" and is

therefore sourced to Indianola in accordance with Iowa Code section 423.15(1)*"b."* More information can be found in Iowa Code section 423.15(2)*"a."* Because Y knows the location where the product will be received by the purchaser, Y must collect Iowa sales and any local option sales tax applicable in the city of Indianola on the down payment. More information can be found in subrule 205.6(1). The result is the same regardless of whether Y or a third-party shipping agent delivers the product and regardless of whether the product is shipped from outside of Iowa. More information can be found in subrule 205.6(1), Examples 3 and 4.

All other facts and results from Example 1A remain the same.

EXAMPLE 1C: Same facts as in Example 1A. In this example, however, partway through the rental period, X moves to Clinton, Iowa, for the remainder of the rental period. X informs Y of the change in address and that X is bringing the couch to Clinton as part of the move. Y updates Y's business records to reflect X's new address and the location of the couch.

Every payment that occurs after X informed Y of X's new address is sourced to Clinton, Iowa, because the "primary property location" as indicated by an address for the property provided by the lessee was updated to Clinton, Iowa. More information can be found in Iowa Code section 423.15(2)*"a."*

EXAMPLE 1D: Same facts as Example 1A. X makes the first several monthly payments while residing in Indianola. However, partway through the rental period, X moves to Ames and brings the couch. X does not update Y about the new address and location of the couch. Y does not receive any record from X indicating X's new address.

Even though the couch is actually located in Ames, the "primary property location" indicated by an address for the property provided by X that is available to Y from records maintained in the ordinary course of business is the Indianola address. More information can be found in Iowa Code section 423.15(2)*"a."* Therefore, Y is correct in sourcing each lease payment to Indianola.

EXAMPLE 2: Rental that does not require recurring periodic payments. B rents a woodchipper from C for a week in exchange for a single, up-front payment. C delivers the woodchipper to B at a location in Sioux Center, Iowa. The rental payment is sourced to Sioux Center, Iowa, because that is the location where B receives the woodchipper and the location is known to C, the seller. More information can be found in Iowa Code section 423.15(1)*"b."* C must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux Center. A rental that does not require recurring period payment is sourced the same as retail sales under Iowa Code section 423.15(1) and subrule 205.6(1). More information can be found in Iowa Code section 423.15(2)*"b."*

205.6(4) *Sales of items from vending machines.* Sales from vending machines are sourced to the location of the individual vending machine at which the purchaser receives the item.

205.6(5) *Sales of items by an itinerant merchant, peddler, or salesperson having a route.* When an itinerant merchant, peddler, or mobile salesperson meets with a customer and solicits an order or completes a contract for sale and the customer receives the item at that location, the sale is sourced to that location pursuant to Iowa Code section 423.15(1)*"b,"* regardless of whether the location is the customer's home, a business establishment, or elsewhere. This rule applies to all other sales by itinerant merchants, peddlers, and mobile salespersons in the same manner as they apply to any other seller.

205.6(6) *Items purchased for resale but withdrawn from inventory.* If a person purchases items for resale or processing but withdraws and uses any of those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of the items withdrawn and used are sourced to the county in which they are withdrawn regardless of where the items were purchased for resale.

EXAMPLE: X owns and operates a home and furniture store located in Black Hawk County, Iowa. In Johnson County, Iowa, X purchases five rocking chairs. X provides the Johnson County retailer with sales tax exemption certificates stating that the rocking chairs are purchased for resale; the retailer accepts the certificates and does not charge Iowa sales tax on the sale of the rocking chairs. After returning to Black Hawk County, X decides to use one rocking chair in X's home instead of selling it. Because the rocking chair was withdrawn from inventory in Black Hawk County, sales tax and the applicable local option tax in Black Hawk County are due.

205.6(7) *Items withdrawn from inventory by a manufacturer.* Where a manufacturer manufactures tangible personal property and uses the property it manufactures for any purpose except for resale or

processing, such use by the manufacturer is subject to sales tax and sourced to the county in which the manufacturer first used the property. Taxable use includes using such property as building materials, supplies, or equipment in the performance of a construction contract. Tax is computed upon the cost to fabricate the property. More information can be found in rule 701—219.6(423).

EXAMPLE: X manufactures steel beams in Madison County, Iowa. X withdraws a beam from inventory to use on a construction project at its facility. X's withdrawal of the beam for use in the construction project is sourced to Madison County, Iowa, and sales tax and the applicable local option tax are due.

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These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.

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CHAPTER 207
REMOTE SALES AND MARKETPLACE SALES
[Prior to 9/7/22, see Revenue Department[701] Ch 215]

701—207.1(423) Definitions.

207.1(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code sections 423.1 and 423.14A and rule 701—200.1(423).

207.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

"Gross revenue from sales" means all revenue from Iowa sales.

"Iowa sales" means the same as defined in Iowa Code section 423.14A(1)*"a"* and includes all retail sales, whether taxable or exempt, and other sales of tangible personal property, specified digital products, or services otherwise sold into Iowa or for delivery into Iowa, including wholesale or sale for resale. "Iowa sales" includes sales made through a marketplace.

"Marketplace" means any physical or electronic place, including but not limited to a store, booth, Internet website, catalog, television or radio broadcast, or dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property, or specified digital products, or where services are offered for sale into Iowa regardless of whether the tangible personal property, specified digital product, marketplace seller, or marketplace has a physical presence in Iowa.

"Physical presence in Iowa" means the activities described in Iowa Code section 423.1(48)*"a"*(1).

"Remote seller" means a retailer that does not have a physical presence in Iowa but that makes sales of tangible personal property, specified digital products, or services that are sourced to Iowa.

"Retailer" means the same as defined in Iowa Code section 423.1(47). "Retailer" includes a marketplace facilitator that meets or exceeds the sales threshold and includes a remote seller.

"Sales threshold" means the revenue level that triggers collection and remittance obligations for Iowa sales tax and local option tax as described in Iowa Code section 423.14A(3): $100,000 or more in gross revenue from Iowa sales into Iowa in either the current or immediately prior calendar year.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.2(423) Administration; incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.3(423) Filing returns; payment of tax; penalty and interest; incorporation of 701—Chapter 202. Except as otherwise stated in this chapter, the filing requirements of 701—Chapter 202 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.4(423) Permits; incorporation of 701—Chapter 201. Except as otherwise stated in this chapter, the permit requirements of 701—Chapter 201 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit Iowa sales tax and applicable local option sales tax under this chapter.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.5(423) Retailers with physical presence in Iowa.

207.5(1) *Sales threshold inapplicable.* The sales threshold does not apply to any seller, marketplace facilitator, or other retailer that has physical presence in Iowa. A seller, marketplace facilitator, or other retailer with physical presence in Iowa must collect and remit Iowa sales tax and any applicable local option sales tax pursuant to Iowa Code section 423.14 even if the sales threshold is not met.

207.5(2) *Mixed marketplace and nonmarketplace sales.* A retailer with physical presence in Iowa who makes both marketplace and nonmarketplace sales must do the following:

a. Collect Iowa sales tax and any applicable local option tax on any taxable sales on which the marketplace does not collect tax.

b. Report on its Iowa sales tax return its gross revenue from all Iowa sales, including any marketplace sales on which the marketplace facilitator collected Iowa sales tax and applicable local option tax, regardless of whether the sales threshold is met.

EXAMPLE: Seller X is an Iowa-based business, with property and personnel located in Iowa. Seller X has $80,000 in gross revenue from Iowa sales. Seller X makes $10,000 of gross revenue from Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax. The remaining $70,000 in gross revenue comes from Iowa sales made at Seller X's storefront in Iowa. Seller X must collect and remit Iowa sales tax and applicable local option sales tax on the $70,000 in nonmarketplace sales. On its Iowa sales tax return, Seller X should report $80,000 in gross revenue from sales. Seller X may take a deduction on its Iowa sales tax return of $10,000 for sales on which the marketplace collected Iowa sales tax and applicable local option sales tax.

[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.6(423) Remote sellers—registration and collection obligations.

207.6(1) *Combined Iowa sales from all sources.* The sum of the total amount of Iowa sales through marketplace and nonmarketplace Iowa sales determines whether remote sellers meet the sales threshold.

207.6(2) *Remote sellers with Iowa sales solely through marketplaces.* If a remote seller meets the sales threshold but only makes retail sales in Iowa through marketplaces, the remote seller's registration and collection obligations depend on whether all of the marketplace facilitators through which the remote seller makes Iowa sales are registered to collect Iowa sales tax and applicable local option tax.

a. Registered marketplace facilitators. If all the marketplace facilitators used by the remote seller to make taxable Iowa sales collect Iowa sales tax and applicable local option sales tax, the remote seller does not have to collect the tax. The marketplace facilitator will report and pay Iowa sales tax and applicable local option sales tax on a sales tax return filed by the marketplace facilitator.

EXAMPLE: Seller X has $200,000 in gross revenue from Iowa sales. Seller X makes all of its Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax on sales. Seller X does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. The marketplace facilitator will report the Iowa sales tax and applicable local option sales tax on the marketplace facilitator's Iowa sales tax return.

b. Nonregistered marketplace facilitators. If a marketplace facilitator is not required to or fails to register and collect tax in Iowa, remote sellers who exceed the sales threshold must obtain an Iowa sales tax permit, collect Iowa sales tax and applicable local option sales tax, and file Iowa sales tax returns for sales made on that marketplace.

EXAMPLE: Seller X has $200,000 in gross revenue from Iowa sales. Seller X has $2,000 in gross revenue from sales on Marketplace Y and $198,000 in gross revenue from sales on Marketplace Z. Marketplace Y meets the sales threshold and is registered to collect and remit Iowa sales tax and applicable local option sales tax in Iowa. Marketplace Z, however, has very few low-cost Iowa sales, meets neither the gross revenue nor volume of sales threshold, and is therefore not required to and does not collect tax on Iowa sales. Seller X must collect Iowa sales tax and applicable local option sales tax on retail sales sourced to Iowa that are made on Marketplace Z.

207.6(3) *Remote sellers making both marketplace and nonmarketplace sales.* A remote seller that exceeds the sales threshold and makes nonmarketplace Iowa sales, such as through the remote seller's own website, must obtain an Iowa sales tax permit. The remote seller must report on its Iowa sales tax return its gross revenue from all Iowa sales. The remote seller would be able to deduct the amount of gross sales made through any marketplaces registered to collect tax in Iowa on the remote seller's sales tax return. A remote seller making Iowa sales through a marketplace operated by an unregistered marketplace facilitator must collect and remit Iowa sales tax and applicable local option sales tax on those sales.

[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.7(423) Marketplace facilitators—registration and collection obligations. A marketplace facilitator that meets the sales threshold must collect and remit Iowa sales tax and applicable local option sales tax on all taxable sales made through the marketplace facilitator's marketplace that are sourced to Iowa. A marketplace facilitator must collect Iowa sales tax on all taxable Iowa sales, regardless of the location or sales volume of a marketplace seller that makes sales on a marketplace facilitator's marketplace.

EXAMPLE: M is a marketplace facilitator that meets the sales threshold and therefore collects Iowa sales tax and applicable local option sales tax on Iowa sales facilitated through M's marketplace. Seller S lists soccer balls for sale on M's marketplace. A purchaser in Iowa buys a soccer ball listed by S on M's marketplace. The soccer ball is delivered to the purchaser's home address in Iowa. M must collect Iowa sales tax and applicable local option sales tax on the sale of the soccer ball. The outcome is the same regardless of whether S is located in Iowa and regardless of S's Iowa sales volume.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.8(423) Advertising on a marketplace. A marketplace seller does not sell or offer to sell tangible personal property, a specified digital product, or a service on a marketplace when merely advertising that product on a marketplace.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.9(423) Commencement of collection obligation and sales tax liability.

207.9(1) *Commencement of collection obligation.* If a remote seller or marketplace facilitator without physical presence in Iowa did not exceed the sales threshold for the prior year and therefore does not collect sales tax in the current year, and exceeds the sales threshold in the current year, the remote seller or marketplace facilitator must collect Iowa sales tax and applicable local option sales tax starting on the first day of the next calendar month that starts at least 30 days from the day the remote seller or marketplace facilitator first exceeded the sales threshold. The remote seller or marketplace facilitator must collect tax through the end of the calendar year in which the sales threshold was met or exceeded as well as the entire next calendar year.

EXAMPLE: Company S, a remote seller, did not exceed the sales threshold in 2018. On September 15, 2019, S exceeds the sales threshold for the first time. S must register to collect Iowa sales tax and must begin collecting Iowa sales tax and applicable local option sales tax on November 1, 2019. S must continue to collect through at least December 31, 2020. S's sales volume in 2020 and later years will determine whether S must collect Iowa sales tax and applicable local option sales tax after December 31, 2020.

207.9(2) *Commencement of sales tax liability.* If a remote seller or marketplace facilitator without physical presence in Iowa exceeds the sales threshold as described in subrule 207.9(1), the remote seller or marketplace facilitator without physical presence in Iowa is not liable for any Iowa sales tax and applicable local option sales tax not collected beginning on January 1 of the current year through the day prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect the tax as described in subrule 207.9(1). A purchaser will be liable for any use tax that accrues prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

207.9(3) *Permit registration.* If a remote seller or marketplace facilitator without physical presence in Iowa that makes taxable sales exceeds the sales threshold, the remote seller or marketplace facilitator without physical presence in Iowa must register for a sales and use tax permit under 701—Chapter 201 prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.10(423) Retailers registered and collecting who fail to meet or exceed sales threshold. If a retailer is registered to collect Iowa sales tax and applicable local option sales tax and collects in year 1 and fails to meet or exceed the sales threshold in year 2, the retailer must still collect all applicable

sales taxes in year 2. If the retailer does not meet or exceed the sales threshold at any point in year 2, the retailer is not required to collect and remit Iowa sales tax or applicable local option sales tax in year 3. However, if a retailer is registered to collect, the retailer must continue collecting regardless of the impact of the sales threshold. A retailer that falls under the sales threshold may either submit sales tax returns demonstrating it did not collect tax until a time in the future when the retailer meets or exceeds the sales threshold or cancel its sales tax permit if it wishes to cease collecting. If the retailer meets or exceeds the sales threshold at any point thereafter, the retailer would need to register again in accordance with 701—Chapter 201 and begin collecting in accordance with this chapter.

EXAMPLE: Company S, a remote seller, exceeds the sales threshold on June 25, 2019. S must collect Iowa sales tax and applicable local option sales tax beginning August 1, 2019, and must collect for all of 2020. S does not meet or exceed the sales threshold in 2020; therefore, S is not obligated to collect sales tax on January 1, 2021. S may cease collection and cancel its sales tax permit effective January 1, 2021.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.11(423) Coupons; incorporation of rule 701—213.10(423). Coupons and other discounts offered by marketplace facilitators and remote sellers are retailers' discounts, which reduce the sales price and thus the taxable amount of a sale. The requirements of rule 701—213.10(423) apply to marketplace facilitators and remote sellers in the same manner that those requirements apply to retailers.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.12(423) Customer returns marketplace purchase directly to marketplace seller.

207.12(1) If a marketplace facilitator collects Iowa sales tax and applicable local option sales tax on the sale and the customer returns the item directly to the marketplace seller, either the marketplace facilitator or marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator, upon acknowledgement of receipt of the item by the marketplace seller.

207.12(2) If the marketplace facilitator does not refund the amount paid and instead requires or permits the marketplace seller to do so, the marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator. The marketplace seller shall seek reimbursement of Iowa sales tax and applicable local option sales tax from the marketplace facilitator. The marketplace facilitator shall reimburse the returned Iowa sales tax and applicable local option sales tax to the marketplace seller once the marketplace seller has adequately demonstrated that the marketplace seller returned the tax in conjunction with a return made directly to the marketplace seller. The marketplace facilitator may claim a credit for the return of Iowa sales tax and local option sales tax on its Iowa sales tax return.

207.12(3) Nothing in this rule requires a marketplace seller to accept a return as described in this rule. Nothing in this rule requires a marketplace facilitator to allow returns to be made directly to a marketplace seller.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.13(423) Exempt and nontaxable sales.

207.13(1) *Exempt sales.* A retailer required to collect and remit Iowa sales tax and applicable local option sales tax in accordance with Iowa Code section 423.14A and this chapter is responsible for correctly applying exemptions for tangible personal property, specified digital products, and services. As a member of the streamlined sales tax governing board, the department maintains a taxability matrix to describe whether various items are taxable or exempt. See rule 701—204.6(423) for an explanation of the liability relief provided to retailers that rely on the taxability matrix in determining whether to collect tax on an item.

207.13(2) *Nontaxable sales.* A retailer, including an Iowa retailer with a physical presence in Iowa, a remote seller, or a marketplace facilitator, that makes or facilitates only nontaxable sales, such as sale for resale or wholesale transactions, is not required to register for a sales tax permit.

207.13(3) *Exemption certificates submitted to a marketplace facilitator.* An exemption certificate as described in rule 701—288.3(423) that identifies the marketplace facilitator as the seller may be used by the purchaser for sales made or facilitated by the marketplace facilitator.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

701—207.14(423) Other taxes for marketplace sales and items not subject to sales/use tax. A marketplace facilitator is not obligated to collect tax on a product sold through a marketplace it operates that is not subject to Iowa sales and use tax.

EXAMPLE: A marketplace facilitator allows marketplace sellers to list for sale vehicles subject to registration under Iowa Code chapter 321, including the fee for new registration imposed in accordance with Iowa Code section 321.105A. Because the fee for new registration is not imposed under Iowa Code chapter 423, the marketplace facilitator is not obligated to collect the fee for new registration.
[**ARC 7621C**, IAB 2/7/24, effective 3/13/24]

These rules are intended to implement Iowa Code section 423.14A.

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CHAPTER 217
TELECOMMUNICATION SERVICES
[Prior to 9/7/22, see Revenue Department[701] Ch 224]

701—217.1(423) Taxable telecommunication service and ancillary service. The sales price of all telecommunication service and ancillary service are subject to the sales or use tax.
[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.2(423) Definitions.

217.2(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code section 423.1.

217.2(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

"800 service" means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

"900 service" means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900 service" and any subsequent numbers designated by the Federal Communications Commission.

"Ancillary services" means services that are associated with or incidental to the provision of a telecommunication service. "Ancillary services" includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

"Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include telecommunication services used to reach the conference bridge.

"Detailed telecommunication billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

"Directory assistance" means an ancillary service of providing telephone number information and address information.

"Fixed wireless service" means a telecommunication service that provides radio communication between fixed points.

"Home service provider" means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. §124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

"International" means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

"Interstate" means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

"In this state" means that telecommunication service is provided "in this state" only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is "interstate" in nature and not subject to tax.

"Intrastate" means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

"Mobile telecommunication service" means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. §124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. More information is contained in Iowa Code section 423.2(9).

"Mobile wireless service" means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

"Paging service" means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

"Pay telephone service" means a telecommunication service provided through any pay telephone. "Pay telephone service" also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

"Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Residential telecommunication service" means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

"Sales price from the sale of telecommunication service" or *"sales price"* means all charges to any person that are necessary for the end user to secure the service, except those charges that are in the nature of a sale for resale (more information is contained in subrule 217.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state, even though payment of the charge may also be necessary to secure other services.

"Telecommunication service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. "Telecommunication service" does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
2. Installation or maintenance of wiring or equipment on a customer's premises;
3. Tangible personal property;
4. Advertising, including but not limited to directory advertising;
5. Billing and collection services provided to third parties;
6. Internet access service;
7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. §522.6 and audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 CFR §20.3;
8. Ancillary services;
9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

"Value-added non-voice data service" means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

"Vertical service" means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

"Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

This rule is intended to implement Iowa Code section 423.2(9).

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.3(423) Imposition of tax.

217.3(1) *Taxable telecommunication service and ancillary service.* The sales price of the sale of telecommunication service and ancillary service are subject to Iowa sales or use tax. The following is a nonexclusive list of taxable telecommunication services:

a. Air-to-ground radio telephone service;
b. Ancillary services except detailed communications billing service;
c. Conference bridging service;
d. Fixed wireless service;
e. Mobile wireless service;
f. Pay telephone service;
g. Postpaid calling service;
h. Prepaid calling service;
i. Prepaid wireless calling service;
j. Private communication service;
k. Residential telecommunication service.

217.3(2) *Other taxable services and circumstances.* The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. Long distance charges. Charges imposed or approved by the utilities division of the department of commerce that are necessary to secure long distance service in this state, for example, "end user intrastate access charges," are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. Sales price of services performed by another company. The sales price collected by a company (selling company) from the end users of telecommunication services and ancillary services performed in this state by another company (providing company) are considered to be the taxable sales price of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. Directory assistance. Charges for directory assistance service rendered in this state are subject to tax.

d. Electrical and electronic installation and repair. The sales price of the installation or repair of any inside wire that provides electrical current that allows an electronic device to function is subject to tax. The sales price is from the enumerated service of electrical and electronic repair and installation. The sales price of inside wire maintenance charges for services performed under a service or warranty contract is also subject to tax. Depending upon the circumstances, the sales price is for the enumerated service of electrical and electronic repair and installation or is incurred under an optional service or warranty contract for an enumerated service. In either event, the receipts are subject to tax.

e. Electrical and electronic installation and repair: billing methodology. The sales price of the repair or installation of inside wire or the repair or installation of any electronic device, including a

telephone or telephone switching equipment, is subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

(1) A flat fee or a flat hourly charge that covers all costs, including labor and materials;

(2) A premises visit or trip charge;

(3) A single charge covering and not distinguishing between charges for labor and materials;

(4) A charge with labor and material segregated; or

(5) A charge for labor only.

f. Nonitemized taxes and charges. Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

g. Rental of tangible personal property. The sales price of the rental of any device for home or office use or to provide a telecommunication service to others is taxable as the rental of tangible personal property. The sales price of rental includes rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device that is included in the sales price of the rental of the device is also subject to tax.

h. Sales of tangible personal property. The sale of any device, new or used, is subject to tax both when the device is in place on the customer's premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. More information is contained in Iowa Code section 423.3. Other exemptions may be applicable, as well.

i. Mandatory charges or fees. Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the sales price of the sale of the property itself and therefore subject to tax.

j. Deposits. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of the sales price.

k. Municipal utilities. Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. More information is contained in subrule 217.4(5).

l. Fax. The service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state is subject to sales tax.

EXAMPLE A: Company A is located in Des Moines, Iowa. Company A charges a customer $2 to transmit a fax to Dubuque, Iowa. The $2 is a taxable sales price. Midwest Telephone Company charges Company A $500 per month for the intrastate communication service on the company's dedicated fax line. The $500 is also a sales price from a taxable communication service.

EXAMPLE B: The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing that is attributable to expenses for faxing. For example, "bill to John Smith for $1,000 for legal services performed, fax expenses that are part of this billing—$30." The $30 is not a sales price for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

This rule is intended to implement Iowa Code section 423.2(9).

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.4(423) Exempt from the tax. This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

217.4(1) Detailed communications billing service.

217.4(2) Internet access fees or charges.

217.4(3) Value-added non-voice data service.

217.4(4) Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

a. Fees and charges for securing only interstate telecommunication services.

b. Federal taxes.

c. Fees and charges for only interstate directory assistance.

217.4(5) Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

217.4(6) Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

217.4(7) 911 surcharge. A 911 emergency telephone service surcharge is a surcharge for a service that routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for 911 emergency telephone service is not subject to sales tax if:

a. The amount is no more than $1 per month per telephone access line; and

b. The surcharge is separately identified and separately billed.

217.4(8) Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

217.4(9) Resale exemption. A service or facility furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualifies for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

217.4(10) Online services. Any contracted online service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted online services, as long as they provide access to information through a computer server.

217.4(11) New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure is exempt from Iowa tax. More information is contained in 701—Chapter 219.

This rule is intended to implement Iowa Code section 423.3.

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.5(423) Bundled transactions in telecommunication service. More information on general rules on bundled transactions is contained in 701—Chapter 206. In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

217.5(1) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

217.5(2) If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate, unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products

subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

This rule is intended to implement Iowa Code section 423.2(8).

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.6(423) Sourcing telecommunication service.

217.6(1) The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services, unless the service falls under one of the exceptions set forth in subrule 217.6(2).

217.6(2) Exceptions. The following telecommunication services and products are sourced as follows:

a. Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

b. The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1)*"e"* shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer's website. No items are delivered. The sale would be sourced to the consumer's Iowa billing address.

EXAMPLE 4: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller's website. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer's billing address in Iowa.

EXAMPLE 5: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller's website. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

c. A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

d. The sale of Internet access service is sourced to the customer's place of primary use.

e. The sale of an ancillary service is sourced to the customer's place of primary use.

f. A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either:

(1) The seller's telecommunication system; or

(2) Information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

g. The sale of telecommunication service sold on a call-by-call basis is sourced to:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

h. The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

i. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

This rule is intended to implement Iowa Code section 423.20.

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.7(423) General billing issues. This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.

217.7(1) *Retailers liable for collecting and remitting tax.* A retailer that sells taxable telecommunication service and ancillary service is liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

217.7(2) *Billing date and tax period.* A company that bills the company's subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in the company's sales price. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the sales price stated in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

217.7(3) *Permitting business offices.* A company must have a permit for each business office that provides telecommunication service in this state. The company must collect and remit tax upon the sales price of the operation of each office.

217.7(4) *Credit.* A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

217.7(5) *Direct pay permit not applicable to telecommunication services.* The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

217.7(6) *Guaranteed amounts for coin-operated telephones.* If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable sales price collected.

This rule is intended to implement Iowa Code section 423.36.

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.8(34A) Prepaid wireless 911 surcharge.

217.8(1) *Definitions.* The definitions in rule 701—217.2(423) apply to this rule. The following definitions are also applicable to this rule:

"Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

"Department" means the department of revenue.

"Prepaid wireless 911 surcharge" means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

"Provider" means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

"Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include but are not limited to prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

"Seller" means a person who sells prepaid wireless telecommunications service to another person.

217.8(2) *Registration.* Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

217.8(3) *Collecting, filing, and remitting.*

a. Each seller is responsible for collecting the applicable 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service in paragraph 217.6(2)*"b."* More information is also contained in Iowa Code sections 34A.7B(4), 423.15 and 423.20.

b. The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

c. The prepaid wireless 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless 911 surcharges that the seller collects from consumers as provided in paragraph 217.8(3)*"a,"* including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer's Use Tax and Surcharge Return and file the information with the department.

f. The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

g. The seller may deduct and retain 3 percent of prepaid wireless 911 surcharges that are collected by the seller from consumers.

h. The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as $5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with 10 minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells a prepaid wireless phone with 15 minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

217.8(4) *Audit, appeal, and enforcement.*

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless 911 surcharge. More information is contained in Iowa Code sections 421.10 and 421.60.

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. More information is contained in Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of Iowa Code section 34A.7B.

217.8(5) *Procedures for documenting that a sale is not a retail transaction.* The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

217.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless 911 surcharges to the treasurer of state for deposit in the 911 emergency communications fund created under Iowa Code section 34A.7A(2) within 30 days of receipt of the 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless 911 surcharges.

This rule is intended to implement Iowa Code section 34A.7B.

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

701—217.9(423) State sales tax exemption for central office equipment and transmission equipment. Central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by certain providers enumerated in Iowa Code section 423.3(47A)*"a."*

217.9(1) *Definitions.* The following definitions are applicable to this rule:

"Central office equipment" means the same as defined in Iowa Code section 423.3(47A)*"b"*(1).

"Transmission equipment" means the same as defined in Iowa Code section 423.3(47A)*"b"*(4).

217.9(2) *Central office equipment or transmission equipment.* The following are central office equipment or transmission equipment:

a. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

b. Peripheral equipment used to support the transmission of communications over the network, such as emergency power equipment, lightning arrestors, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

c. Circuit equipment that utilizes the message path to carry signaling information or that utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

d. Radio equipment, including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

217.9(3) *Not central office equipment or transmission equipment.* The following are not central office equipment or transmission equipment:

a. Telecommunications towers. These towers are structures and, as such, constitute real property. Real property is outside the scope of "equipment."

b. Equipment shelters or enclosures erected on concrete or other foundations. These shelters or enclosures are structures and, as such, constitute real property. Real property is outside the scope of "equipment."

c. Fencing erected around the telecommunications towers and equipment shelters or enclosures.

This rule is intended to implement Iowa Code section 423.3(47A).

[**ARC 7622C**, IAB 2/7/24, effective 3/13/24]

[Filed ARC 9814B (Notice ARC 9675B, IAB 8/10/11), IAB 10/19/11, effective 11/23/11]
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[Editorial change: IAC Supplement 10/18/23]
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CHAPTER 270
LOCAL OPTION SALES AND SERVICES TAX

[Prior to 12/17/86, Revenue Department [730]]
[Prior to 9/7/22, see Revenue Department[701] Ch 107]

701—270.1(423B) Definitions.

270.1(1) *Incorporation of definitions.* To the extent it is consistent with Iowa Code chapter 423B and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and chapter 423B and rule 701—200.1(423).

270.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

"City" means the same as defined in Iowa Code section 362.2(4).

"Local option tax" or *"local option taxes"* means the taxes imposed by Iowa Code chapter 423B.

"Most recent certified federal census" means the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the Bureau of the Census. If a subsequent certified census occurs that modifies the "most recent certified federal census" for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

"Unincorporated area of the county" means all areas of a county that are outside the corporate limits of all cities that are located within the geographical area of the county.

This rule is intended to implement Iowa Code section 423B.7.

[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.2(423B) Imposition of local option taxes and notification to the department. This rule describes notification and other requirements as related to the department. More information on election forms and instructions can be found in 721—Chapter 21.

270.2(1) *Notice to the department.* Within ten days of the election at which a majority of those voting on the question of imposition, repeal, or change in the rate of tax vote in favor, the county auditor must give notice of the election results to the director by sending a copy of the abstract of votes and a copy of the sample ballot from the election.

270.2(2) *Avoiding a lapse in tax due to expiration of a former local option tax.* A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. A local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

This rule is intended to implement Iowa Code section 423B.6.

[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.3(423B) Administration.

270.3(1) *Generally.* The department is charged with the administration of the tax, once imposed, and must administer the tax as nearly as possible in conjunction with the administration of the state sales tax.

270.3(2) *Incorporation of 701—Chapter 11.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to retailers required to collect local option taxes in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.4(423B) Filing returns; payment of tax; penalty and interest.

270.4(1) *Incorporation of 701—Chapter 202.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 202 apply to retailers required to collect local option tax in the same manner as those requirements apply to all sellers and retailers making sales subject to state sales tax.

270.4(2) *Local tax collections not included to determine filing frequency.* Local option tax collections are included in computation of the total tax to determine frequency of filing under Iowa Code section 423.31.

This rule is intended to implement Iowa Code section 423B.6.
[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.5(423B) Permits. Except as otherwise stated in this chapter, the requirements of 701—Chapter 201 apply to retailers required to collect local option tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.
[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.6(423B) Sales subject to local option sales and services tax. All sales subject to sales tax under Iowa Code chapter 423 are subject to local option sales and services tax. There is no local option use tax.

270.6(1) *Sourcing.* The general sourcing rules described in Iowa Code section 423.15 and 701—Chapter 205 are used to determine whether a sale is subject to local option taxes and, if so, in what jurisdiction. A local sales and services tax is not applicable to transactions sourced to a place of business, as defined in Iowa Code section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

270.6(2) *Sellers responsible for collecting local option sales and services tax.* Sales sourced to Iowa and made by sellers subject to Iowa Code section 423.1(48) or 423.14A are subject to local option sales and services tax.

This rule is intended to implement Iowa Code section 423B.5(1).
[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.7(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and services tax is imposed upon the same basis as the Iowa state sales and services tax, with the following exceptions:

1. Local option tax is not imposed on the sales price from the sale of tangible personal property and services that are excluded from local option tax as described in Iowa Code section 423B.5(1).

2. A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service to the extent precluded by Section 602 of the Telecommunications Act of 1996. A "local taxing jurisdiction" is any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.

3. Sales subject to Iowa use tax. Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and services tax, local option tax is not imposed on any transactions subject to Iowa use tax, including the one-time registration fee applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions that are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

This rule is intended to implement Iowa Code section 423B.5.
[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.8(423B) Local option sales and services tax payments to local governments.

270.8(1) *County-imposed local sales and services tax; division of funds from accounts.* Division of the amount from each county's account to be distributed is done with these steps.

a. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

b. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax-imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census that is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census that is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction that is used to compute the participating jurisdiction's share of the revenue from the county's account that is based on county population. Example 3 of this rule contains a demonstration of how an interim census can affect a population distribution formula.

c. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985, as obtained by using data from county tax rate reports and city tax rate reports compiled by the department of management. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately, then totaled. The property tax amount for each sales tax-imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

d. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in paragraph 270.8(1)*"c"* is added to the amount found in paragraph 270.8(1)*"b."* This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and services tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1: If a local option sales tax is approved for all of Pottawattamie County, the distribution of $100,000 in countywide receipts would be made in this manner:

Step 1:

Distribution Basis	**Amount**
Population	$ 75,000.00
Property Taxes Levied	25,000.00
Total	$100,000.00

Step 2:

	Certified Population		Receipts to be
Jurisdiction	**Number**	**Percentage**	**Distributed**
Avoca	1,650	1.91%	$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	17,796	20.59%	15,442.50
Total	86,442	100.00%	$75,000.00

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.
Step 3:

	Three-Year Total Taxes Levied		Receipts to be
Jurisdiction	**Amount**	**Percentage**	**Distributed**
Avoca	$ 454,556	0.82%	$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	21,782,457	39.42%	9,855.00
Total	$55,262,284	100.00%	$25,000.00

Step 4:

Jurisdiction	Amount to be Distributed By Population	Amount to be Distributed By Taxes	Total Distribution
Avoca	$ 1,432.50	$ 205.00	$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	15,442.50	9,855.00	25,297.50
Total	$75,000.00	$25,000.00	$100,000.00

EXAMPLE 2: If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and $10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	$ 7,500.00
Property Taxes Levied	2,500.00
Total	$10,000.00

Step 2:

Jurisdiction	Certified Population Number	Certified Population Percentage	Receipts to be Distributed
Avoca	1,650	39.45%	$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	981	23.45%	1,758.75
Total	4,183	100.00%	$7,500.00

Step 3:

Jurisdiction	Three-Year Total Taxes Levied Amount	Three-Year Total Taxes Levied Percentage	Receipts to be Distributed
Avoca	$ 454,556	40.56%	$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	346,849	30.96%	774.50
Total	$1,120,558	100.00%	$2,500.00

Step 4:

Jurisdiction	Amount to be Distributed By Population	Amount to be Distributed By Taxes	Total Distribution
Avoca	$2,958.75	$1,014.00	$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	1,758.75	774.00	2,532.75
Total	$7,500.00	$2,500.00	$10,000.00

EXAMPLE 3: For the purposes of understanding this example, assume that the numbers for "certified population" from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The cities' percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1{,}752}{1{,}752 + 1{,}493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1{,}493}{1{,}493 + 1{,}752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population Number	Certified Population Percentage	Receipts to be Distributed
Avoca	1,752	41.46%	$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	981	23.21%	1,740.75
Total	4,226	100.00%	$7,500.00

The "amount to be distributed by population" found in Step 4 of Example 2 would then be recomputed based on the new figures.

270.8(2) *City-imposed local option sales and services tax.* More information on the distribution of city-imposed local sales and services tax can be found in Iowa Code section 423B.7(1).

This rule is intended to implement Iowa Code section 423B.7.

[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.9(423B) Allocation procedure when sourcing of local option sales tax remitted to the department is unknown. If the director is unable to determine from which county local option sales tax was collected, that local option sales tax shall be allocated among the various counties in which local option sales and services tax is imposed according to the following procedure:

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county's account in the local sales and services tax fund.

2. The total amount of receipts for which the director is unable to determine a county of collection that have accumulated since the last allocation of these receipts shall be added together to form one lump sum.

3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and services tax is imposed shall be determined.

4. The amount of population so determined in numbered paragraph "3" above for each county shall be added to the amount for every other county in Iowa in which the local option sales and services

tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and services tax is imposed is determined.

5. The sum determined to exist in numbered paragraph "2" above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in numbered paragraph "3" above and the denominator of which is the number calculated by the method described in numbered paragraph "4." The procedure described herein in numbered paragraph "5" shall be used until the amount of tax due to every county imposing local option sales and services tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county's account in the local sales and services tax fund. Characterization of the term "most recent certified federal census" can be found in rule 701—270.1(423B), and methods of rounding off percentages and monetary sums can be found in rule 701—270.8(423B).

This rule is intended to implement Iowa Code section 423B.7(1).

[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.10(423B) Application of payments. Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and services tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)*"d."* The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and services tax due for the given tax period in relation to combined total payment of sales and local option sales and services tax actually received for that tax period.

This rule is intended to implement Iowa Code section 423B.7.

[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

701—270.11(423B) Computation of local option tax due from mixed sales on excursion boats. Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, whether local option sales tax is payable to a particular jurisdiction is based on destination sourcing. More information can be found in Iowa Code section 423.15 and 701—Chapter 205. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula that rationally apportions the progress of an excursion gambling boat among jurisdictions that impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples 1 and 3 utilize a "distance" formula for apportionment. Examples 2 and 4 utilize a "time" formula for apportionment. In Examples 1 and 2, state sales tax is included in the sales price of the taxable items. In Examples 3 and 4, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

EXAMPLE 1: The excursion gambling boat "Auric" is based in Clinton. Assume that during a particular cruise there occurs $10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters that are part of a local option sales tax jurisdiction and 25 of those miles that are not. The amount of state sales tax due and the amount of local option sales tax (LOST) due using a "distance" apportionment formula are determined as follows:

1. $(25 \div 50) \times 0.01 = 0.005$

(miles in LOST jurisdiction ÷ total miles) × LOST rate = effective LOST rate

2. $1 + 0.06 + 0.005 = 1.065$

1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)

3. $10,000.00 ÷ 1.065 = $9,389.67

Gross receipts ÷ (1 + effective total tax rate) = total sales

4. $9,389.67 × 0.06 = $563.38

Total sales × state tax rate = state tax amount

5. $9,389.67 × 0.005 = $46.95

Total sales × effective LOST rate = LOST amount

6. $563.38 + $46.95 = $610.33

State tax amount + LOST amount = total tax amount

EXAMPLE 2: The excursion gambling boat "Blue Diamond" is based in Davenport. Assume that, as in Example 1, during a particular cruise there occurs $10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example 1, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. The calculation is performed as follows:

1. (2 ÷ 3) × 0.01 = 0.00666

(hours in LOST jurisdiction ÷ total hours) × LOST rate = effective LOST rate

2. 1 + 0.06 + 0.00666 = 1.06666

1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)

3. $10,000.00 ÷ 1.06666 = $9,375.06

Gross receipts ÷ (1 + effective total tax rate) = total sales

4. $9,375.06 × 0.06 = $562.50

Total sales × state tax rate = state tax amount

5. $9,375.06 × 0.00666 = $62.44

Total sales × effective LOST rate = LOST amount

6. $562.50 + $62.44 = $624.94

State tax due + LOST due = total tax amount

EXAMPLE 3: The excursion gambling boat "Golconda" is based in Dubuque. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles, the Golconda is passing through waters that are part of a local option sales tax jurisdiction. Assume that on one particular cruise, $100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the $100,000 amount but not state sales tax. Thus, the total amount collected is $106,000; $100,000 in gross receipts, $6,000 in state sales tax. Local option tax is calculated as follows:

1. (25 ÷ 50) × 0.01 = 0.005

(miles in LOST jurisdiction ÷ total miles) × LOST rate = effective LOST rate

2. 1 + 0.005 = 1.005

1 + effective LOST rate

3. $100,000.00 ÷ 1.005 = $99,502.49

Gross receipts including LOST ÷ (1+ effective LOST rate) = total sales

4. $99,502.49 × 0.06 = $5,970.15

Total sales × state tax rate = state tax amount

5. $100,000.00 – 99,502.49 = $497.51

Gross receipts including LOST – total sales = LOST amount

6. $5,970.15 + $497.51 = $6,467.66

State tax due + LOST due = total tax amount

7. $99,502.49 + $497.51 + $5,970.15 = $105,970.15

Total sales + LOST amount + state tax amount = total amount collected by vendor

EXAMPLE 4: The excursion gambling boat "Black Jack" is based in Davenport. Assume that during a particular cruise there is $150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is $159,000; $9,000 in state sales tax and $150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example 2, the Black Jack's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example, tax is computed as follows:

1. (2 ÷ 3) × 0.01 = 0.00666 effective LOST rate

(hours in LOST jurisdiction ÷ total hours) × LOST rate = effective LOST rate

2. 1 + 0.00666 = 1.00666

1 + effective LOST rate

3. $150,000.00 ÷ 1.00666 = $149,007.61

Gross receipts including LOST but not state tax ÷ (1 + effective LOST rate) = total sales

4. $149,007.61 × 0.06 = $8,940.46

Total sales × state tax rate = state tax amount

5. $150,000.00 – 149,007.61 = $992.39

Gross receipts including LOST but not state tax – total sales = LOST amount

6. $8,940.46 + $992.39 = $9,932.85

State tax amount + LOST amount = total tax amount

7. $149,007.61 + $992.39 + $8,940.46 = $158,940.46

Total sales + LOST amount + state tax amount = total amount collected by vendor

Upon beginning operation, a licensee may choose to employ either the "distance" method of apportionment set out in Examples 1 and 3 or the "time" method set out in 2 and 4 above without informing the department in advance of filing a sales tax return of the licensee's choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 423B.5.

[**ARC 7623C**, IAB 2/7/24, effective 3/13/24]

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◊ Two or more ARCs

1 At its meeting held October 9, 2000, the Administrative Rules Review Committee delayed the effective date of 107.16 until adjournment of the 2001 Session of the General Assembly.

CHAPTER 271
NEW SCHOOL INFRASTRUCTURE LOCAL OPTION SALES AND SERVICES TAX—EFFECTIVE ON OR AFTER APRIL 1, 2003, THROUGH FISCAL YEARS ENDING DECEMBER 31, 2022

[Prior to 9/7/22, see Revenue Department[701] Ch 109]

Rescinded **ARC 7624C**, IAB 2/7/24, effective 3/13/24

CHAPTER 275
REBATE OF IOWA SALES TAX PAID
[Prior to 9/7/22, see Revenue Department[701] Ch 235]

701—275.1(423) Sanctioned automobile racetrack facilities. Iowa Code section 423.4(5) provides for rebates of qualifying sales made at sanctioned automobile racetrack facilities. Definitions of key terms may be found in Iowa Code section 423.4(5)*"a."*

275.1(1) *Affidavit by owner or operator.* The owner or operator of an automobile racetrack facility seeking a rebate allowed under Iowa Code section 423.4(5) of the sales tax imposed and collected by retailers upon sales of tangible personal property or services furnished to purchasers at the automobile racetrack facility must file with the department the following affidavit certifying that qualifications for the rebate have been met:

Iowa Department of Revenue
Sales Tax Rebate Affidavit

NAME OF AFFIANT ADDRESS OF AFFIANT	* * * *	AFFIDAVIT FOR SANCTIONED AUTOMOBILE RACETRACK FACILITY

The undersigned duly swears that the named Automobile Racetrack Facility complies with criteria to be entitled to rebate of sales tax as required in Iowa Code section 423.4 as follows:

a. The facility is sanctioned as an automobile racetrack facility;

b. The sanctioned automobile racetrack facility is located as part of a racetrack and entertainment complex, including any museum attached to or included in the sanctioned automobile racetrack facility, but excluding any restaurant;

c. The sanctioned automobile racetrack facility has not and will not receive any grants under the community attraction and tourism program pursuant to Iowa Code chapter 15F, subchapter II, or the vision Iowa program pursuant to Iowa Code chapter 15F, subchapter III;

d. The sanctioned automobile racetrack facility is located on a maximum of 232 acres of Iowa land;

e. The sanctioned automobile racetrack facility is located in a city with a population, as defined by this rule, of at least 14,500, but not more than 16,500;

f. The city in which the sanctioned automobile racetrack facility is located is in a county with a population, as defined by this rule, of at least 35,000, but no more than 40,000;

g. Construction of the sanctioned automobile racetrack facility was commenced on or before July 1, 2006;

h. Cost of construction of the automobile racetrack facility upon completion is at least $35 million; and

i. There has not been a "change of control" as defined in the rules governing this program regarding the legal ownership or operation of the automobile racetrack facility.

The undersigned duly swears that he or she is the owner or operator of the sanctioned automobile racetrack facility or that the undersigned is the authorized representative of the sanctioned automobile racetrack facility and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the sanctioned automobile racetrack facility has met all of the requirements as contained herein.

_____ _____
Name of Affiant Date
Position of Affiant

275.1(2) *Notification to the department of revenue.* The owner or operator of the automobile racetrack facility will provide the department with the identity of all retailers at the automobile racetrack facility that will be collecting sales tax and is required to keep the information current. The owner or operator of the automobile racetrack facility will notify the department within ten days of the termination of a retailer from collecting sales tax at the racetrack facility. In addition, the owner or operator of the automobile racetrack facility will notify the department within ten days of the start-up of a retailer collecting sales tax at the automobile racetrack facility.

275.1(3) *Limitations.* The automobile racetrack facility rebate program applies only to transactions that occur on or after January 1, 2006, but before the end date provided in Iowa Code section 423.4(5), and for which sales tax was collected. Only the state sales tax is subject to rebate. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to an automobile racetrack facility are not authorized for transactions that occur on or after the date of the change of control of the automobile racetrack facility. The rebate is limited to 5 percent.

275.1(4) *Termination of rebate program.* The rebate program for automobile racetrack facilities terminates on the earliest of the dates listed in Iowa Code section 423.4(5)*"g."*

275.1(5) *Sourcing of sales.* Advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the automobile racetrack facility is located must be imposed.

Other types of sales eligible for rebate under this program include but are not limited to sales by vendors and sales at concessions, gift shops, and museums. However, sales by a restaurant on facility land are not subject to rebate.

275.1(6) *Requirements to obtain a rebate of state sales tax by the racetrack facility.* In order to obtain a rebate, a request is considered timely and complete when the authorized form containing all requested information is filed quarterly with the department.

This rule is intended to implement Iowa Code section 423.4(5).

[**ARC 7625C**, IAB 2/7/24, effective 3/13/24]

701—275.2(423) Baseball and softball complex sales tax rebate.

275.2(1) *Generally.*

a. Rebate approval. An entity whose project pursuant to Iowa Code section 15F.207 is reviewed and recommended by the economic development authority and approved by the enhance Iowa board is entitled to rebates of qualifying sales tax in accordance with Iowa Code section 423.4(10) and this rule, not to exceed the amount awarded by the economic development authority.

b. Qualifying rebates. Qualifying rebates of Iowa state sales tax may be made to the owner or operator of a complex as defined in this rule for sales occurring on or after the project completion date for a period of ten years or the date the award was made, whichever is later. Qualifying rebates are for state sales tax only. Local option taxes are not subject to rebate under this program.

275.2(2) *Definitions.* For the purpose of this program, the definitions found in Iowa Code section 423.4(10) apply. In addition, the following definitions apply:

"Department" means the department of revenue.

"Eligible baseball and softball complex" or *"complex"* means a facility located in this state that has a project completion date that is after July 1, 2016, is designed and built to host baseball and softball games and has a cost of construction upon completion that is at least $10 million. The boundaries of a "complex" may be a portion or the entirety of a premises. After granting an award to a complex, the enhance Iowa board shall describe in writing to the department the physical boundaries of the complex and provide the department a map illustrating the approved boundaries of the complex.

"Placed into service" means the first day a complex is able to host a baseball or softball game.

275.2(3) *Notification to the department of revenue.* The owner or operator of the complex shall provide the department with a copy of the award notice from the enhance Iowa board.

275.2(4) *Retailer identification.*

a. Identification of retailers. The owner or operator shall provide the department with the identity of all retailers at the complex that will be collecting sales tax, provide sales tax permit numbers for each retailer, and keep the information current.

b. Notification to department. The owner or operator of the complex shall notify the department within ten days of the start-up or termination of a retailer collecting sales tax at the complex. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the complex or after one calendar year expires since the retailer collected sales tax at the complex.

c. Verification by department. The department shall verify the identity of a retailer collecting sales tax at the complex before rebates are paid for sales made by that retailer.

275.2(5) *Baseball and softball complex rebate request form and filing requirements.* To obtain the rebate, the owner or operator must submit a rebate request to the department on the authorized form furnished by the department. A properly completed form shall adhere to the following rules:

a. Who may file the claim. The claim must be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the complex. The following information shall be provided:

(1) Business name,

(2) Responsible party,

(3) Federal employer identification number (FEIN), and

(4) Sales tax permit number, which must be associated with an address at the complex.

c. Sales at the complex. Information on sales at the complex and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.2(5)*"b"* and Iowa Code section 423.4(10) are eligible for rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the complex took place.

275.2(6) *Fund transfers.* The amount of sales tax revenues transferred from the general fund to the complex fund is that portion of sales tax receipts remaining in the general fund after other department transfers, as described in Iowa Code section 423.4(10)*"e."*

275.2(7) *Termination of rebate program.* The rebate program terminates 30 days following the date on which $5 million in total rebates has been provided. The rebate award for each complex terminates on the earliest of the following dates:

a. Ten years after the project completion date; or

b. The date on which total rebates equal to the amount of the rebate award have been provided to the complex; or

c. The date of the change of control of the facility.

275.2(8) *Sourcing of sales.*

a. Generally. In general, sales are considered to occur "at the complex" if they occur within the boundaries identified in the physical description provided by the enhance Iowa board and are sourced to a location within those boundaries under Iowa Code section 423.15.

b. Advance ticket and admissions sales. Advance ticket and admissions sales shall be considered occurring at the baseball and softball complex regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the facility is located must be imposed on the purchase price of advance ticket and admissions sales.

This rule is intended to implement Iowa Code section 423.4(10).

[**ARC 7625C**, IAB 2/7/24, effective 3/13/24]

701—275.3(423) Raceway facility sales tax rebate. Qualifying rebates of Iowa state sales and use tax may be made to the owner or operator of a raceway facility that meets the requirements of Iowa Code section 423.4(11).

275.3(1) *Definitions.* For purposes of this rebate, unless further defined below, the terms used in this rule mean the same as defined in Iowa Code section 423.4(11). Additionally, "incurred date" means the date on which the payment for the project cost was made or the performance of the work that gave rise to the payment occurred, whichever is later.

275.3(2) *Retailer identification.*

a. Identification of retailers. The owner or operator shall provide the identity of all retailers at the raceway facility that will be collecting sales tax and provide the department with the sales tax permit number for each retailer. During the period in which rebates may be claimed, the owner or operator shall keep the information current.

b. Notification to department. The owner or operator shall notify the department within ten days of the termination or start-up of a retailer collecting sales tax at the raceway facility. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the raceway facility or after one calendar year expires since the retailer collected sales tax at the raceway facility.

c. Verification by department. The department shall verify the identity of a retailer collecting sales tax at the raceway facility before rebates are paid for sales made by that retailer.

275.3(3) *Project cost report and rebate form and filing requirements.* To request a rebate, the owner or operator must timely submit a project cost report and rebate request to the department on the authorized form, furnished by the department, in addition to the retailer sales report, as described in subrule 275.3(4). A properly completed rebate form shall contain the following:

a. Documentation and information required.

(1) Invoices for project costs.

(2) An explanation of how each cost meets the definition of "project costs."

(3) The date each cost was incurred and the date each cost was paid.

b. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

c. Sworn statement. The department may require a sworn statement regarding the truthfulness and eligibility of the report.

d. Filing frequency. To be considered timely, the form and supporting documentation must be provided to the department within 90 days of the date the project cost was paid. Generally, this report is filed quarterly with the rebate request form; however, the project cost report may be filed more frequently if necessary to meet the 90-day filing requirement. Project cost reports and rebate forms will not be accepted on or after the earliest date provided in Iowa Code section 423.4(11)*"g."*

275.3(4) *Raceway facility retailer sales report and filing requirements.* The owner or operator must submit a retailer sales report to the department on the authorized form furnished by the department. A properly completed form shall contain the following.

a. Who may file the claim. Rebate claims shall only be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the raceway facility. Retailer information must include:

(1) Business name,

(2) Responsible party,

(3) Federal employer identification number (FEIN), and

(4) Sales tax permit number.

c. Sales at the raceway facility. Sales occurring at the raceway facility and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.3(4)*"b"* and Iowa Code section 423.4(11) that occur during the time period specified in Iowa Code section 423.4(11)*"c"*(3) are eligible for the rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement by the retailer and the owner or operator regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the raceway facility took place.

275.3(5) *Sourcing of sales.*

a. Generally. In general, sales are considered to occur at the raceway facility if they occur within the boundaries of the raceway facility portion of the fairgrounds and are sourced to that raceway facility under Iowa Code section 423.15.

b. Advance ticket and admissions sales. Advance ticket and admissions sales shall be considered occurring at the raceway facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the raceway facility is located must be imposed on the sales price of advance ticket and admissions sales.

275.3(6) *Local option sales tax.* Local option taxes imposed under Iowa Code chapter 423B are not eligible for rebate under this program.

This rule is intended to implement Iowa Code section 423.4(11).

[**ARC 7625C**, IAB 2/7/24, effective 3/13/24]

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CHAPTER 276
FACILITATING BUSINESS RAPID RESPONSE TO STATE-DECLARED DISASTERS

[Prior to 9/7/22, see Revenue Department[701] Ch 242]

701—276.1(29C) Purpose. The Iowa department of revenue, the Iowa department of homeland security and emergency management and the secretary of state are authorized and tasked by the legislature to jointly administer and oversee mutual aid among the political subdivisions of Iowa, other states and the federal government and to ensure the state government and its departments and agencies facilitate the rapid response of businesses and workers in the state and other states to a disaster.
[**ARC 7626C**, IAB 2/7/24, effective 3/13/24]

701—276.2(29C) Definitions. For purposes of this chapter, the definitions from Iowa Code section 29C.24 are adopted by reference.
[**ARC 7626C**, IAB 2/7/24, effective 3/13/24]

701—276.3(29C) Disaster or emergency-related work.

276.3(1) *Out-of-state business.* An out-of-state business conducting operations within the state solely for the purpose of performing disaster or emergency-related work during a disaster response period does not establish a level of presence that would subject the out-of-state business to any of the requirements and responsibilities listed in Iowa Code section 29C.24(3)*"a."*

276.3(2) *Out-of-state employee.* The performance of disaster or emergency-related work during a disaster response period by an out-of-state employee is not a basis to determine that the out-of-state employee has established residency or a level of presence in Iowa that would subject the out-of-state employee to any of the requirements or responsibilities listed in Iowa Code section 29C.24(3)*"b."*

276.3(3) *After the disaster response period ends.* An out-of-state business or out-of-state employee remaining in Iowa after the disaster response period for which the disaster or emergency-related work was performed is responsible for all taxes, fees, registration, filing or other requirements the out-of-state business or out-of-state employee would have been subject to but for Iowa Code section 29C.24.
[**ARC 7626C**, IAB 2/7/24, effective 3/13/24]

These rules are intended to implement Iowa Code section 29C.24.

[Filed ARC 3085C (Notice ARC 2942C, IAB 2/15/17), IAB 5/24/17, effective 6/28/17]
[Filed ARC 6508C (Notice ARC 6400C, IAB 7/13/22), IAB 9/7/22, effective 10/12/22]
[Filed ARC 7626C (Notice ARC 7153C, IAB 12/13/23), IAB 2/7/24, effective 3/13/24]

CHAPTER 277
SALES AND USE TAX REFUND FOR BIODIESEL PRODUCTION

[Prior to 9/7/22, see Revenue Department[701] Ch 250]

701—277.1(423) Biodiesel production refund. A refund of sales or use tax is available for certain producers of biodiesel for calendar year 2012 to the ending year specified in Iowa Code section 423.4(9)*"e."*

277.1(1) *Qualifications for the refund.* To be eligible for the refund, a biodiesel producer that produces biodiesel in Iowa must meet the criteria listed in Iowa Code section 423.4(9)*"a."*

277.1(2) *Calculation of the refund.* The amount of refund is calculated as described in Iowa Code section 423.4(9)*"b"* and up to the number of gallons identified in Iowa Code section 423.4(9)*"c."* No refund will be allowed for gallons produced at a facility on or after the date identified in Iowa Code section 423.4(9)*"e."*

277.1(3) *Claiming the refund.* In order to claim a refund for each calendar quarter, a biodiesel producer must file Form IA 843, Refund Return, on which the biodiesel producer will include the number of biodiesel gallons produced during the quarter, the calculation of the biodiesel production refund, and the amount of biodiesel production refund claimed. The biodiesel producer must also timely file all sales and use tax returns due and timely pay all sales and use taxes owed on the biodiesel producer's purchases, even when the amount of the biodiesel production refund due exceeds the amount of sales and use taxes owed for the quarter. The department will reduce the amount of the refund issued by the amount of any sales and use taxes owed by the biodiesel producer.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2023. The producer also owes $10,000 of Iowa use tax based on purchases made during the first quarter of 2023. In order to claim a refund, the producer must timely file an Iowa sales and use tax return and pay $10,000 of use tax with the return and file Form IA 843, Refund Return, to request a refund of $200,000 (5 million gallons multiplied by 4 cents per gallon) for the first quarter of 2023.

[**ARC 7627C**, IAB 2/7/24, effective 3/13/24]

This rule is intended to implement Iowa Code section 423.4(9).

[Filed ARC 3043C (Notice ARC 2896C, IAB 1/18/17), IAB 4/26/17, effective 5/31/17]
[Filed ARC 6508C (Notice ARC 6400C, IAB 7/13/22), IAB 9/7/22, effective 10/12/22]
[Filed ARC 7627C (Notice ARC 7154C, IAB 12/13/23), IAB 2/7/24, effective 3/13/24]

CHAPTER 278
REFUNDS FOR ELIGIBLE BUSINESSES UNDER ECONOMIC DEVELOPMENT AUTHORITY PROGRAMS

[Prior to 7/13/22, see rule 701—12.19(15)]
[Prior to 9/7/22, see Revenue Department[701] Ch 258]

701—278.1(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program or workforce housing tax incentives program by the economic development authority, a refund of sales and use tax is available.

278.1(1) *Sales and use tax eligible for refund.* Eligible businesses can receive a refund of the sales and use tax paid for those items listed in Iowa Code section 15.331A to the extent applicable for purposes of the particular program.

278.1(2) *Sales and use tax ineligible for refund.* The sales and use tax for which the eligible business cannot receive a refund consists of the following:

a. Any local option sales tax paid is not eligible for the refund. The refund is limited to the state sales and use tax paid.

b. Any sales and use tax attributable to intangible property, furniture, or furnishings is not eligible for the refund. "Furnishings" means any furniture, appliances, equipment, and accessories that are movable and with which a room or building is furnished for comfort, convenience, or aesthetic value. Examples include rugs, décor, and window coverings. "Furnishings" does not include installed flooring such as hardwood, carpet, ceramic, stone, laminate, or vinyl.

278.1(3) *When to claim the refund.* To receive a refund, the eligible business must file a claim for refund within the following period of time:

a. High quality jobs program. The first date the eligible business may file a claim for refund is after the contract completion as defined in Iowa Code section 15.331A. The last date the eligible business may file a claim for refund is one year after the project completion date as defined in Iowa Code section 15.329.

b. Workforce housing tax incentives program. The first date the eligible business may file a claim for refund is after the agreement completion date as defined in Iowa Code section 15.355. The last date the eligible business may file a claim for refund is one year after the agreement completion date as defined in Iowa Code section 15.355.

278.1(4) *How to claim the refund.*

a. Gas, electric, water, or sewer utility services. To request a refund of the sales and use tax paid for gas, electric, water, or sewer utility services used during construction, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

b. Contractor or subcontractor. To request a refund of the sales and use tax paid on tangible personal property, or on services rendered to, furnished to, or performed for a contractor or subcontractor relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form, along with the Iowa Contractor's Statement, with the department of revenue. The Construction Contract Claim for Refund form shall include the tax credit certificate number given by the Iowa economic development authority. It is not necessary to attach invoices to the Construction Contract Claim for Refund form, but the department of revenue reserves the right to request invoices when reviewing the refund claim.

c. Racks, shelving, and conveyor equipment. To request a refund of the sales and use tax attributable to racks, shelving, and conveyor equipment, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

[**ARC 7628C**, IAB 2/7/24, effective 3/13/24]

This rule is intended to implement Iowa Code chapter 15.

[Filed Emergency ARC 6398C, IAB 7/13/22, effective 7/1/22]

[Filed ARC 6508C (Notice ARC 6400C, IAB 7/13/22), IAB 9/7/22, effective 10/12/22]
[Editorial change: IAC Supplement 10/18/23]
[Filed ARC 7628C (Notice ARC 7155C, IAB 12/13/23), IAB 2/7/24, effective 3/13/24]

LABOR SERVICES DIVISION[875]

[Prior to 11/19/97, see Labor Services Division[347]]

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CHAPTER 32
CHILD LABOR

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 32]

875—32.1(92) Definitions.

"Director" means the director of the department of inspections, appeals, and licensing or the director's designee.

"Filing date" means the date a document is postmarked by the U.S. Postal Service, if the document is filed by mailing and the U.S. postmark is legible. For a document filed via facsimile transmission, "filing date" means the date the document is transmitted. For any other document, "filing date" means the date the document is received by the director.

"Operated by the child's parents," as used in Iowa Code section 92.17(3), means a business operated by the child's parent or licensed foster parent who has control of the day-to-day operation of the business and is on the premises during the hours of the child's employment.

"Serious injury or illness" means an illness or injury requiring medical attention beyond first aid.

"Week," as used in Iowa Code section 92.7, means Sunday through Saturday.

"Willfully volunteering" means performing service for a charitable or public purpose without promise, expectation, or receipt of compensation. A child shall be considered a volunteer only if services are offered freely and without direct or implied pressure or coercion from an employer. A child shall not be considered a volunteer if the child is otherwise employed by the same charitable or public organization to perform the same type of services as those for which the child proposes to volunteer. A child shall not be considered a volunteer while working in commercial activities for a nonprofit organization.

"Working days," as used in rule 875—32.12(92), means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

This rule is intended to implement Iowa Code chapter 92 .

[**ARC 8300B**, IAB 11/18/09, effective 1/1/10; **ARC 2134C**, IAB 9/2/15, effective 10/7/15; **ARC 4640C**, IAB 8/28/19, effective 10/2/19; Editorial change: IAC Supplement 2/10/21; **ARC 7615C**, IAB 2/7/24, effective 3/13/24]

875—32.2(92) Permits and certificates of age. Rescinded **ARC 7615C**, IAB 2/7/24, effective 3/13/24.

875—32.3 and **32.4** Reserved.

875—32.5(92) Terms. The terms used in Iowa Code section 92.5 are defined and applied as specified in this rule.

32.5(1) *Cleaning products that require personal protective equipment.* Prior to allowing a 14- or 15-year-old to use cleaning products that require personal protective equipment, the employer shall submit to the director the following:

a. The safety data sheets of all such chemicals the minor will use.

b. What personal protective equipment the minor will be using with each chemical that requires it.

c. Proof of training the minor on the use of the required personal protective equipment.

32.5(2) *Definitions.*

"Car cleaning, washing, and polishing" as used in Iowa Code section 92.5(9) does not include using chemicals that recommend personal protective equipment.

"Laundering" as used in Iowa Code section 92.5(12) includes laundering with residential-style machines and includes laundromats. It includes industrial laundering on the following conditions:

1. A parent or guardian gives written permission for the minor to do industrial laundering, to be kept on file by the employer.
2. The minor is not exposed to any chemicals that recommend personal protective equipment.
3. The employer shall provide nonslip shoes.
4. The employer shall provide training on bloodborne pathogens.

5. The minor shall lift loads of no more than 30 pounds.

"Light tools" as used in Iowa Code section 92.5(11) includes the listed tools that are up to 30 pounds.

This rule is intended to implement Iowa Code section 92.5.

[**ARC 7615C**, IAB 2/7/24, effective 3/13/24]

875—32.6(92) Terms. The terms used in Iowa Code section 92.6A are defined and applied as specified in this rule.

"Light assembly work" means assembling with nonpower hand tools and does not include welding.

"Properly licensed" means a minor who holds a current license from the National Pool and Waterpark Lifeguard Training program in one of the following programs:

1. National Pool and Waterpark Pool Lifeguard.
2. National Pool and Waterpark Lifeguard Training.
3. National Pool and Waterpark Deep Water Lifeguard.

If there is a question whether a specific training course meets the requirements of these rules, information about the course should be submitted to the director for evaluation.

32.6(1) *Waiver of weight limitation.* An employer may submit an application for waiver to allow a 15-year-old person to load, unload, or lift up to 50 pounds for work allowed under Iowa Code section 92.6A(1). The application shall include information required by the director in an application form. The application shall be signed by the employer, the minor employee, and a parent or guardian. The application shall include documentation from a physician or physician's assistant that the minor is physically capable of this work activity.

32.6(2) *Waiver to unload lawn machines.* An employer may submit an application for waiver to allow a 15-year-old person to unload lawn machines under Iowa Code section 92.6A(3). The application shall include information required by the director in an application form. The application shall be signed by the employer, the minor, and a parent or guardian. The application shall include documentation from a physician or physician's assistant that the minor is physically capable of this work activity.

This rule is intended to implement Iowa Code section 92.6A.

[**ARC 7615C**, IAB 2/7/24, effective 3/13/24]

875—32.7(92) Workweek. Rescinded **ARC 2134C**, IAB 9/2/15, effective 10/7/15.

875—32.8(92) Terms. The terms used in Iowa Code section 92.8 are defined and applied as specified in this rule.

32.8(1) *"Work activities in or about plants or establishments manufacturing or storing explosives or articles containing explosive components"* means:

a. All activities in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in paragraph *"b"*) manufacturing or storing explosives or articles containing explosive components except where the activities are performed in a "nonexplosive area."

b. The following activities in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(1) All activities involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other activities requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(2) All activities involved in the manufacturing, transporting, or handling of primers and all other activities requiring the performance of any duties in the same building in which primers are manufactured.

(3) All activities involved in the priming of cartridges and all other activities requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(4) All activities involved in the plate loading of cartridges and in the operation of automatic loading machines.

(5) All activities involved in the loading, inspecting, packing, shipping and storage of blasting caps.

c. Definitions.

"Explosives" and *"articles containing explosive components"* means and includes ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR Parts 71-78, in effect July 1, 1987).

"Nonexplosive area" means an area where none of the work performed in the area involves the handling or use of explosives; the area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings; the area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet the criteria of this definition.

"Plant or establishment manufacturing or storing explosives or articles containing explosive components" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

Nothing in this subrule shall be construed to prohibit light assembly work that is away from machines, and nothing in this subrule shall be construed to prohibit selling or assisting in the sale of consumer fireworks in accordance with Iowa Code section 10A.519.

This subrule is intended to implement Iowa Code section 92.8(1).

32.8(2) *"Logging and the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill"* means all related activities with the following exceptions:

a. Exceptions applying to logging:

(1) Work in offices or in repair or maintenance shops.

(2) Work in the construction, operation, repair or maintenance of living and administrative quarters or logging camps.

(3) Work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining firefighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrol person away from the actual logging operations. This exception shall not apply to the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles.

(4) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging activities prohibited by this subrule.

(5) Work in the feeding or care of animals.

b. Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill:

(1) Work in offices or in repair or maintenance shops.

(2) Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.

(3) Pulling lumber from the dry chain.

(4) Cleanup in the lumberyard.

(5) Piling, handling, or shipping of cooperage stock in yards or storage sheds, other than operating or assisting in the operation of power-driven equipment.

(6) Clerical work in yards or shipping sheds, such as done by order persons, tally persons, and shipping clerks.

(7) Cleanup work outside shake and shingle mills, except when the mill is in operation.

(8) Splitting shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover.

(9) Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover.

(10) Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury. The exceptions in paragraph *"b,"* subparagraphs (1) to (10), do not apply to a portable sawmill the lumberyard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained and work which entails entering the sawmill building.

Definitions.

"Logging" means all work performed in connection with the felling of timbers; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of these products in connection with logging; the constructing, repairing and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency firefighting.

"All activities in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill" means all work performed in or about any mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperage stock; storing, drying, and shipping lumber, laths, shingles, cooperage stock, or other products of the mills and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill.

This subrule is intended to implement Iowa Code section 92.8(2).

32.8(3) *"Operation of power-driven woodworking machines"* means operating power-driven woodworking machines including supervision or controlling the operation of the machines, feeding material into the machines, and helping the operator to feed material into the machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding. Also included are activities of setting up, adjusting, repairing, oiling or cleaning power-driven woodworking machines and the operations of off-bearing from circular saws and from guillotine-action veneer clippers.

Definitions.

"Off-bearing" means the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this subrule include:

a. The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expansion roller, and

b. The following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation; the carrying, moving or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling or loading of materials.

"Power-driven woodworking machines" means all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing or printing wood or veneer.

This subrule is intended to implement Iowa Code section 92.8(3).

32.8(4) *"Work activities involving exposure to radioactive substances and to ionizing radiations"* means activity in any workroom in which radium is stored or used in the manufacture of self-luminous compound; self-luminous compound is made, processed or packaged; self-luminous compound is stored, used or worked upon; incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; and other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook

No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," June 5, 1959.

Also included is any other work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

Definitions.

"Ionizing radiations" means alpha and beta particles, electrons, protons, neutrons, gamma and X-ray and all other radiations which produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and X-ray.

"Self-luminous compound" means any mixture of phosphorescent material and radium, mesothorium or other radioactive element.

"Workroom" means the entire area bounded by walls of solid material and extending from floor to ceiling.

This subrule is intended to implement Iowa Code section 92.8(4).

32.8(5) *"Operation of elevators and other power-driven hoisting apparatus"* means:

a. Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one-ton capacity.

b. Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

c. Work of assisting in the operation of a crane, derrick or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like activities.

d. Exception. Iowa Code section 92.8(5) shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over-travel by the car.

e. Definitions.

"Automatic elevator" means any passenger elevator, a freight elevator or a combination passenger-freight elevator, the operation of which is controlled by push buttons in a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

"Automatic signal operation elevator" means an elevator which is started in response to the operation of a switch (such as a lever or push button) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

"Crane" means any power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.

"Derrick" means any power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

"Elevator" means any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators, (including portable elevators or tiering machines), but shall not include dumbwaiters.

"High-lift truck" means any power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.

"Hoist" means any power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term includes all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

*"Manlift"*means any device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; the belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

This subrule is intended to implement Iowa Code section 92.8(5).

32.8(6) *"Operation of power-driven metal forming, punching and shearing machines"* means being the operator of or helper on the following power-driven metal forming, punching, and shearing machines.

a. All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

b. All pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

c. All bending machines, such as apron brakes and press brakes.

d. All hammering machines, such as drop hammers and power hammers.

e. All shearing machines, such as guillotine or squaring shears, alligator shears and rotary shears.

Also included are the occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

"Forming, punching and shearing machines" means power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls or knives which are mounted on rams, plungers or other moving parts. Types of forming, punching, and shearing machines enumerated in this subrule are the machines to which the designation is by custom applied.

"Helper" means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove them from the machine.

"Operator" means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

This subrule is intended to implement Iowa Code section 92.8(6).

32.8(7) *"Mining"* means all work performed underground in mines and quarries; underground working, open-pit, or surface part of any coal-mining plant that contribute to the extraction, grading, cleaning, or other handling of coal; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where the operations are performed as a part of a manufacturing process.

The term "mining" shall not include:

a. Work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded and further processed, or plants manufacturing clay, glass or ceramic products.

b. Work performed in connection with petroleum production, in natural gas production, or in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

c. Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground.

d. Work in the operation and maintenance of living quarters.

e. Work outside the mine in surveying, in the repair and maintenance of roads, and in general cleanup about the mine property such as clearing brush and digging drainage ditches.

f. Work of track crews in the building and maintaining of sections of railroad track located in those areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that the building and maintenance work is being done.

g. Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.

h. Work in metal mills other than in mercury-recovery mills or mills using the cyanide process involving the operation of jigs, sludge tables, flotation cells, or drier-filters; hand-sorting at picking table or picking belts; or general cleanup.

Nothing in this subrule shall be construed to permit any employment of minors in any other activity otherwise prohibited by Iowa Code chapter 92.

This subrule is intended to implement Iowa Code section 92.8(7).

32.8(8) *"Work activities in or about slaughtering and meat packing establishments and rendering plants"* means:

a. All activities on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, hand truckers and similar activities which require entering workrooms or workplaces infrequently and for short periods of time.

b. All activities involved in the recovery of lard and oils, except packaging and shipping of the products and the operation of lard-roll machines.

c. All activities involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

d. All activities involved in the operation or feeding of the following power-driven meat processing machines, including setting up, adjusting, repairing, oiling, or cleaning the machines regardless of the product being processed by these machines (including, for example, the slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese, etc.):

1. Meat patty forming machines, meat and bone cutting saws, knives (except bacon-slicing machines), head splitters, and guillotine cutters;
2. Snout pullers and jaw pullers;
3. Skinning machines;
4. Horizontal rotary washing machines;
5. Casing-cleaning machines such as crushing, stripping, and finishing machines;
6. Grinding, mixing, chopping, and hashing machines; and
7. Presses (except belly-rolling machines).

e. All boning activities.

f. All activities involving the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.

g. All activities involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

Definitions.

"Boning" means the removal of bones from meat cuts. It does not include cutting, scraping or trimming meat from cuts containing bones.

"Curing cellar" means the workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include the workroom or workplace where meats are smoked.

"Hide cellar" means the workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

"Killing floor" means the workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

"Rendering plants" means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients and similar products.

"Slaughtering and meat packing establishments" means places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses, poultry, rabbits or small game are killed, processed or butchered and establishments which manufacture or process meat products or sausage casings from these animals.

This subrule is intended to implement Iowa Code section 92.8(8).

32.8(9) *"Operation of certain power-driven bakery machines"* means operating, assisting to operate or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machines; or cake cutting band saw and setting up or adjusting a cookie or cracker machine. However, this definition does not apply to the operation of pizza dough rollers that are a type of dough sheeter that have been constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers, that have gears that are completely enclosed, and that have microswitches that disengage the machinery if the backs or sides of the rollers are removed, only when all the safeguards detailed in Iowa Code section 92.8(9) are present on the machinery, are operational, and have not been overridden.

This subrule is intended to implement Iowa Code section 92.8(9).

32.8(10) *"Operation of paper-products machines"* means operating or assisting to operate any of the following power-driven paper-products machines and includes:

a. Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

b. Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

c. The activities of setting up, adjusting, repairing, oiling, or cleaning the machines in paragraphs *"a"* and *"b"* of this subrule including those which do not involve hand feeding.

d. Loading material into paper/cardboard balers except when the machine is powered off and the key is stored in a separate area from the machine.

Definitions.

"Operating or assisting to operate" means all work which involves starting or stopping a machine covered by this subrule, placing materials into or removing them from the machine, or any other work directly involved in operating the machine except loading material into balers when the machine is powered off and the key is stored in a separate area from the machine.

"Paper-products machine" means power-driven machines used in:

1. The remanufacture or conversion of paper or pulp into a finished product, including the preparation of materials for recycling.

2. The preparation of materials for disposal. The term applies to the machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishments.

This subrule is intended to implement Iowa Code section 92.8(10).

32.8(11) *"Manufacturing brick, tile and related products"* means the manufacture of brick, tile and related products and includes the manufacture of clay construction products and of silica refractory products and includes:

a. All work in or about establishments in which clay construction products are manufactured, except work in storage and shippings; work in offices, laboratories, and storerooms; and work in the drying departments of plants manufacturing sewer pipe.

b. All work in or about establishments in which silica brick or other silica refractories are manufactured, except work in offices.

c. Nothing in this subrule shall be construed to permit any employment of minors in any other activities otherwise prohibited by Iowa Code chapter 92.

Definitions.

"Clay construction products" means brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. It does not include nonstructural-bearing clay products such as ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor nonclay construction products such as sand-lime brick, glass brick, or nonclay refractories.

"Silica brick or other silica refractories" means refractory products produced from raw materials containing free silica as its main constituent.

This subrule is intended to implement Iowa Code section 92.8(11).

32.8(12) *"Operation of circular saws, band saws, and guillotine shears"* means:

a. Operator of or helper on power-driven fixed or portable circular saws, band saws, and guillotine shears except machines equipped with full automatic feed and ejection.

b. Setting up, adjusting, repairing, oiling, or cleaning circular saws, band saws, or guillotine shears.

Definitions.

"Band saw" means a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

"Circular saw" means a machine equipped with an endless steel disc and having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

"Guillotine shear" means a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

"Helper" means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove them from the machine.

"Machines equipped with full automatic feed and ejection" means machines covered by this subrule which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any body part in the point-of-operation area.

"Operator" means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing them from the machine, or any other function directly involved in the operation of the machine.

This subrule is intended to implement Iowa Code section 92.8(12).

32.8(13) *"Wrecking, demolition and shipbreaking operations"* means all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

This subrule is intended to implement Iowa Code section 92.8(13).

32.8(14) *"Roofing operations"* means all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term also includes all work performed in connection with the installation of roofs, including related metal work such as flashing; and alterations, additions, maintenance and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of

the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment or similar appliances attached to roofs.

This subrule is intended to implement Iowa Code section 92.8(14).

32.8(15) *"Excavation"* means all activities involved with:

a. Excavating, working in, or backfilling (refilling) trenches, except manually excavated or manually backfilling trenches that do not exceed four feet in depth at any point or working in trenches that do not exceed four feet in depth at any point.

b. Excavating for buildings or other structures or working in the excavations, except manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, working in an excavation not exceeding four feet in depth, or working in an excavation where the side walls are shored or sloped to the angle or repose.

c. Working within tunnels prior to the completion of all driving and shoring operations.

d. Working within shafts prior to the completion of all sinking and shoring operations.

This subrule is intended to implement Iowa Code section 92.8(15).

32.8(16) to **32.8(19)** Reserved.

32.8(20) Work activities prohibited by the director include the following:

a. Activities involved in the operation of power cutters on corn detasseling machines.

b. Activities involved in the driving of power-driven detasseling machines unless the driver has a valid driver's license or a certificate issued by the Federal Extension Service showing that the driver has completed a 4-H farm and machinery program.

This subrule is intended to implement Iowa Code section 92.8(21).

This rule is intended to implement Iowa Code section 92.8.

[**ARC 9963B**, IAB 1/11/12, effective 2/15/12; **ARC 5022C**, IAB 4/8/20, effective 5/13/20; **ARC 6764C**, IAB 12/28/22, effective 2/1/23; **ARC 7615C**, IAB 2/7/24, effective 3/13/24]

875—32.9(92) Terms. The terms used in Iowa Code section 92.8A are defined and applied as specified in this rule.

"Incidental" means not a primary activity of the minor.

"Intermittent and for short periods of time" may vary depending on the degree and type of hazard. The frequency and duration of an activity shall make it clear the employee is a learner rather than a production worker. The burden is on the employer to justify more than one hour per day or 20 percent of a shift.

"Written permission" shall include a description of the activity that would otherwise be unlawful under Iowa Code section 92.8, including the expected frequency and duration of that activity.

This rule is intended to implement Iowa Code section 92.8A.

[**ARC 7615C**, IAB 2/7/24, effective 3/13/24]

875—32.10 Reserved.

875—32.11(92) Civil penalty calculation. An employer who violates this chapter or Iowa Code chapter 92 is subject to a civil penalty of not more than $10,000 per violation as set forth in this rule.

32.11(1) *Counting the number of violations.*

a. Violations shall be counted as follows: each day that a child works too many hours, works at a prohibited time, or works in a prohibited occupation shall be a separate violation.

b. The director may waive or reduce the penalty if this method of counting the violations would result in a penalty that is disproportionate to the harm done to the minor(s), the size of the employer, or both.

32.11(2) *Determining whether a violation is a repeat violation.* The higher penalty amounts outlined in subrules 32.11(4) and 32.11(5) for repeat instances may be assessed by the director if citations regarding the earlier instance or instances are final action and occurred less than five years before.

32.11(3) *Permit violations.* Rescinded IAB 2/7/24, effective 3/13/24.

32.11(4) *Hours violations.* If a child is killed while working at a prohibited time or for excessive hours, the civil penalty shall be $10,000 for each instance. For other time or hour violations, the penalties set forth in this subrule shall be applied.

a. The civil penalties for working less than 15 minutes before or after an allowed time are as set forth in the following schedule:

Instance	Penalty
First	Warning letter
Second	$100 civil penalty
Third	$200 civil penalty
Fourth	$500 civil penalty
Fifth	$1,000 civil penalty
Sixth	$2,500 civil penalty
Seventh	$5,000 civil penalty
Eighth	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

b. For any time or hours violation not described elsewhere in this subrule, the following civil penalty schedule shall apply:

Instance	Penalty
First	$100 civil penalty
Second	$250 civil penalty
Third	$500 civil penalty
Fourth	$1,000 civil penalty
Fifth	$2,500 civil penalty
Sixth	$5,000 civil penalty
Seventh	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

32.11(5) *Occupation violations.*

a. If no serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

Instance	Penalty
First	$500 civil penalty
Second	$1,500 civil penalty
Third	$2,500 civil penalty
Fourth	$5,000 civil penalty
Fifth	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

b. If a nonfatal but serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

Instance	Penalty
First	$2,500 civil penalty
Second	$5,000 civil penalty
Each additional instance	$10,000 civil penalty

c. If a fatality results from the work, the civil penalty for allowing or permitting a child to perform prohibited work is $10,000 for each instance.

32.11(6) *Penalty reduction factors.* Except for violations related to the death of a child while working, the director shall reduce the penalty calculated pursuant to subrules 32.11(1), 32.11(2), 32.11(4) and 32.11(5) by the appropriate penalty reduction percentages set forth in this subrule. However, if the director requests information relevant to the penalty assessment and the employer does not provide responsive information, the director shall not reduce the penalty.

a. Penalty reduction for size of business. The director shall reduce a penalty by 25 percent if the employer has 25 or fewer employees. The director shall reduce the penalty amount by 15 percent if the employer has 26 to 100 employees. The director shall reduce the penalty amount by 5 percent if the employer has 101 to 250 employees.

b. Penalty reduction for good faith. The director may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the director warned an employer in writing about a prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the director shall not reduce the penalty based on good faith.

c. Penalty reduction for history. The director shall reduce a penalty by 10 percent if the director has not assessed a civil penalty under this chapter within the past five years. If the director has assessed a civil penalty under this chapter in the past five years but the civil penalty has not reached judicial or administrative finality, the civil penalty shall be reduced by 10 percent.

This rule is intended to implement Iowa Code section 92.22.

[**ARC 8300B**, IAB 11/18/09, effective 1/1/10; **ARC 2134C**, IAB 9/2/15, effective 10/7/15; **ARC 4639C**, IAB 8/28/19, effective 10/2/19; **ARC 7615C**, IAB 2/7/24, effective 3/13/24]

875—32.12(92) Civil penalty procedures.

32.12(1) *Notice of civil penalty.* The director shall serve a notice of proposed civil penalty by certified mail or in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. There shall be a 15-day grace period before issuing the notice. The notice shall include the following:

a. A statement that the notice proposes a civil penalty assessment for violation of child labor laws.

b. Descriptions of the alleged violations including the provisions allegedly violated, the number of violations, and the proposed penalties.

c. A statement that the employer has the right to request a hearing by filing a notice of contest with the director within 15 working days from the receipt of the notice of proposed civil penalty and that if a notice of contest is not timely filed, the proposed civil penalty will become final agency action.

d. A reference to the applicable procedural provisions.

32.12(2) *Notice of contest.* The civil penalty proposed by the director shall become final agency action if the employer does not timely file a notice of contest. The filing date for a timely notice of contest shall be within 15 working days of the date the notice of proposed civil penalty was received by the employer. The notice of contest shall include the name, address, and telephone number of the employer's representative. If a notice of contest is filed by fax, the original shall be mailed to the director.

32.12(3) *Contested case procedures.* Contested case procedures are set forth in 875—Chapter 1 and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 92.22.

[**ARC 8300B**, IAB 11/18/09, effective 1/1/10; **ARC 2134C**, IAB 9/2/15, effective 10/7/15; **ARC 7615C**, IAB 2/7/24, effective 3/13/24]

875—32.13 to **32.16** Reserved.

875—32.17(92) Definitions. Rescinded **ARC 2134C**, IAB 9/2/15, effective 10/7/15.

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CHAPTER 90
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

[Prior to 1/14/98, see 347—Chs 41 to 49]
[Prior to 8/16/06, see 875—Chs 200, 202]

875—90.1(89) Purpose and scope. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered "under pressure" and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less. Jurisdiction is limited to objects, appurtenances, controls, safety devices, and equipment rooms as required by Iowa rules.

[**ARC 0416C**, IAB 10/31/12, effective 12/5/12; **ARC 3903C**, IAB 7/18/18, effective 9/1/18]

875—90.2(89,252J,272D) Definitions. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

"Alteration" means a change in the object described on the original manufacturer's data report that affects the pressure-retaining capability of the pressure-retaining object. A nonphysical change such as an increase in the maximum allowable working pressure (internal or external), an increase in design temperature, or a reduction in minimum temperature of a pressure-retaining item shall be considered an alteration.

"ANSI/ASME CSD-1" means Control and Safety Devices for Automatically Fired Boilers.

"Appurtenance" means any item or equipment that is attached to the object and is part of the boiler external piping.

"ASME" means the American Society of Mechanical Engineers.

"Boiler" means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat. "Boiler" includes all temporary boilers.

"Boiler external piping" means all boiler piping and components as set forth in the scope of the edition of ASME B31.1 currently adopted by reference in Chapter 91.

"Certificate of noncompliance" means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J; or
2. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

"CFR" means Code of Federal Regulations.

"Construction or installation code" means the applicable standard for construction or installation in effect at the time of installation.

"CSD-1 report" means Manufacturer's/Installing Contractor's Report for ASME CSD-1.

"Division" means the division of labor services, unless another meaning is clear from the context.

"Electric boiler" means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

"Exit" means a doorway, hallway, or similar passage that will allow free, normally upright unencumbered egress from an area.

"External inspection" means a complete examination made of the external surfaces and safety devices while the object is in operation, unless the object is required to be shut down pursuant to 875—subrule 89.3(4).

"High temperature water boiler" means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

"Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

"Hot water supply boiler" means a boiler that:

1. Operates at a pressure not exceeding 160 psig;
2. Furnishes hot water to be used externally to itself; and, either:

- Bears a National Board "H" stamp and has a temperature less than or equal to 250°F at or near the boiler outlet, or,
- Bears a National Board "HLW" stamp and has a temperature less than or equal to 210°F at or near the boiler outlet.

"Installation" means the process by which an object is connected to a system for operation. This applies to all objects whether they are new, used, or being brought back to service after being removed.

"Institution of health and custodial care" means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 135O.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or
6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis shall not be an "institution of health and custodial care."

"Internal inspection" means as complete an examination as can be reasonably made of the internal surfaces of an object while it is shut down and access for examination is attained through the removal of any manhole plates, handhole plates, blind flanges, piping spools or fittings attached to the object. A determination that an examination cannot be reasonably made shall not be based on a failure of the owner or user to provide clearance pursuant to rule 875—91.10(89) or on failure of the owner or user to provide for the inspector's safety and health as described in 875—Chapters 90 and 91.

"ISO" means International Standards Organization.

"Labor commissioner" means the labor commissioner or the commissioner's designee.

"Lap seam crack" means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

"Miniature boiler" means a boiler that does not exceed a 16-inch inside shell diameter, 20 square feet of heating surface (not applicable to electric boilers), 5 cubic feet of gross volume (exclusive of casing and insulation), and 100 psig maximum allowable working pressure.

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of boiler codes. The National Board's website is nationalboard.org.

"National Board Inspection Code" or *"NBIC"* means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

"Object" means a boiler or pressure vessel.

"OEM" means original equipment manufacturer.

"Owner or user" means any person, firm, or corporation legally responsible for the installation, operation, and maintenance of any object within the jurisdiction.

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch or a water boiler intended for operation at pressures in excess of 160 pounds per square inch or temperatures in excess of 250 degrees Fahrenheit.

"Process steam generator" means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

"Psig" means pounds per square inch gage.

"Relief valve" means an automatic pressure-relieving device actuated by a static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure and that is used primarily for liquid service.

"Repair" means work necessary to return a boiler or pressure vessel to a safe operating condition.

"Rupture disk device" means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

"Safe point of discharge" means the same as in the National Board Inspection Code: a location that will not cause property damage, cause equipment damage, or create a health or safety threat to personnel in the event of discharge.

"Safety appliance" shall include, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;
3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

"Safety relief valve" means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

"Safety valve" means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. The safety valve is used for gas or vapor service.

"Special inspection" means an inspection which is not required by Iowa Code chapter 89.

"Temperature and pressure relief valve" means a valve set to relieve at a designated temperature and pressure.

"Temporary object" means a boiler, unfired steam pressure vessel, or combination thereof that is not a permanent fixture or part of normal operation of the facility.

"Unfired steam boiler" means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

"Unfired steam pressure vessel" means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source. "Unfired steam pressure vessel" may include items such as expansion tanks, flash tanks, and condensate return tanks.

"U.S. customary units" means feet, pounds, inches and degrees Fahrenheit.

"Water heater supply boiler" means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160 psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 9790B**, IAB 10/5/11, effective 11/9/11; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 0739C**, IAB 5/15/13, effective 6/19/13; **ARC 1964C**, IAB 4/15/15, effective 5/20/15; **ARC 3903C**, IAB 7/18/18, effective 9/1/18; **ARC 5159C**, IAB 8/26/20, effective 9/30/20; **ARC 5977C**, IAB 10/20/21, effective 11/24/21]

875—90.3(89) Iowa identification numbers. All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the division to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

875—90.4(89) National Board registration. Rescinded IAB 11/18/09, effective 1/1/10.

875—90.5(89) Preinspection owner or user preparation.

90.5(1) *Preparation of objects.* Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

90.5(2) *Confined space and lockout, tagout procedures.*

a. It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lockout, tagout standards pursuant to 29 CFR 1910.146 and 1910.147. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all applicable requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.

b. It is the duty of the owner or user to inform any inspector of the owner's or user's confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.

c. If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space. If there is a breach of the procedure or the procedure is inconsistent with 29 CFR 1910.146 or 1910.147, the inspection process shall cease until the space is reassessed and determined to be safe or the procedure is rewritten in a manner consistent with the standards. No inspector shall violate the owner's or user's confined space or lockout, tagout procedures in making an inspection.

d. The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector's entry for inspection or testing.

e. For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

90.5(3) *Hydrostatic tests.* The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector, which date shall be not less than seven days after the date of notification.

90.5(4) *Boilers.* A boiler shall be prepared for internal inspection in the following manner:

a. Fluid shall be drawn off and the boiler washed thoroughly.

b. Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.

c. All grates of internally fired boilers shall be removed.

d. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

e. Low-water fuel cutoff controls shall be opened or removed to allow for visual inspection.

90.5(5) *Pressure vessels.* The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation shall include removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

90.5(6) *Removal of covering or brickwork to permit inspection.* If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

90.5(7) *Improper preparation for inspection.* If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—90.6(89) Inspections.

90.6(1) *General.* All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2021), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

90.6(2) *Schedule.*

a. All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3, unless an exception is set forth in this rule.

b. Except for inspections of unfired steam pressure vessels operating in excess of 15 pounds per square inch and low pressure steam boilers, each certificate inspection must be performed within a 60-day period prior to the expiration date of the operating certificate. Modification of this 60-day period will be permitted only upon written application showing just cause for waiver of the 60-day period.

c. Special inspections may be conducted when deemed necessary by the division and the object's owner or user.

90.6(3) *Inspections conducted by special inspectors.* Special inspectors shall provide copies of the completed report to the insured and to the division within 14 days of completing the inspection. The reports shall list all noteworthy conditions that are within the scope of Iowa Code chapter 89, all recommendations, and all requirements. If the special inspector has not provided the results of the inspection within the time frame identified, the division may conduct the inspection.

90.6(4) *Type of inspection.* The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

a. Visible metal or insulation discoloration due to excessive heat.

b. Visible distortion of any part of the pressure vessel.

c. Visible leakage from any pressure-containing boundary.

d. Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.

e. A suspected or known history of internal corrosion or erosion.

f. Evidence or knowledge of a vessel having been subjected to external heat from a fire.

g. A welded repair not documented as required.

h. Evidence of an accident, incident or malfunction that could affect or may have resulted from a problem with the object's integrity.

90.6(5) *Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch.* The commissioner may require an internal inspection of an unfired steam pressure vessel operating in excess of 15 psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

90.6(6) *Inspection of inaccessible parts.* When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

90.6(7) *Imminent danger.*

a. If the labor commissioner determines that continued operation of an object constitutes an imminent danger that could seriously injure or cause death to any person, notice to immediately cease operation of that object shall be made to the owner or user through contact information available in the division's records or by posting a notice at the location of the object.

b. Upon such notice, the owner or user shall immediately take the necessary steps to cease operation of the object. All forms of energy to and from the object must be isolated and physically locked in the closed position.

c. A division inspector will verify that the object is no longer in operation and all forms of energy to and from the object have been isolated and are locked in the closed position.

d. The object shall not be used until all necessary repairs have been completed, the object has passed inspection, all repair documentation is complete, and the division reviews and approves the documentation.

e. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code sections 89.11 and 89.13.

90.6(8) *Internal inspections on a four-year cycle based on process safety management compliance.* The owner shall demonstrate compliance with the requirements set forth in Iowa Code section 89.3(5)*"a"*(4)(b) by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

90.6(9) *Internal inspection on a four-year cycle for utility objects.* An object that meets the criteria of this subrule shall be inspected internally at least once every four years and externally every year. If at any time the object or the owner no longer meets the criteria of this subrule, internal inspections shall be performed on a two-year cycle.

a. The object is owned and operated by an electric public utility subject to rate regulation under Iowa Code chapter 476.

b. The object and the owner meet all the requirements for a two-year internal inspection interval as set forth in Iowa Code section 89.3, subsection 4.

c. If the object is shut down for a period sufficient to allow safe entry, and more than two years have passed since the last internal inspection, the owner shall notify the labor commissioner of the outage and shall schedule an internal inspection.

d. If the labor commissioner determines that an earlier inspection is necessary, the owner shall prepare the object for inspection pursuant to rule 875—90.5(89).

90.6(10) *Request for extended inspection interval.*

a. Owners of objects covered under Iowa Code section 89.3(4)*"a"* may apply for an extended internal inspection interval of up to seven years.

b. The application for an extended internal inspection interval shall include the following information submitted to the director:

(1) The name and contact information of the requestor.

(2) The state identification number of the object.

(3) The interval requested with supporting reasons.

(4) An affidavit affirming the following:

1. Compliance with the process safety management standard contained in 29 CFR §1910.119.

2. The object is included as process safety management process equipment in the owner's process safety management program.

3. The object meets the requirements contained in the National Board Inspection Code.

4. The object is fit for service based on the year of fabrication and the estimated service life of the object as determined by Part 2 of the National Board Inspection Code.

5. Practices have been implemented for managing consumable items and ancillary equipment of the object.

(5) The following supporting records:

1. Inspection records of the boiler and ancillary equipment for the prior five years.

2. The most recent Report of Fitness for Service Assessment.

3. Every Form R-1 Report of Repair and Form R-2 Report of Alterations for the prior five years.

(6) A request for an informal conference, if desired.

c. The director will consider, among other things, whether the object meets the requirements contained in the National Board Inspection Code, whether the object is fit for service based on the year of fabrication, the estimated service life of the object as determined by Part 2 of the National Board Inspection Code, and whether the owner has implemented practices for managing consumable items and ancillary equipment of the object.

d. The director may grant an extended inspection interval.

(1) An extended inspection interval lasts until the next inspection, at which time the owner of the object may again apply for an extension.

(2) The owner shall promptly report to the department's boiler and pressure vessel unit any unscheduled shutdowns, significant incidents, near misses, and any other occurrences that might reasonably require reinspection before the extended date. Should the occurrence reasonably require it, or if any such event is not reported within ten days of occurrence, the director may revoke the extended inspection interval.

e. If the director does not intend to grant the extension, the director will give the applicant a Notice of Intent to Deny Extended Inspection Interval, granting ten days for the applicant to provide additional reasons and evidence why the interval should be extended.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 1189C**, IAB 11/27/13, effective 1/1/14; **ARC 1634C**, IAB 10/1/14, effective 11/5/14; **ARC 1964C**, IAB 4/15/15, effective 5/20/15; **ARC 2403C**, IAB 2/17/16, effective 4/1/16; **ARC 4977C**, IAB 3/11/20, effective 4/15/20; **ARC 5977C**, IAB 10/20/21, effective 11/24/21; **ARC 6135C**, IAB 1/12/22, effective 2/16/22; **ARC 7616C**, IAB 2/7/24, effective 3/13/24]

875—90.7(89) Fees.

90.7(1) *Special inspector commission fee.* A $55 fee shall be paid annually to the commissioner to obtain a special inspector commission pursuant to Iowa Code section 89.7.

90.7(2) *Certificate fee.* A $40 fee shall be paid for each one-year certificate, an $80 fee shall be paid for each two-year certificate, and a $160 fee shall be paid for each four-year certificate.

90.7(3) *Fees for inspection.* An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

a. A $55 fee for each water heater supply boiler.

b. A $95 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.

c. A $215 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.

d. A $55 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.

e. An additional fee will be charged if, upon the request of an owner or user, the labor commissioner agrees to any non-routine schedule for an inspection outside of normal business hours, a special inspection, or a site visit. The additional fee will be calculated at a rate of $200 per hour, including travel time, with a minimum charge of $400.

f. If a boiler or pressure vessel has to be reinspected, there shall be another inspection fee as specified above.

90.7(4) *Fees for attempted inspections.* A $35 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

[**ARC 7863B**, IAB 6/17/09, effective 7/1/09; **ARC 8081B**, IAB 8/26/09, effective 9/30/09; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 1422C**, IAB 4/16/14, effective 5/21/14; **ARC 4733C**, IAB 10/23/19, effective 11/27/19]

875—90.8(89) Certificate. No boiler or pressure vessel shall be operated without a current, valid certificate to operate. A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

[**ARC 1964C**, IAB 4/15/15, effective 5/20/15]

875—90.9(89,252J,272D) Special inspector commissions.

90.9(1) *Definition of "reputable insurance company."* As used in this rule, "reputable insurance company" means a company recognized by the Iowa insurance division as a licensed insurer, a risk retention group, an alien surplus lines insurer, or a surplus lines insurer.

90.9(2) *Application.*

a. A person applying for a new or renewed commission shall complete, sign, and submit to the division with the required fee the form entitled "Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the division. Additionally, the applicant shall submit a copy of the applicant's current National Board work card with each application.

b. An applicant for a new Iowa special inspector commission shall schedule a meeting with the chief boiler inspector to discuss Iowa law and the responsibilities, expectations, and requirements for a special inspector.

90.9(3) *Expiration.*

a. The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than December 31 of each year.

b. Notwithstanding paragraph 90.9(3)*"a"* and in order to transition from an expiration date of June 30 to an expiration date of December 31, a commission issued between June 1, 2022, and November 30, 2022, shall expire on December 31, 2023.

90.9(4) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

90.9(5) *Denials.* The labor commissioner may refuse to issue or renew a special inspector's commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules 90.9(7) to 90.9(9).

90.9(6) *Investigations.* Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

90.9(7) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector does not represent a reputable insurance company or the special inspector filed inaccurate reports.

90.9(8) *Reasons for suspension.* The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals the following:

a. The special inspector failed to submit and report inspections on a timely basis;

b. The special inspector abused the special inspector's authority;

c. The special inspector misrepresented self as a state inspector or a state employee;

d. The special inspector used commission authority for inappropriate personal gain;

e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

f. The special inspector committed numerous violations as described in subrule 90.9(7);

g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

h. The National Board revoked or suspended the special inspector's work card;

i. The division received a certificate of noncompliance;

j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs *"a"* to *"h"* of this subrule; or

k. The special inspector does not represent a reputable insurance company.

90.9(9) *Reasons for revocation.* The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

a. The special inspector filed a misleading, false or fraudulent report;

b. The special inspector failed to perform a required inspection;

c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;

d. The special inspector failed to notify the division in writing of any accident involving an object;

e. The special inspector committed repeated violations as described in subrule 90.9(8);

f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs *"a"* to *"f"* of this subrule;

h. The National Board revoked or suspended the special inspector's work card;

i. The division received a certificate of noncompliance; or

j. The special inspector does not represent a reputable insurance company.

90.9(10) *Procedures.* The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J or 272D shall apply.

a. Notice of actions. The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

b. Contested cases. The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. Hearing procedures. The hearing procedures in 875—Chapter 1 shall govern.

d. Emergency suspension. Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. Probation period. A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. Suspension period. A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. Revocation period. A special inspector's commission that has been revoked shall not be reinstated for five years.

h. Concurrent actions. Multiple actions may proceed at the same time against any special inspector.

i. Revoked or suspended commissions. Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall forfeit the special inspector's commission card to the labor commissioner.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 4734C**, IAB 10/23/19, effective 11/27/19; **ARC 5159C**, IAB 8/26/20, effective 9/30/20; **ARC 5945C**, IAB 10/6/21, effective 11/10/21]

875—90.10(89) Quality reviews, surveys and audits.

90.10(1) An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The division is authorized to conduct the quality reviews, surveys or audits. If the division performs the service, the manufacturer or repairer shall pay all applicable expenses.

90.10(2) Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the labor commissioner. Any person or organization seeking this designation on behalf of the division shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and audits to be performed. The labor commissioner shall have final authority to determine qualifications and designations.

a. Assessing quality programs. The division recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits that lead to ASME or National Board program certification.

b. ISO 9000 assessments. The division recognizes the ASME and the National Board:

(1) To be acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry;

(2) To certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A; and

(3) To conduct ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

875—90.11(89) Reporting requirements.

90.11(1) *Control and safety device reports.* Documentation required by this subrule shall be kept on site and shall be available for inspection by the division or special inspectors. The owner or user shall mail a copy of the documentation required by this subrule to the division.

a. The requirements of this subrule do not apply to:

(1) Rescinded IAB 7/18/18, effective 9/1/18.

(2) An object within the scope of 875—Chapter 96;

(3) A hot water supply boiler covered by ASME Section IV, Part HLW; or

(4) A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

b. The installer shall complete a CSD-1 report for each installed object.

c. A person who installs a new burner, new gas train, or new controller on an object shall complete a CSD-1 report.

d. A person who replaces a part or component of an object shall complete the relevant portions of the CSD-1 report unless the replacement satisfies the design specifications. A copy of an invoice containing the same information as the relevant portions of the CSD-1 report is an acceptable alternative.

90.11(2) *Reporting repairs and alterations.* If the National Board Inspection Code requires that an R-1 Report of Repair or an R-2 Report of Alteration be filed with the National Board, a copy of the National Board form must be simultaneously filed with the labor commissioner.

90.11(3) *Reporting explosions and other incidents.*

a. The following definitions apply to this subrule.

"Incident" means the explosion of a covered object or other failure of a component of a covered object causing injury or acute illness.

"Injury" means a personal injury requiring professional medical care or causing disability exceeding one day.

b. The owner or user of a covered object shall notify the commissioner of an incident. A special inspector investigating an incident shall notify the owner or user of this reporting requirement.

c. Incident reports shall be made by calling (515)725-5609 or (515)725-5610. If the incident occurs during normal division operating hours, notification shall occur before close of business on that day. If the incident occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

d. At the request of the commissioner, a person who submits a report pursuant to this subrule shall also submit a written report that includes the state identification number of the object, name of the owner of the object, and description of the incident.

e. The removal of any part of the damaged object from the premises is forbidden until permission to do so is granted by the state inspector or special inspector who investigated the incident.

f. When an incident involves the failure or destruction of any part of the object, the use of the object is forbidden until it has been made safe and it has passed an inspection by the state inspector or special inspector who investigated the incident.

[**ARC 2589C**, IAB 6/22/16, effective 7/27/16; **ARC 3903C**, IAB 7/18/18, effective 9/1/18; **ARC 4733C**, IAB 10/23/19, effective 11/27/19; **ARC 5977C**, IAB 10/20/21, effective 11/24/21]

875—90.12(89) Publications available for review. Pursuant to Iowa Code section 89.5(3), the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa.

[**ARC 5977C**, IAB 10/20/21, effective 11/24/21]

875—90.13(89) Notice prior to installation. Written notice of intent to install objects subject to the jurisdiction of Iowa Code chapter 89 shall be provided to the labor commissioner at least ten days before installation. Written notice shall be accomplished by completing and submitting to the labor commissioner either:

1. The form designated by the labor commissioner, or
2. The National Board's Boiler Installation Report, I-1.

875—90.14(89) Temporary objects.

90.14(1) *Certificate to operate.* A certificate to operate a temporary object shall expire one year from the date of issuance or when the temporary object is disconnected.

90.14(2) *Inspections.*

a. An internal inspection and hydrostatic test pursuant to the National Board Inspection Code shall be performed on site at a new location before a temporary object is started up. Once a temporary object has been placed into normal operation, an external operating inspection shall be performed.

b. An inspection on a temporary object that remains at the same location and is in continuous service longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3.

[**ARC 5977C**, IAB 10/20/21, effective 11/24/21]

875—90.15(89) Conversion of a power boiler to a low-pressure boiler. The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

90.15(1) *General requirements.*

a. The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at iowaboilers.gov. At a minimum the notice shall contain the following:

(1) Address, uses, and owner of the building where the boiler is located.

(2) The Iowa identification number assigned to the boiler.

(3) Name and contact information for the person completing the notice.

(4) Name and contact information for the contractor or other person planning to perform the conversion.

b. Pressure controls shall not exceed 14 pounds per square inch.

c. All boiler controls shall comply with ASME CSD-1.

d. Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

e. One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

(1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.

(2) The valve capacity shall be certified by the National Board.

f. The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

90.15(2) *Boilers located outside places of public assembly.* A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

a. The owner shall notify the labor commissioner at least ten days prior to converting the boiler.

b. The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

c. The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

90.15(3) *Boilers located in places of public assembly.* A power boiler converted to a low-pressure boiler that is located in a place of public assembly shall comply with 875—Chapter 94.
[**ARC 9232B**, IAB 11/17/10, effective 12/22/10; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—90.16(89) Definitions regarding objects. The following definitions shall govern classification and status of objects in Iowa. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

"Active status" means an object is physically attached to the system and any forms of potential energy. The object may or may not be in operation.

"Exempt status" means an object that is not required to be inspected pursuant to Iowa Code chapter 89.

"Inactive status" means the object is no longer in operation and all forms of potential energy have been disconnected in a manner that creates an air gap.

"Modular boiler" means a steam or hot water heating assembly consisting of a group of individual boilers called modules intended to be installed as a unit with no intervening stop valves. Modules may be under one jacket or individually jacketed. The individual modules shall be limited to a maximum input of 400,000 Btu/hour (117kW) (gas), 3 gph (11.4 L/h) (oil), or 115kW (electric).

"Scrapped status" means the object has been permanently destroyed and is no longer physically at the location.
[**ARC 5977C**, IAB 10/20/21, effective 11/24/21]

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, and 272D.

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◊ Two or more ARCs
1 Date corrected IAC Supp. 3/26/08

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345] under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97, see Job Service Division[345]]

CHAPTER 9
LABOR-MANAGEMENT COOPERATION PROGRAM

CHAPTER 10
YOUTH AFFAIRS

CHAPTER 11
WORK FORCE INVESTMENT PROGRAM

CHAPTER 12
IOWA JOB TRAINING PARTNERSHIP PROGRAM

CHAPTER 13
MENTOR ADVISORY BOARD

CHAPTER 14
IOWA WELFARE-TO-WORK PROGRAM

CHAPTER 15
STRATEGIC WORKFORCE DEVELOPMENT FUND

CHAPTER 16
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CHAPTER 17
IOWA JOBS TRAINING PROGRAM

CHAPTER 18
WORKFORCE DEVELOPMENT FUND

CHAPTER 31
Reserved

CHAPTER 32
ADULT EDUCATION AND LITERACY PROGRAMS

CHAPTER 33
IOWA VOCATIONAL REHABILITATION SERVICES

CHAPTER 7
IOWA WORKFORCE INVESTMENT ACT PROGRAM

877—7.1(84A,PL105-220) Designation of responsibility. Through Executive Order Number One and Executive Order Number Five, the department of workforce development was designated by the governor as the department responsible for activities and services under the Workforce Investment Act (WIA) of 1998 (P. L. 105-220).

877—7.2(84A,PL105-220) Purpose. The purpose of the Iowa workforce investment Act program is to meet the needs of businesses for skilled workers and the training, education and employment needs of individuals through a statewide, one-stop workforce development center system.

877—7.3(84A,PL105-220) Definitions.

"Chief elected official board" means the units of local government joined through an agreement for the purpose of sharing liability and responsibility for programs funded by the Workforce Investment Act of 1998.

"Contractor" means grantees, subrecipients, coordinating service providers, and service providers.

"Coordinating service provider" means the entity or consortium of entities selected by the regional workforce investment board and the chief elected official board to coordinate partners within the workforce development center system. The coordinating service provider is one of the workforce development center system partners.

"Department" means the department of workforce development.

"Director" means the director of the department of workforce development.

"Local elected official" means the county supervisors and mayors of a region's cities with a population of more than 50,000.

"Local grant recipient" means the chief elected official board.

"Mandatory partners" means the service providers that make their services available through the workforce development center system and use a portion of their resources to support the operation of the regional workforce development center system and the delivery of core services to their customers. Entities that carry out the following federal programs are required to make their services available through the workforce development center system: Wagner-Peyser Act; Unemployment Insurance; Senior Community Service Employment Activities - Title V Older Americans Act; Adult Education and Literacy Activities - Title II; Title I of the Rehabilitation Act of 1973; Welfare to Work; Veterans Services under Chapter 41, Title 38; Employment and Training Activities under Community Block Grants; HUD Employment and Training Activities; and Post-Secondary Vocational Education Activities under the Carl Perkins Act. In addition, those entities selected to provide Workforce Investment Act funded services for adults, dislocated workers and youth are mandatory partners, as are service providers for Native American programs, migrant and farm worker programs, veterans workforce programs, and Job Corps.

"Regional workforce investment board (RWIB)" means a board established according to 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code.

"Subrecipient" means an entity selected by the chief elected official board to receive the Workforce Investment Act funds in a region from the department and disburse those funds to the entity(ies) designated by the regional workforce investment board.

"Workforce development center system" means the regional network of workforce development centers and access points for workforce development services supported by the chief elected official board, regional workforce investment board, partners, service providers, and vendors. The system is focused on meeting the needs and priorities of the customer through an integrated service delivery system based on interagency partnerships and the sharing of resources.

"Workforce Investment Act of 1998," "WIA" or "the Act" means Public Law 105-220.

877—7.4(84A,PL105-220) Service delivery region designations. The governor is responsible for the designation of workforce investment regions with the assistance of the state workforce development board, after consultation with the chief elected officials and after consideration of comments received through a public comment process.

7.4(1) In making the designation of regions, the governor shall take into consideration the following:

a. Geographic areas served by local educational agencies and intermediate educational agencies;

b. Geographic areas served by postsecondary educational institutions and vocational education schools;

c. The extent to which the regions are consistent with labor market areas;

d. The distance that individuals will need to travel to receive services provided in the regions; and

e. The resources of the areas that are available to effectively administer the activities carried out through the workforce development centers.

7.4(2) In order to initiate the designation process, the governor shall publicly announce the proposed region designations after receiving a recommendation from the state workforce development board. This will begin a public comment period of two weeks, during which local elected officials and other interested parties may comment on the proposed designations. Due to state legislative limitations, the maximum number of regions that may be designated is 16.

7.4(3) Any request from any unit of local government with a population of 500,000 or more shall be approved by the governor. In addition, the governor shall approve any requests from any unit of general local government, or consortium of contiguous units of general local government, that was a service delivery area under the federal Job Training Partnership Act, provided that it is determined that the area performed successfully in each of the last two program years and has sustained the fiscal integrity of funds. For the purposes of this subrule, "performed successfully" means that the service delivery area met or exceeded the performance for the following performance standards as appropriate:

a. Title IIA: adult follow-up employment rate; adult welfare follow-up employment rate; adult follow-up weekly earnings; and adult welfare follow-up weekly earnings.

b. Title III: entered employment rate; and average wage at placement.

Also for the purposes of this subrule, "sustained fiscal integrity" means that the Secretary of the Department of Labor has not made a final determination during any of the last three years that either the grant recipient or administrative entity misspent funds due to willful disregard of the requirements of the Job Training Partnership Act, gross negligence, or failure to observe accepted standards of administration.

7.4(4) The final designation of the regions shall be made by the governor once all comments have been received and reviewed.

7.4(5) Any unit of general local government, or consortium of contiguous units of general government, that requests, but is not designated, a region under 7.4(3) may submit an appeal in accordance with the provisions of 7.24(12).

877—7.5(84A,PL105-220) Chief elected official board. Each region is required to form a chief elected official board made up of representatives of the elected officials of local governments within the region.

7.5(1) The board shall consist of a representative of each county within a region and a representative of each of the region's cities with a population of 50,000 or more. Although required to participate, the supervisors or mayors may choose to "opt out" by resolution of their full boards of supervisors or city councils. By exercising this option, the county or city will no longer share in the liability for the WIA funds or have a voice in the design and oversight of the system.

7.5(2) The board shall be formed through an agreement that details how the responsibilities and liabilities related to WIA programs will be shared by the local governments. At a minimum, the agreement must contain the following items:

a. All elements of an agreement required by Iowa Code chapter 28E for joint exercise of governmental powers;

b. Process for selecting the chairperson;

c. Process for nominating and selecting appointments to the regional workforce investment board;

d. Apportionment of responsibility and liability among participating units of government, including losses, expenses and burdens that may result from any misuse of WIA grant funds; and

e. Designation of an entity to serve as the local subrecipient.

7.5(3) The fully executed agreement, or any amendments to the agreement, must be filed with the secretary of state and the county recorder of each county that is a party to the agreement. A copy of the agreement and any amendments must also be sent to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

7.5(4) The chief elected official board shall serve as the local grant recipient and be liable for any misuse of WIA grant funds, unless an agreement is reached with the department to act as the local grant recipient and to bear such liability. The department shall serve as a region's local grant recipient only in rare or extreme circumstances.

7.5(5) The chief elected official boards have the following roles and responsibilities:

a. Providing input to the governor, through the department and state workforce development board, on designation of workforce investment regions;

b. Securing nominations for regional workforce investment board vacancies in accordance with 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code; and

c. Accepting liability for any misuse of WIA funds expended under contract with the chief elected official board.

7.5(6) In partnership with the regional workforce investment board, the chief elected official board is responsible for:

a. Negotiating and reaching agreement with the department on regional performance standards;

b. Appointing a youth advisory council;

c. Determining the role of the coordinating service provider;

d. Designating and certifying the coordinating service provider;

e. Developing a chief elected official/regional workforce investment board agreement to detail how the two boards shall work together in establishing and overseeing the region's workforce development center system, as defined in 877—7.7(84A,PL105-220);

f. Developing and entering into a memorandum of understanding with the region's workforce development center system's partners;

g. Conducting oversight of the WIA adult and dislocated worker services, youth programs, and the workforce development center system;

h. Evaluating service delivery to determine if regional needs and priorities are being met;

i. Determining whether regional needs have changed and, if so, whether a plan modification is necessary;

j. Ensuring quality improvement is ongoing and performance standards are met; and

k. Developing and submitting the regional workforce development customer service plan based on a regional needs assessment and analysis.

877—7.6(84A,PL105-220) Regional workforce investment board. Each region shall establish a regional workforce investment board as defined in 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code. The roles and responsibilities of the regional workforce investment board include:

1. Selecting service providers for WIA adult and dislocated worker intensive services and youth programs.
2. Establishing policy for the region's workforce development center system.
3. Developing a budget to carry out the duties of the board, subject to the approval of the chief elected official board.
4. Coordinating WIA youth, adult and dislocated worker employment and training activities with economic development strategies and developing other employer linkages with these activities.
5. Promoting the participation of private sector employers in the workforce development system and ensuring the availability of services to assist such employers in meeting workforce development needs.

6. Certifying eligible training providers.
7. Determining the use of the strategic workforce development fund, including the operation and funding of a summer or in-school youth program(s), use of discretionary funds, and selection of service providers.
8. Selecting the welfare-to-work service provider.
9. Submitting an annual report to the state workforce development board.
10. Establishing cooperative relationships with other boards in the region.
11. Directing the activities of the youth advisory council.
12. Sharing the duties with the chief elected official board as outlined in subrule 7.5(6).

877—7.7(84A,PL105-220) Regional workforce investment board/chief elected official board agreement. Each regional workforce investment board and chief elected official board shall enter into an agreement to define how they shall share certain responsibilities.

7.7(1) At a minimum, the agreement must include the following elements:

a. How the coordinating service provider will be selected;

b. How the boards will be involved in negotiations of performance measures with the department;

c. How the boards will develop a memorandum of understanding with the region's workforce development center system's partners;

d. How the boards will develop and approve the regional workforce development customer service plan;

e. How the boards will share the oversight of the workforce development center system;

f. Process that will be used by the boards to appoint members to the youth advisory council;

g. Process for modifying or amending the agreement;

h. Process to be used to develop an operating budget for the regional workforce investment board and youth advisory council; and

i. Methods of communications between the two boards.

7.7(2) A fully executed copy, and any subsequent modifications, of the agreement shall be submitted to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

877—7.8(84A,PL105-220) Youth advisory council. Each region must appoint a youth advisory council to provide expertise and make recommendations regarding youth employment and training policy.

7.8(1) The roles and responsibilities of the youth advisory council, at the direction of the regional workforce investment board, include the following:

a. Assist in the development of the regional customer service plan relating to eligible youth;

b. Recommend and oversee youth service providers; and

c. Coordinate youth activities funded under WIA.

7.8(2) Youth advisory council membership shall include:

a. Members of the regional workforce investment board that have a special interest or expertise in youth policy;

b. Individuals who represent youth service agencies, such as juvenile justice and local law enforcement agencies;

c. Individuals who represent local public housing authorities, if applicable;

d. Parents of youth eligible for WIA youth services or who were served under a Job Training Partnership Act youth program;

e. Individuals with experience relating to youth activities;

f. Former Job Training Partnership Act participants;

g. Representatives of the Job Corps, if Job Corps has an office within the region; and

h. Any other individuals that the chairperson of the regional workforce investment board, in cooperation with the chief elected official board, determines to be appropriate.

7.8(3) The size of the youth council, the number of representatives from each sector, term length, nomination process, and county/city representation are decisions of the regional workforce investment board and chief elected official board.

7.8(4) The regional workforce investment board shall submit the name, mailing address, and sector affiliation of each youth advisory council appointee to the department for mailing list purposes. The list, and subsequent updates due to new appointments, shall be submitted to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

877—7.9(84A,PL105-220) Selection of coordinating service provider. To receive funds made available under Title I of WIA, the regional workforce investment board, in agreement with the chief elected official board, must designate an entity as the coordinating service provider for the workforce investment region.

7.9(1) The regional workforce investment board and chief elected official board must determine the role of the coordinating service provider. At a minimum, the coordinating service provider's roles and responsibilities shall include the following:

a. Provide overall customer management and tracking, including responsibility for results of enrollments.

b. Manage the workforce development center system in the region, including workforce development center facilities, and ensure that services are accessible and available in every county of the region.

c. Ensure workforce development center system partners' compliance with the memorandum(s) of understanding.

d. Coordinate and negotiate the resource sharing agreement.

e. Ensure that performance standards and customer satisfaction goals for the region's workforce development center system are met.

f. Provide information and feedback to the regional workforce investment board and chief elected official board concerning the delivery of the services outlined in the customer service plan versus the needs and priorities identified in the regional needs assessment and analysis.

g. Maintain, promote and market the regional workforce development center system.

h. Develop and submit an annual progress report toward meeting the needs and priorities identified in the regional needs assessment and analysis to the regional workforce investment board.

i. May, as described in the memorandum(s) of understanding, determine eligibility for training services.

7.9(2) The regional workforce investment board and chief elected official board need to determine if they want to grandfather the current coordinating service provider, based on the role that has been determined. The boards also need to determine if the current coordinating service provider desires to be grandfathered.

7.9(3) If the regional workforce investment board or chief elected official board does not desire to grandfather the existing coordinating service provider, or if the coordinating service provider members do not desire to be grandfathered, then the service provider(s) needs to be selected prior to the designation of the coordinating service provider.

7.9(4) The coordinating service provider may be a public or private entity, or a consortium of entities, of demonstrated effectiveness located in the region. Eligible entities may include, but are not limited to, the following:

a. A postsecondary educational institution;

b. An employment service agency established under the Wagner-Peyser Act;

c. A private nonprofit organization (including a community-based organization);

d. A private, for-profit entity;

e. A government agency; or

f. Another interested organization (includes a local chamber of commerce, labor organization or other business organization).

Elementary schools and secondary schools are the only entities not eligible for designation or certification as a coordinating service provider. However, nontraditional public secondary schools and area vocational schools are eligible for designation.

7.9(5) To designate a coordinating service provider, the regional workforce investment board must utilize one of the three processes listed below. More than one option may be pursued concurrently.

a. An agreement with the governor to designate the coordinating service provider that was in place on August 7, 1998. In order to utilize this option, the chairpersons of the regional workforce investment board and chief elected official board must provide a written notice to the department indicating that both boards have taken appropriate action and desire to pursue this option.

b. A competitive process. At a minimum, the competitive process to designate the coordinating service provider shall include the following:

(1) Public notice. A public notice shall be published in one of the official county newspapers, as designated by the county board of supervisors. The public notice must indicate that both boards shall hold a joint meeting to select the coordinating service provider(s) for the region. The notice must list the criteria that will be used in the selection of the coordinating service provider(s). The notice must also require that written proposals be submitted by a specific date and invite interested entities to give presentations and answer questions relating to the selection criteria in 7.9(6) at the joint public meeting. Notices must also be mailed to potentially interested entities within the region.

(2) Public meeting. Since both boards must agree on the designation of the coordinating service provider, at a minimum, the boards shall jointly conduct a public meeting to review the written proposals received, obtain any additional information from entities submitting written proposals, and reach an agreement as to the selection(s).

c. An agreement between the regional workforce investment board and a consortium of entities that, at a minimum, includes three or more of the mandatory partners. In order to utilize this option, at a minimum, the regional workforce investment board and chief elected official board shall notify all partners that they are willing to consider proposals from mandatory partners and hold an open meeting to obtain input and finalize the action.

7.9(6) The following criteria are suggested for use in the selection of a coordinating service provider:

a. The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports, and capability of the agency's fiscal unit to manage a similar type of program or project;

b. The likelihood of meeting program goals based upon factors such as past performance, staff commitment, and availability and location of staff;

c. The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the programs; and

d. Other criteria as determined by both boards.

877—7.10(84A,PL105-220) Selection of service providers. Core and intensive services for the adult program and the dislocated worker program shall be provided through the workforce development center. These services may be provided by one entity or a number of different entities. If the role of the coordinating service provider includes the provision of core and intensive services for adults and dislocated workers, then the selection of adult and youth service providers may be combined with the selection of the coordinating service provider. The regional workforce investment board and chief elected official board must determine the most effective and efficient manner to provide these services in the region. The regional workforce investment board and chief elected official board must also determine which service providers will be responsible for ensuring that performance standards are met and that the service provider(s) responsible for performance have the authority to make enrollment decisions for their participants.

7.10(1) In selecting service providers, the regional workforce investment board may use the following procedure or may develop a more formal procurement procedure. At a minimum, the procedure to designate service providers must include the following:

a. Public notice. A public notice shall be published in the official county newspaper, as designated by the county board of supervisors. The public notice must indicate that the regional workforce investment board shall hold a meeting to select the service provider(s) to provide core and intensive services for the adult and dislocated worker programs under Title I. The notice shall list the criteria for the selection of the service provider(s) and invite interested entities to give presentations and answer questions relating to the selection criteria. Notices shall also be mailed to potentially interested entities within the local region.

b. Public meeting. The regional workforce investment board shall conduct a public meeting to obtain information from entities interested in providing core and intensive services in the local region and to reach an agreement as to the selection of the service provider(s).

c. Criteria for selecting service providers. The following are examples of criteria that could be considered and addressed in the selection of a service provider:

(1) The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports, previous partnerships negotiated for services for customers, and capability of the agency's fiscal unit to manage a similar type of program or project;

(2) The likelihood of meeting performance goals based upon factors such as past performance, effective use of previous grant funds, staff commitment, and availability of staff;

(3) The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the program; and

(4) Other criteria as determined by the regional workforce investment board.

7.10(2) Youth service providers shall be selected via a competitive process and based on recommendations of the youth advisory council. Since the delivery of the youth services could be accomplished through a number of different service providers, the regional workforce investment board should initially designate a youth service provider to coordinate the operation of the youth program and to provide eligibility, enrollment, objective assessment and individual service strategy services for youth. Additional youth service providers could be designated at a later date. At a minimum, the procedure to designate the youth service provider(s) must include the following:

a. Public notice. A public notice shall be published in one of the official county newspapers, as designated by the county board of supervisors. The public notice must indicate that the regional workforce investment board shall hold a public meeting to select a youth service provider to coordinate the operation of the youth program, and to provide eligibility, enrollment, objective assessment and individual service strategy services for youth. The notice must list the criteria to be used in the selection of the youth service provider(s) and must require that written proposals be submitted by a specific date. The notice must also invite interested entities that have submitted written proposals to give presentations and answer questions relating to the selection criteria at the public meeting. Notices must also be mailed to potentially interested entities within the local region.

b. Public meeting. The regional workforce investment board must conduct a public meeting to review the written proposals received, obtain any additional information from entities submitting written proposals, and reach an agreement as to the selection(s).

c. Criteria for selecting youth service providers. The following are examples of criteria that could be considered and addressed in the selection of a service provider:

(1) The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports and capability of the agency's fiscal unit to manage a similar type of program or project;

(2) The likelihood of meeting performance goals based upon factors such as past performance, staff commitment, and availability of staff;

(3) The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the program; and

(4) Other criteria as determined by the regional workforce investment board.

7.10(3) Entities with taxing authority may not use tax paid services as in-kind matching funds.

877—7.11(84A,PL105-220) Memorandum of understanding. The memorandum of understanding is an agreement developed and executed between the regional workforce investment board, with the agreement of the chief elected official board, and the workforce development center system partners relating to the operation of the workforce development center system in the region. There may be a single memorandum of understanding developed that addresses the issues relating to the regional workforce development center system, or the regional workforce investment board and partners may decide to enter into several agreements. Regardless of whether there is a single agreement or multiple agreements, each partner should be aware of the contents of all of the agreements executed.

7.11(1) The regional workforce investment board and the chief elected official board should initiate the negotiation process for the development of the agreement. Prior to the start of negotiations, the following tasks shall be completed:

a. Identify all of the local partners and the services they provide.

b. Name the coordinating service provider.

c. Determine the role of the coordinating service provider.

d. Complete the regional needs assessment and analysis.

e. Execute a single memorandum of understanding or multiple memorandums of understanding.

7.11(2) At a minimum, the memorandum of understanding shall include:

a. The services to be provided through the workforce development center system.

b. The location of the comprehensive workforce development center(s), as well as other locations where each partner's services will be provided. All partners must make their core services available, at a minimum, at one comprehensive physical center in the region. All adult and dislocated worker core services shall also be available at the comprehensive center. In addition, core services may be provided at additional sites, and partners' applicable core services need not be provided exclusively at the comprehensive workforce development center. The core services may be made available by the provision of appropriate technology at the comprehensive workforce development center by co-locating personnel at the center, by cross-training of staff, or through a cost reimbursement agreement.

c. The programs and services that will be available at the different locations must be specified, as well as the manner in which the services will be made available.

d. The particular arrangements for funding the services provided through the workforce development center system and the operating costs of the system. Each partner must contribute a fair share of the operating costs based on the use of the workforce development center delivery system by the individuals attributable to the partner's program. While the resources that a partner contributes do not have to be cash, the resources must be of value and must be necessary for the effective and efficient operation of the center system. The specific method of determining each partner's proportionate responsibility must be described in the agreement. This could include a list of resources that each partner is providing toward the operation of the system. Since most partners' budgets fluctuate on an annual basis, partner contributions for the operating costs of the system should be reevaluated annually.

e. The partners who will be using the common intake/case management system as the primary referral mechanism, and how referrals will occur between and among the partners not utilizing the common intake/case management system.

f. When the agreement will become effective as well as when the memorandum will terminate or expire. The effective date must be no later than July 1, 2000.

g. The process or procedure for amending the agreement. The procedure should include such items as:

(1) Identification of who can initiate an amendment;

(2) Time lines for completing an amendment;

(3) Conditions under which an amendment will become necessary; and

(4) Method of communicating changes to all of the partners.

7.11(3) It is a legal obligation for the regional workforce investment board, chief elected official board and partners to engage in good-faith negotiation and reach agreement on the memorandum of understanding. Any or all parties may seek the assistance of the department or other appropriate state agencies in negotiating the agreements. After exhausting all alternatives, the department or the other state agencies may consult with the appropriate federal agencies to address impasse situations. If the regional workforce investment board and chief elected official board have not executed a memorandum of understanding with all of the mandatory partners and service providers, the region shall not be eligible for state incentive grants awarded for local cooperation.

877—7.12(84A,PL105-220) Performance measures. The programs authorized in Title I are evaluated by measures established by the Act on a state and regional basis. In order for the state to qualify for incentive funds, it must meet performance standards set for these measures, in conjunction with successful performance by programs funded under the Carl Perkins Act and the Workforce Investment Act Title II.

7.12(1) Standards for measurement for each region shall be established through negotiations between the department, the chief elected official board and each regional workforce investment board.

7.12(2) Performance outcome measures. The overall mission of Iowa's workforce development center system is to increase the size of the skilled labor force and increase earned income among Iowa citizens. Each region's workforce development center system shall address its locally developed priorities in conjunction with the above goals. In addition to having the performance of the regional workforce development center system evaluated as a whole, all Title I programs shall be evaluated based on the following outcome measures:

a. Adult program outcome measures.

(1) Entry into unsubsidized employment;

(2) Retention in unsubsidized employment for six months after entry into employment;

(3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

b. Dislocated worker program outcome measures.

(1) Entry into unsubsidized employment;

(2) Retention in unsubsidized employment for six months after entry into employment;

(3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

c. Youth aged 19 to 21 outcome measures.

(1) Entry into unsubsidized employment;

(2) Retention in unsubsidized employment for six months after entry into employment;

(3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter postsecondary education, advanced training, or unsubsidized employment.

d. Youth aged 14 to18 outcome measures.

(1) Attainment of basic skills and, as appropriate, work readiness or occupational skills;

(2) Attainment of secondary school diplomas or their recognized equivalents; and

(3) Placement and retention in postsecondary education, advanced training, military service, employment, or qualified apprenticeships.

e. Customer satisfaction of participants.

f. Customer satisfaction of employers.

7.12(3) Other measures. The following measures shall also be tracked and progress reported.

a. Entry by participants who have completed training services into unsubsidized employment related to the training received;

b. Wages at entry into employment (including rate of wage replacement for groups of participants, such as dislocated workers);

c. Cost of workforce investment activities relative to the effect of the activities on the performance of participants;

d. Retention and earnings received in unsubsidized employment 12 months after entry into the employment; and

e. Performance of recipients of public assistance, out-of-school youth, veterans, individuals with disabilities, displaced homemakers, and older individuals, as required by the Department of Labor.

7.12(4) Retention in employment measures and wages earned measures will be calculated using data from the unemployment insurance wage record database with the assistance of the department.

7.12(5) Regional performance standards shall be negotiated between the department, the regional workforce investment board and chief elected official board. Performance standards shall be negotiated for each region annually. The department, the regional workforce investment board and chief elected official board shall evaluate regional performance and the appropriateness of the negotiated standards each year. Formal negotiation shall be conducted for two-year periods and remain consistent with years in which needs assessment activities are conducted.

The department shall establish a minimum acceptable level of performance for each measure, based upon levels established through negotiation between the state and the Department of Labor and using historical data. Negotiation will focus on the adjusted level of performance, which will serve as the regional objective. Performance of a program within a region below the minimum acceptable levels shall be the basis for corrective action or sanctions. Performance above adjusted levels shall be the basis for incentive awards. In addition, regions may negotiate maximum levels of performance (level at which adjusted levels shall not be negotiated beyond during the first five years).

7.12(6) Incentive awards. A portion of the state level funds shall be reserved from Title I programs to provide incentive awards to regions that demonstrate superior performance and to provide technical assistance to all regions. Incentive awards, which are granted during a program year, shall be distributed based upon performance from the previous program year. Actual distribution of the funds shall occur after the end of each program year when final performance standards are calculated. At that time, performance shall be compared against the region's adjusted levels to determine eligibility for, and the amount of, incentive awards.

Incentive awards shall be distributed to regional workforce investment boards when average performance across all measures exceeds the average adjusted levels for the percent achieved score for each measure. When the percent achieved score is greater than 100 percent, the region qualifies for a regional incentive award. There is no requirement for the number of individual measures that must be exceeded, but the customer and employer satisfaction measures must be exceeded for a region to qualify for an incentive award.

The regional workforce investment board must utilize the incentive funds to support Title I services, but it is possible for a region to purchase services that do not count toward performance measurement.

The determination of actual performance achievement on the 17 performance measures and any subsequent incentive awards shall be based on data contained in the integrated customer service (ICS) system. The initial determination of incentive awards shall be made no later than September 1 following the end of the program year. By that time, the chair of each regional workforce investment board shall be notified of its initial performance and incentive award determination. The regional workforce investment board, or its designee, shall be allowed two weeks in which to respond to these initial determinations. The response shall be limited to the calculation of the awards. Changes to the data shall not be permitted

unless authorized by the department. A final determination and the awarding of incentive funds shall occur no later than October 1 following the end of the program year. The department reserves the authority to adjust the time lines for the awarding of incentive funds if circumstances warrant such an adjustment.

7.12(7) If a region does not meet performance outcome requirements, the department shall provide technical assistance to the region to improve its performance. The following process shall be used:

a. Technical assistance shall be available to the Title I service providers through the department's staff. In situations where regional performance falls below the minimum acceptable level, the department will assist the regional workforce investment board, or its designee, with the development of a performance improvement plan.

b. If regional Title I programs do not meet the minimum acceptable level of performance for two consecutive years, the regional workforce investment board shall be required to develop a performance improvement plan. Technical assistance shall also be available to the regional workforce investment board and chief elected official board to adjust the regional customer service plan to facilitate the success of the region's performance improvement plan.

c. The performance improvement plan must be reviewed and approved by the chief elected official board prior to its submittal of the plan to the department.

7.12(8) If a region falls below the minimum acceptable levels of performance agreed upon for the region's average composite percent achieved score in any of the program areas for two consecutive years, the governor, through the department, shall take corrective action. The critical measures that determine possible sanctions are:

1. Adult program measures average;
2. Dislocated worker program measures average;
3. Youth program measures average; and
4. Customer satisfaction measures average.

At a minimum, the corrective action shall include the development of a performance improvement plan and the possibility of a reorganization plan, under which the governor:

a. Requires the appointment and certification of a new regional workforce investment board;

b. Prohibits the use of particular service providers that have been identified as achieving poor levels of performance;

c. Requires the certification of a new coordinating service provider;

d. Requires the development of a new regional plan; or

e. Requires other appropriate measures designed to improve the performance of the region.

An appeal to sanctions may be made by following the process identified in 7.24(15). If a region is being sanctioned, it shall not qualify for an incentive award in the Title I category.

877—7.13(84A,PL105-220) Regional customer service plan. Each regional workforce investment board, in partnership with the chief elected official board, shall develop and submit to the governor a five-year comprehensive plan that is in compliance with the state's workforce investment plan. A region must have an approved plan in place prior to receiving funds.

7.13(1) The plan shall contain the following elements:

a. Workforce development services available in the region.

b. An explanation of how customers access the services.

c. Statement of the region's workforce development priorities.

d. An identification of the workforce investment needs of businesses, job seekers, and workers in the region.

e. Current and projected employment opportunities, and the job skills necessary to obtain such opportunities.

f. A description of the regional workforce development center system, including the locations of access points, such as the region's one-stop center, satellite workforce development centers, resource centers, and other locations within the region where access to services shall be provided (including the access point in each county for department services that is required by state law); what products and

services will be delivered at each of these locations and how access to those services will be provided at that location; identification of the products and services that may be provided upon a fee basis and an explanation of the amount and circumstances when the fee will be applied; and a description or flowchart of the service delivery system, identifying how customers will be served and referred within the center system, and when necessary, how program services, including the adult, dislocated worker and youth programs, will be provided to employers, and to other customers through the adult, dislocated workers, rapid response, and youth programs.

g. Description of the region's policies regarding issues such as activities and services, eligibility, selection, enrollment, and applicant and participant processes.

h. If a region will be sharing the costs of delivering services with another region within a labor market area, that arrangement and cost-sharing agreement shall be described.

i. Identification of the chief elected official board's and regional workforce investment board's oversight policies concerning the region's performance standards and continuous improvement activities.

j. Identification of how the regional workforce investment board and chief elected official board will evaluate the service delivery process and service providers' performance.

k. Description of the annual budget development, review and monitoring process for the region.

l. Description of how economic development groups, older workers, disabled individuals, and partners are provided an opportunity to provide periodic and meaningful input regarding the operation of the workforce development system.

m. Identification of the subrecipient or entity responsible for the disbursal of grant funds.

n. Attachments, including the regional needs assessment and analysis; region's negotiated performance measures; the region's memorandum of understanding; a copy of the region's complaint procedures; procurement procedures; and any documentation customers will be asked to provide for enrollment.

o. Public input process, including proof of publication for public notices soliciting public input for the plan.

p. Limitations on the dollar amount or duration of an individual training account (ITA), or both. There may be a limit for an individual participant that is based on the needs identified in the individual employment plan, as documented by an individual needs determination, or there may be a maximum amount applied to all ITAs. The amount of any ITA must be decreased by the amount of any Pell Grant awarded to a participant.

7.13(2) Prior to submitting the plan to the governor, the regional workforce investment board shall provide opportunities for public input regarding the plan. The public input process must include, at minimum:

a. Making copies of a proposed plan available to the public through such means as public hearings and public notices in local newspapers.

b. Allowing a 30-day period for regional workforce investment board members and members of the public, including representatives of business and labor organizations, to submit comments to the regional workforce investment board on the proposed plan after the plan is made available to the public. When the plan is submitted to the governor, any comments received expressing disagreement with the plan shall be included.

c. Holding open meetings to make information about the plan available to the public on an ongoing basis.

7.13(3) The plan must be formally approved by the regional workforce investment board and chief elected official board. An original signed document and four copies must be submitted by April 1, 2000, to the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

7.13(4) The department shall review the plan and recommend approval to the state workforce development board, unless deficiencies in the plan are identified in writing by the department and revision is required; or the plan is not in compliance with federal and state laws and regulations, including required consultations and public comment provisions.

7.13(5) Modifications to the plan may be required by the department under certain circumstances, including significant changes in regional economic conditions, changes in the financing available, changes in the regional workforce investment board structure, or a need to revise strategies to meet performance goals. A proposed modification of the plan must be approved by vote of the regional workforce investment board and chief elected official board at a public meeting.

877—7.14(84A,PL105-220) Activities and services.

7.14(1) *Core services.* Core services are designated as self-service and informational, which do not require registration or eligibility determination; and staff-assisted, which require registration and eligibility determination.

a. The following types of activities and services are considered self-service or informational core services:

(1) Determination of eligibility to receive services under WIA;

(2) Outreach, intake (which may include worker profiling) and orientation to the information and other services available through the system;

(3) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(4) Job search and placement assistance and, where appropriate, career counseling;

(5) Provision of employment statistics information, related to local, regional, and national labor market areas, such as job vacancy listings in such labor market areas, information on job skills necessary to obtain the jobs listed, and information relating to local occupations in demand and the earnings and skill requirements for such occupations;

(6) Provision of performance and program cost information on eligible providers of training services;

(7) Provision of information regarding how the local area is performing on the local performance measures and any additional information with respect to the workforce development center system in the local region;

(8) Provision of accurate information relating to the availability of supportive services, including child care and transportation available in the local region, and referral to such services as appropriate;

(9) Provision of information regarding filing claims for unemployment compensation;

(10) Assistance in establishing eligibility for welfare-to-work and programs of financial aid for assistance for training and education programs that are not funded under the Act and are available in the region;

(11) Follow-up services, including counseling regarding the workplace, for WIA participants who are placed in unsubsidized employment, for not less than 12 months after the first day of employment, as appropriate.

b. The following types of activities and services are considered staff-assisted core services:

(1) Counseling;

(2) Individual job development;

(3) Job clubs; and

(4) Screened referrals.

7.14(2) *Intensive services.* A participant must receive intensive services before being determined to be in need of training services to obtain employment that leads to self-sufficiency. Intensive services include:

a. Comprehensive and specialized assessments of skill levels and service needs, including diagnostic testing and use of other assessment tools, and in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

b. Development of an individual employment plan to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve the employment goals;

c. Group counseling;

d. Individual counseling and career planning;

e. Case management for participants seeking training services;

f. Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training;

g. Out-of-area job search expenses;

h. Relocation expenses;

i. Internships; and

j. Work experience.

7.14(3) *Training services.* The following types of activities and services are considered to be training services:

a. Occupational skills training, including training for nontraditional employment;

b. Programs that combine workplace training with related instruction, which may include cooperative education programs;

c. Training programs operated by the private sector;

d. Skill upgrading and retraining;

e. Entrepreneurial training;

f. Job readiness training; and

g. Customized training.

7.14(4) *Supportive services* . Supportive services are those services necessary to enable an individual to participate in activities authorized under WIA. The following types of supportive services are allowable:

a. Clothing;

b. Counseling;

c. Dependent care;

d. Financial assistance;

e. Health care;

f. Housing assistance;

g. Miscellaneous services;

h. Needs-related payments;

i. Residential/meals support;

j. Services to individuals with disabilities;

k. Supported employment and training; and

l. Transportation.

7.14(5) *Youth services.* An array of services may be made available to youth. The list of youth services, which must be made available in each region, is as follows:

a. Tutoring, study skills training and instruction leading to secondary school completion, including dropout prevention strategies;

b. Alternative secondary school offerings;

c. Summer employment opportunities directly linked to academic and occupational learning;

d. Paid and unpaid work experiences, including internships and job shadowing;

e. Occupational skill training;

f. Leadership development opportunities;

g. Supportive services;

h. Adult mentoring, for a duration of at least 12 months, which may occur both during and after program participation;

i. Follow-up services; and

j. Comprehensive guidance and counseling, including drug and alcohol abuse counseling.

7.14(6) *Customized training* . The purpose of customized training is to provide training specific to an employer's needs, so individuals will be hired, or retained, by the employer after successful completion of the training. Customized training is normally provided in a classroom setting and is designed to meet the special requirements of an employer or group of employers. The employer(s) must commit to hire, or in the case of incumbent workers, continue to employ, an individual on successful completion of the

training and must pay not less than 50 percent of the cost of the training. Participants enrolled in this activity must be covered by adequate medical and accident insurance.

7.14(7) *Entrepreneurial training.* The purpose of entrepreneurial training is to help participants acquire the skills and abilities necessary to successfully establish and operate their own self-employment businesses or enterprises.

a. The methods of providing training may include classes in small business development, marketing, accounting, financing, or any other courses that could contribute to a participant's goal of self-employment. On-site observation and instruction in business skills may also be provided, as well as individualized instruction and mentoring.

b. Entrepreneurial training may not be used for training in job-specific skills other than business management. However, it may be provided concurrently or consecutively with specific skill training for the purpose of establishing an enterprise that utilizes those skills.

c. Payments under entrepreneurial training are limited to training programs and activities that provide instruction in business operation and management. Funds may not be used for any direct costs associated with the establishment or operation of the business (e.g., materials, inventory, overhead, or advertising).

d. All participants who are enrolled in this training must apply for any financial assistance for which they may qualify, including Pell Grants. For purposes of this requirement, financial assistance does not include loans.

e. Participants must be covered by adequate medical and accident insurance.

7.14(8) *Follow-up services* . The purpose of these services is to identify any problems or needs that might preclude a former participant from remaining employed or continuing to progress toward unsubsidized employment. The provision of follow-up services and contacts or attempted contacts must be documented in the participant file.

a. Follow-up services must be provided for all adults and dislocated workers who enter employment for not less than 12 months after the first day of employment. The first follow-up contact must occur within the first 30 days of entering employment. The first contact must be a personal contact (in person or by telephone) with the participant. A second contact must occur approximately 90 days after the first day of employment. Contacts are required quarterly thereafter for the next three quarters. The types of follow-up services provided must be based on the needs of the adult or dislocated worker. Follow-up services may include:

(1) Counseling regarding the workplace;

(2) Assistance to obtain better employment;

(3) Determination of the need for additional assistance; and

(4) Referral to services of partner agencies or other community resources.

b. Follow-up services must be provided for all youth for not less than 12 months from the date of exit from the program. The first follow-up contact must occur within the first 30 days of entering employment. The first contact must be a personal contact (in person or by telephone) with the participant. A second contact must occur approximately 90 days after the first day of employment. Contacts are required quarterly thereafter for the next three quarters. Follow-up services may be provided beyond 12 months at the discretion of the RWIB. The types of services provided must be determined based on the needs of the youth. Follow-up services for youth may include:

(1) Leadership development and supportive services;

(2) Regular contact with the youth's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development, and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Tracking the progress of youth in employment, postsecondary training, or advanced training.

7.14(9) *Guidance and counseling* . Guidance and counseling is the provision of advice to participants through a mutual exchange of ideas and opinions, discussion and deliberation. Guidance and counseling should be academic or employment-related, and may include drug and alcohol abuse

counseling and referral. Guidance for youth must be categorized as either academic (primarily provided to assist a youth in achieving academic success), or employment-related (primarily provided to assist a youth in achieving employment-related success).

7.14(10) *Institutional skill training* . The purpose of this service is to provide individuals with the technical skills and information required to perform a specific job or group of jobs. Institutional skill training is conducted in a classroom setting.

a. All participants who are enrolled in this service must apply for any financial assistance for which they may qualify, including Pell Grants. All participants must be covered by the training institution's tuition refund policy. In the absence of a refund policy established by the training institution, the WIA service provider must negotiate a reasonable refund policy with the training site.

b. Participants must be covered by adequate medical and accident insurance.

c. A participant who is employed must not be earning a self-sufficiency wage to be enrolled in this service.

7.14(11) *Job club.* The purpose of this activity is to provide a structured job search activity for a group of participants who develop common objectives during their time of learning and working together, supporting one another in the job search process. The scheduled activities and required hours of participation should reflect proven job search techniques and the employment environment of the region.

a. Participants in job club shall meet the following objectives:

(1) Have been prepared to understand and function in the interview process and the workplace;

(2) Have completed all tools needed for effective work search, including a résumé and an application letter; and

(3) Have the opportunity to complete as many actual job contacts and interviews as possible after completing all of the job search tools.

b. Participants must be covered by adequate medical and accident insurance.

7.14(12) *Leadership development.* The purpose of leadership development is to enhance the personal life, social, and leadership skills of participants, and to remove barriers to educational and employment-related success. Leadership development opportunities may include the following:

a. Exposure to postsecondary educational opportunities;

b. Community and service learning projects;

c. Peer-centered activities, including peer mentoring and tutoring;

d. Organizational and team training, including team leadership training;

e. Training in decision making, including determining priorities;

f. Citizenship training, including life skills training such as parenting, work behavior training, and budgeting of resources;

g. Employability training; and

h. Positive social behavior or "soft skills," including but not limited to, positive attitudinal development, self-esteem building, cultural diversity training, and work simulation activities.

Leadership development activities are normally conducted in a group setting and must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule. Participants must be covered by adequate on-site medical and accident insurance.

7.14(13) *Limited internship.* The purpose of a limited internship is to provide a participant with exposure to work and the requirements for successful job retention that are needed to enhance the long-term employability of that participant.

a. Limited internships are limited in duration, devoted to skill development, and enhanced by significant employer investment.

b. Internships may be conducted at public, private, for-profit and nonprofit work sites. The use of an intern should involve a substantial investment of effort by employers accepting the intern, and an intern must not be employed in a manner that subsidizes or appears to subsidize private sector employers.

c. The total participation in a limited internship for any participant must not exceed 500 hours per enrollment. In addition, for in-school youth, participation must be limited to 20 hours per week during the school year. In-school youth may participate full-time during summer vacation and holidays.

d. Limited internship agreements must be written only for positions for which a participant would not normally be hired because of lack of experience or other barriers to employment.

e. Participants may be compensated for time spent in the activity. This compensation may be in the form of incentive and bonus payments or wages. If the participant receives wages, the WIA service provider is the employer of record. The wages paid to the participant must be at the same rates as similarly situated employees or trainees of the employer of record, but in no event less than the higher of the federal or state minimum wage. Participants receiving wages must always be paid for time worked, must not be paid for any scheduled hours they failed to attend without good cause, and must, at a minimum, be covered by workers' compensation in accordance with state law. In addition, all participants who are paid wages must be provided benefits and working conditions at the same level and to the same extent as other employees of the employer of record working a similar length of time and doing the same type of work.

f. Participants receiving incentive or bonus payments based on attendance must not receive any payment for scheduled hours that they failed to attend without good cause.

g. Participants who are not receiving wages must be covered by adequate on-site medical and accident insurance.

h. Limited internships may be used in conjunction with on-the-job training with the same employer. However, when this occurs, the internship must precede on-the-job training, and the on-the-job training time for the participant must be reduced.

i. If the private sector work site employer hires the participant during internship, the internship for that participant must be terminated.

7.14(14) *Mentoring.* The purpose of mentoring is to provide a participant with the opportunity to develop a positive relationship with an adult. The adult mentor should provide a positive role model for educational, work skills, or personal or social development. Mentoring for youth must be categorized as either academic (primarily provided to assist a youth in achieving academic success) or employment-related (primarily provided to assist a youth in achieving employment-related success).

7.14(15) *On-the-job training.* The purpose of on-the-job training (OJT) is to train a participant in an actual work situation that has career advancement potential in order to develop specific occupational skills or obtain specialized skills required by an individual employer.

a. Since OJT is employment, state and federal regulations governing employment situations apply to OJT. Participants in OJT must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer. Wages paid must not be less than the highest of federal or state minimum wage or the prevailing rates of pay for individuals employed in similar occupations by the same employer.

b. Participants in OJT must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of job. Each participant in OJT must be covered by workers' compensation in accordance with state law.

c. Payment to employers is compensation for the extraordinary costs of training participants, including costs of classroom training, and compensation for costs associated with the lower productivity of such participants. A trainer must be available at the work site to provide training under an OJT contract. For example, a truck driving position in which the driver drives alone or without immediate supervision or training would not be appropriate for OJT. The payment must not exceed 50 percent of the wages paid by the employer to the participant during the period of the training agreement. Wages are considered to be moneys paid by the employer to the participant. Wages do not include tips, commissions, piece-rate-based earnings or nonwage employee fringe benefits. Payment for overtime hours and holidays is only allowable in accordance with local policies. Holidays may be used as the basis for OJT payments only if the participant actually works and receives training on the holiday.

d. An OJT contract with an employer may be written for a maximum of 6 calendar months unless the contract is for a part-time OJT of less than 500 hours, in which instance the contract period may

be extended to a maximum of 12 months. Under no circumstances may an OJT contract be written for a participant if the hours of training required for the position in which the participant is to be trained are determined to be less than 160 hours. The number of OJT training hours for a participant must be determined using a standardized chart, unless the regional customer service plan contains an alternative methodology for determining the length of OJTs. The hours specified must be considered as a departure point for determining actual WIA training hours. If the total number of training hours for the OJT position cannot be provided during the maximum contract length allowable, as many training hours as possible must be provided. The OJT training hours for a participant must be reduced if a participant has related prior employment or training in the same or similar occupation. Previous training or experience, which occurred so long ago that skills gained from that experience are obsolete, may be disregarded to the extent that those skills need to be relearned or reacquired. The number of training hours for a participant may be increased based upon the participant's circumstances, such as a disability. The number of hours of training for any participant as well as the process for extending or reducing those training hours from the basic method of determination must be documented.

e. OJTs may not be written with temporary help agencies or employee leasing firms for positions which will be "hired out" to other employers for probationary, seasonal, temporary or intermittent employment. A temporary employment agency may serve as the employer of record only when the OJT position is one of the staff positions with the agency and not a position that will be "hired out."

f. In situations in which an employer refers an individual for eligibility determination with the intent of hiring that individual under an OJT contract, the individual referred may be enrolled in an OJT with the referring employer only when the referring employer has not already hired the individual and an objective assessment and service plan have been completed which support the development of an OJT with the referring employer.

g. Prior to recontracting with an OJT employer, the past performance of that employer must be reviewed. An OJT contract must not be entered into with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees. Employer eligibility for future OJT contracts need not result in termination if OJT participants voluntarily quit, are terminated for cause, or are released due to unforeseeable changes in business conditions. An employer that has been excluded from OJT contracting because of failing to hire participants may again be considered for an OJT placement one year after that sanction was imposed. In this recontracting situation, if the employer fails to retain the participant after the OJT ends, and there is no apparent cause for dismissing the employee, the employer must not receive any future OJT contracts.

h. OJTs may be written for employed workers when the following additional criteria are met and documented:

(1) The employee is not earning a self-sufficiency wage as defined in the regional customer service plan; and

(2) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes identified in the regional customer service plan.

7.14(16) *Preemployment training.* The purpose of preemployment training is to help participants acquire skills necessary to obtain unsubsidized employment and to maintain employment.

a. Activities may include, but are not limited to:

(1) Instruction on how to keep jobs, including employer's expectations relating to punctuality, job attendance, dependability, professional conduct, and interaction with other employees;

(2) Assistance in personal growth and development which may include motivation, self-esteem building, communication skills, basic living skills, personal maintenance skills, social planning, citizenship, and life survival skills; and

(3) Instruction in how to obtain jobs, including completing applications and résumés, and interviewing skills.

b. Preemployment training activities must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

c. Participants must be covered by adequate on-site medical and accident insurance.

7.14(17) *Remedial and basic skill training.* The purpose of remedial and basic skill training is to enhance the employability of participants by upgrading basic literacy skills through basic and remedial education courses, literacy training, adult basic education, and English as a second language (ESL) instruction. Remedial and basic skill training may be conducted in a classroom setting or on an individual basis. Remedial and basic skill training may be used to improve academic or language skills prior to enrollment in other training activities.

a. For adults and dislocated workers, remedial and basic skill training must be offered in combination with other allowable training services (not including customized training).

b. Remedial and basic skill training activities must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

c. Participants must be covered by adequate on-site medical and accident insurance.

7.14(18) *Secondary education certification.* The purpose of secondary education certification is to enhance the employability of participants by upgrading their level of education. Secondary education certification activities may be conducted in a classroom setting or on an individual basis.

a. Secondary education certification must be categorized as one of the following:

(1) Secondary school;

(2) Alternative school;

(3) Tutoring; or

(4) Individualized study.

b. Participation in this component must be expected to result in a high school diploma, general educational development (GED) certificate, or an individualized educational program (IEP) diploma.

c. Secondary education certification activities must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

d. Participants must be covered by adequate on-site medical and accident insurance.

7.14(19) *Skill upgrading.* The purpose of skill upgrading is to provide short-term prevocational training to participants to upgrade their occupational skills and enhance their employability. Examples of allowable skill upgrading activities include a typing refresher to increase speed and accuracy, keyboarding, or basic computer literacy. Skill upgrading may be conducted in a classroom setting or on an individual basis, but must be short-term in nature and must not exceed nine weeks in duration. Participants must be covered by adequate on-site medical and accident insurance.

7.14(20) *Summer activities.* The purpose of summer activities is to provide a youth with summer employment activities that are directly linked to academic and occupational learning.

a. The employment component provides participants with a positive employment experience during the summer months. The employment experience should be directly linked to academic and occupational learning activities. The employment component could be a limited internship, on-the-job training, vocational exploration, or work experience.

b. The summer academic learning component assists youth in achieving academic success. For in-school youth the goal is to prevent the erosion of basic literacy skills over the summer months and, to the extent possible, to increase basic literacy skill levels, particularly in reading and math. In addition, the purpose of the academic learning component includes the improvement of the employment potential of individuals who are not intending to return to school.

(1) All participants must have at least 30 hours of academic learning activities included in their service strategies.

(2) The academic learning activities should be designed as a comprehensive instructional approach that includes thinking, reasoning, and decision-making processes that are necessary for success in school, on the job, and in society in general.

(3) The academic learning activity may include:

1. Remedial and basic skill training;
2. Basic literacy training;
3. Adult basic education;
4. English as a second language;
5. General educational development (GED) instruction;
6. Tutoring;
7. Study skills training;
8. Leadership development opportunities;
9. Adult mentoring;
10. Citizenship training;
11. Postsecondary vocational and academic courses;
12. Applied academic courses; and
13. Other courses or training methods that are intended to retain or improve the basic educational skills of the participant.

(4) The academic learning activities may be conducted in a classroom setting or on an individual basis. The academic learning curriculum provided to a participant should take into account the learning level and interests of that participant.

(5) A participant may be paid a wage-equivalent payment (stipend) based upon attendance for time spent in the academic learning activity, or may be paid release time wages for time spent in the academic learning activity if work experience, on-the-job training, limited internship or vocational exploration is the primary activity. In lieu of being paid a stipend or wages, the youth may be rewarded with an incentive and bonus payment. Participants cannot be paid for unattended hours in the academic learning activity.

c. The occupational learning component provides youth with an opportunity to learn occupational skills related to a specific occupation, or to an occupational cluster. The occupational learning activities may be incorporated in the employment or academic learning component or may be a separate component such as skill upgrading.

d. Participants must be covered by adequate on-site medical and accident insurance.

7.14(21) *Vocational exploration.* The purpose of vocational exploration is to expose participants to jobs available in the private or public sector through job shadowing, instruction and, if appropriate, limited practical experience at actual work sites.

a. Vocational exploration may take place at public, private nonprofit, or private-for-profit work sites.

b. The total participation in this activity for any participant in any one occupation must not exceed 160 hours per enrollment.

c. The length of a participant's enrollment is limited to a maximum of 640 hours, regardless of the number of explorations conducted for the participant.

d. The participant must not receive wages for the time spent in this activity and is not necessarily entitled to a job at the end of the vocational exploration period.

e. The service provider must derive no immediate advantage from the activities of the participant and on occasion the operation of the employer may actually be impeded. In the case of private-for-profit organizations, the participant must not be involved in any activity that contributes, or could be expected to contribute, to additional sales or profits or otherwise result in subsidization of wages for the organization.

f. Vocational exploration activities must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

g. Participants must be covered by adequate on-site medical and accident insurance.

7.14(22) *Work experience.* The purpose of work experience is to provide participants with short-term or part-time subsidized work assignments to enhance their employability through the development of good work habits and basic work skills. Work experience should held participants acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment.

a. This activity should be used for individuals who have never worked or have been out of the labor force for an extended period of time including, but not limited to, students, school dropouts, individuals with disabilities, displaced homemakers, and older individuals. Work experience must be limited to persons who need assistance to become accustomed to basic work requirements, including basic work skills, in order to successfully compete in the labor market.

b. Work experience may be used to provide:

(1) Instructions concerning work habits and employer and employee relationships in a work environment;

(2) An improved work history and work references;

(3) An opportunity to actively participate in a specific work field; and

(4) An opportunity to progressively master more complex tasks.

c. Work experiences may be paid or unpaid. If the participant is paid wages, the wages must be at the same rates as similarly situated employees or trainees of the employer of record, but in no event less than the higher of the federal or state minimum wage. In most situations, the service provider is the employer of record. Participants must always be paid for time worked, but must not be paid for any scheduled hours they failed to attend without good cause.

d. In addition, all individuals participating in work experience must be provided benefits and working conditions at the same level and to the same extent as other employees of the employer of record working a similar length of time and doing the same type of work. Each participant must be covered either by workers' compensation in accordance with state law or by adequate on-site medical and accident insurance. Participants are exempt from unemployment compensation insurance. Therefore, unemployment compensation costs are not allowable.

e. Under certain conditions participants in a wage-paying work experience may be paid for time spent attending other activities. Such payments may be made only if work experience participation is scheduled for more than 50 percent of the scheduled training time in all activities. Usually, the participant will be enrolled simultaneously in both the work experience and another activity.

f. Service providers may supplement the costs of wages and fringe benefits only if the service provider is the employer of record. In these instances, the payment for work experience would be made to the employer after adequate time and attendance and supporting documentation is provided. Any such arrangement must be specified in an agreement with the service provider.

g. Work experience may take place in the private, for-profit sector, the nonprofit sector, or the public sector. A participant cannot be placed in work experience with an employer with whom the participant is already employed in an unsubsidized position.

h. Work experience must not be used as a substitute for public service employment activities.

i. A work experience agreement at one work site may be written for a maximum of 13 calendar weeks unless the agreement is for a part-time work experience of less than 500 hours, in which instance the activity period may be extended to a maximum of 26 weeks.

7.14(23) *Miscellaneous services.*

a. Bonding is an allowable cost, if it is not available under federally or locally sponsored programs. If bonding is an occupational requirement, it should be verified that the participant is bondable before the participant is placed in training for that occupation.

b. The costs of licenses or application fees are allowable if occupationally required.

c. The costs of relocation are allowable if it is determined by service provider staff that a participant cannot obtain employment within a reasonable commuting area and that the participant has secured suitable long-duration employment or obtained a bona fide job offer in the area of relocation.

d. The costs of lodging for each night away from the participant's permanent home are allowable if required for continued program participation. While the participant is away from home or in travel status for required training the costs for meals are allowable.

e. The costs of special services, supplies, equipment, and tools necessary to enable a participant with a disability to participate in training are allowable. It is not an allowable use of WIA funds to make capital improvements to a training or work site for general compliance with the Americans with Disabilities Act requirements.

f. Supported employment and training payments are allowable to provide individuals requiring individualized assistance with one-on-one instruction and with the support necessary to enable them to complete occupational skill training and to obtain and retain competitive employment. Supported employment and training may only be used in training situations that are designed to prepare the participant for continuing nonsupported competitive employment. Employment positions supported at sheltered workshops or similar situations may not utilize this activity.

g. The cost of transportation necessary to travel to and from WIA activities and services, including job interviews, are allowable.

h. Incentive and bonus payments are allowable to reward youth for attendance or achievement. Payments must be based upon a local policy that is described in the regional customer service plan, is applied consistently to all participants and is based on attendance or achievement of basic education skills, preemployment/work maturity skills, or occupational skills. The payments may be based on a combination of attendance and achievement.

877—7.15(84A,PL105-220) Individual training accounts. The individual training account (ITA) is established on behalf of a participant by the intensive service provider. ITA is the mechanism through which adults and dislocated workers shall purchase training services from eligible training providers. Payment for supportive services and related needs is not allowable under the ITAs.

7.15(1) Adult and dislocated worker service providers must provide participants the opportunity to select an eligible training provider, maximizing participant choice yet also allowing consultation from the participant's case manager. Unless the program has exhausted funding or has insufficient funds to cover the estimated cost of the program, the service provider must refer the individual to the selected training provider. Since funds are limited, priority shall be given to recipients of public assistance and other low-income individuals.

7.15(2) Participants whose application for a Pell Grant is pending may receive training services; however, an agreement must be in place between the participant and the training provider. In the event the Pell Grant is awarded, funds shall be released to reimburse the program and not the participant.

7.15(3) Payments from ITAs may be made in a variety of ways including credit vouchers, electronic transfer of funds through financial institutions, purchase orders, credit/debit cards or other appropriate methods. How funds will be transferred within a region, within the state and outside the state shall be a local decision as described by the regional workforce investment board in the local plan.

7.15(4) The actual implementation of ITAs will involve the service provider(s) in the region where the participant resides and the selected training provider. Payment amounts and duration of an ITA may be limited according to the needs identified in the individual's employment plan and specified in the local plan.

877—7.16(84A,PL105-220) Certification of training providers.

7.16(1) Eligible training providers. Eligible training providers include:

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and provide a program that leads to an associate degree, baccalaureate degree or certificate;

b. Entities that carry out programs under the National Apprenticeship Act; and

c. Other public or private providers of a program of training services.

7.16(2) Training programs. A program of training services is one or more courses or classes that, upon successful completion, lead to a certificate, an associate degree, or baccalaureate degree; or a competency or skill recognized by employers; or a training regimen that provides individuals with additional skills or competencies generally recognized by employers.

7.16(3) Certification process. An application for each training program must be submitted to the regional workforce investment board in the region in which the training provider desires its program to be approved. Each program of training services must be described, including appropriate performance and cost information. Training providers shall be approved, initially, as well as subsequently, by regional workforce investment boards in partnership with the department.

7.16(4) Regional workforce investment board role. The regional workforce investment board shall be responsible for:

a. Accepting applications from postsecondary educational institutions, entities providing apprenticeship programs, and public and private providers for initial and subsequent approval.

b. Submitting to the department the local list of approved providers, including performance and cost information for each program.

c. Ensuring dissemination of the statewide list to participants in employment and training activities through the regional workforce development center system.

d. Consulting with the department in cases where approved providers shall have their approval revoked because inaccurate information has been provided.

e. Notifying all known providers of training in their region regarding the process and time line for accepting applications.

7.16(5) Department role. The department shall be responsible for:

a. Establishing initial approval criteria as well as setting minimum levels of performance for public and private providers;

b. Setting minimum levels of performance measures for all providers to remain subsequently approved;

c. Developing and maintaining the state list of eligible training providers, which is compiled from information submitted by the regional workforce investment boards;

d. Verifying the accuracy of the information on the state list;

e. Removing training providers who do not meet program performance levels;

f. Disapproving training providers who provide inaccurate information; and

g. Disapproving training providers who violate any provision of the Workforce Investment Act.

7.16(6) Initial provider approval. Upon completion of the application, initial approval shall be granted to:

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and provide a program that leads to an associate or baccalaureate degree, certificate, or diploma; and

b. Entities that carry out apprenticeship programs registered under the National Apprenticeship Act.

c. Other public and private providers of training services that currently provide a training program shall be required to submit additional information to the regional workforce investment board in the region in which they desire to provide training services.

The department shall accept documentation from the appropriate certification body for postsecondary educational institutions that are eligible to receive funds under Title IV and National Apprenticeship programs, who do not provide a program of training services at the time of application.

7.16(7) Other public and private providers of training services that currently do not provide a program of training services at the time of application must:

a. Document the need for the training based on specific employer needs in the region; and

b. Develop a training curriculum with the agreement of local employers.

Once the training provider's program is approved, the training provider shall be included on a statewide list that will be available to customers seeking training services.

7.16(8) To be eligible effective July 1, 2000, interested training providers must submit their applications to the regional workforce investment board in their region. The application date shall be established by each regional workforce investment board. All approved applications must be submitted to the department by May 31, 2000. The department has 30 days from the receipt of the regionally approved applications to review and verify the information provided. Initial approval for all training providers shall be effective until November 30, 2001.

7.16(9) If a training provider has been determined to be initially eligible and desires to continue its eligibility, it must submit performance information to the regional workforce investment board and meet performance levels annually.

7.16(10) Each regional workforce investment board shall maintain a list of all approved training providers, including providers for on-the-job and customized training in the region, and make the list available statewide. The regional workforce investment board shall submit all approved applications to the department after the applications are received locally. The department shall be responsible for maintaining the statewide list of all approved training providers. The list will be updated at least annually or as needed and made available to participants in employment and training activities and others through the regional workforce development center system. The regional workforce investment board has the responsibility of notifying all known providers of training in the board's region regarding the process and time line for accepting applications. The department may approve training providers from other neighboring states when requested.

7.16(11) Application process for initial approval.

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and entities that carry out programs under the National Apprenticeship Act must submit an application as required by the regional workforce investment board. The regional workforce investment board may develop its own application procedures or adopt the procedure developed by the department for other public and private training providers.

b. Other public or private providers of a program of training services shall be required to complete and submit an application to the regional workforce investment board in each region as specified below. The application requires identifying information on the training provider and enrollment periods, as well as the following information:

(1) The name and description of the training program(s) to be offered.

(2) The cost of each training program (tuition; books; supplies, including tools; uniforms; fees, including laboratory; rentals, deposits and other miscellaneous charges) to complete a certificate or degree program or an employer-identified competency skill.

(3) A description of the facility and organization of the school.

c. Program completion rate for all individuals participating in the applicable program conducted by the provider. A program completer is a person who has obtained a certificate, degree, or diploma; or received credit for taking the program; or received a passing grade in the program; or finished the required curriculum of the program.

d. Percentage of all students in the program who obtained unsubsidized employment.

e. Average wages of all students in unsubsidized employment.

For initial approval, the regional workforce investment board may require additional information.

7.16(12) Required information for subsequent approval. To remain an approved training provider, all training providers must have their performance information reviewed by the regional workforce investment board on an annual basis. The required performance information for subsequent approval includes the following information:

a. Program completion rate for all individuals participating in the applicable program conducted by the provider.

b. Percentage of all students who obtained unsubsidized employment.

c. Average wages of all students who obtained unsubsidized employment. (If a training provider is using the unemployment insurance database to calculate wages, the average starting wage will be calculated by a national Department of Labor formula that converts quarterly unemployment insurance wages into an hourly rate.)

d. Where applicable, the rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skill of the graduates of the training program.

e. Percentage of WIA participants who obtained unsubsidized employment.

f. Percentage of WIA participants who have completed the training program and who are placed in unsubsidized employment.

g. Retention rates in unsubsidized employment, six months after the first day of employment, of WIA participants who have completed the training program.

h. Average wages, six months after the first day of employment, received by WIA participants who have completed the training program.

i. Average actual cost of training, including tuition, fees, and books, for WIA participants to complete the training program.

The department shall publish, on an annual basis, guidelines on acceptable performance measures for training providers.

7.16(13) Nonapproval. The department, in consultation with the regional workforce investment board, determines whether or not to approve a training provider. If the regional workforce investment board determines that the training provider does not meet the established performance levels, a written recommendation shall be sent to the division administrator of the division of workforce development center administration. The division administrator shall make a determination whether the training provider is disapproved and removed from the list. Regional workforce investment boards and the department must take into consideration the following factors when determining subsequent approval:

a. The specific economic, geographic, and demographic factors in the region in which the training providers seeking approval are located; and

b. Characteristics of the populations served by the training providers seeking approval, including difficulties in serving such populations, where applicable.

If it is determined that an eligible provider or an individual supplying information on behalf of the provider intentionally supplies inaccurate information, the department shall terminate the approval of the training provider for a minimum of two years. If either the regional workforce investment board or the department determines that an eligible provider substantially violates any requirement under the Act, it may terminate approval to receive funds for the program involved or take other such action as determined to be appropriate. A provider whose approval is terminated under any of these conditions is liable to repay all WIA training funds it received during the period of noncompliance.

7.16(14) Appeal process. If a training provider has been determined to be ineligible by failing to meet performance levels, intentionally supplying inaccurate information, or violating any provision of the Act, it has the right to appeal the denial of approval to the department. The training provider shall follow appeal procedures as defined in 7.24(13).

877—7.17(84A,PL105-220) Financial management. Allowable costs shall be determined in accordance with the Office of Management and Budget (OMB) circulars applicable to the various entities receiving grant funds from the department. Nothing in this rule shall supersede the requirements placed on each entity as promulgated by the applicable OMB circular including factors which affect allowability of costs, reasonable costs, allocable costs, applicable credits, direct costs, indirect or facility and administrative costs, allowable costs as defined in "selected items of costs," in accordance with the appropriate OMB circular.

Additional regulations applicable to contractors are found in 29 CFR Part 97 for State and Local Governments and Part 95 for Institutions of Higher Education, Hospitals and other Non-Profit Organizations. Exceptions to those regulations are that:

1. Procurement contracts and other transactions between local boards and units of state and local governments must be conducted only on a cost reimbursement basis.
2. Program income shall be calculated based on the methods outlined in 7.17(2).
3. Any excess revenue over expenditures incurred for services provided by a governmental unit or nonprofit must be considered program income.

7.17(1) General requirements of a financial management system. Financial management systems should provide fiscal controls and accounting procedures that conform to generally accepted accounting principles (GAAP) as they relate to programs administered. A financial management system must also have certain procedures in place to ensure that the system meets the requirements of state and federal laws and regulations.

7.17(2) Program income means income generated by a program-supported activity or earned only as a result of the contract.

a. Program income includes:

(1) Income from fees for services performed and from conferences;

(2) Income from the use or rental of property acquired with contract funds;

(3) Income from the sale of commodities or items fabricated under a contract;

(4) Income generated due to revenue in excess of expenditures for services rendered, when provided by a governmental unit or nonprofit entity.

b. Program income does not include:

(1) Interest earned on grant funds, rebates, credits, discounts, refunds, or any interest earned on any of them. (Such funds shall be credited as a reduction of costs if received during the same funding period. Any credits received after the funding period must be returned to the department.);

(2) Taxes, special assessments, levies, fines, and other governmental revenues raised by a contractor;

(3) Income from royalties and license fees, copyrighted material, patents, patent applications, trademarks, and inventions developed by a contractor;

(4) Any other refunds or reimbursements, such as Pell Grant reimbursement. (Such funds shall be credited back to the program that incurred the original costs.);

(5) Any other funds received as the result of the sale of equipment. (Such funds shall be credited back to the program that incurred the original costs.)

c. Costs incidental to the generation of program income must be deducted, if not already charged to the grant, from gross program income to determine net program income. Net program income earned may be retained and not sent back to the department, if such income is added to the funds committed to the particular program under which it was earned. Net program income must be used for allowable program purposes, and under the terms and conditions applicable to the use of that program's funds. Program income generated may be used for any allowable activity under the program that generated that income.

d. All net program income generated and expended must be reported to the department each month on the financial status report. Documentation of the use of net program income must be maintained on file. Any net program income not used in accordance with the requirements of this rule must be returned to the department.

(1) The classification of costs, including cost limitations, apply to net program income. Net program income must be disbursed prior to requesting additional cash payments. Net program income not disbursed prior to the submittal of the annual closeout reports must be returned to the department.

(2) If the net program income cannot be used by the region that generated such income for allowable purposes, the funds must be returned to the department. The department may permit another region to use the net program income for allowable purposes.

7.17(3) Working capital advance payments of federal funds.

a. Reimbursement is the preferred method for payment. However, the subrecipient may provide working capital advance payments of federal funds only to contractors, not vendors or training providers, after determining that:

(1) Reimbursement is not feasible because the contractor lacks sufficient working capital;

(2) The contractor meets the standards of this rule governing advances to contractor;

(3) Advance payment is in the best interest of the grantee or subrecipient; and

(4) The reason for needing an advance is not the unwillingness or inability of the grantee or subrecipient to provide timely reimbursements to meet the contractor's actual cash disbursements.

b. If the conditions in 7.17(3)*"a"* are met, working capital advance payments may be made to contractors by use of one of the two procedures outlined below:

(1) Cash is only advanced (through check or warrant) to the contractor to cover its estimated disbursement needs for an initial period, generally geared to the contractor's disbursement cycle, but in no event may the advance exceed 20 percent of the contract amount. After the initial advance, the contractor is only reimbursed for its actual cash disbursements; or

(2) Cash is advanced electronically on a weekly basis similar to the system maintained between the department and its contractors. Drawdowns and expenditures must be timed in a way that minimizes the delay between the receipt and actual disbursement of those funds.

7.17(4) Cost allocation. The methods of cost allocation identified in this subrule are not all inclusive. Any method chosen must be consistent with cost allocation principles as defined in the OMB circular applicable to the contractor.

a. Any single cost which is properly chargeable to more than one program or cost category is allocated among the appropriate programs and cost categories based on the benefits derived. Contractors that receive WIA funds are required to maintain a written cost allocation for WIA expenditures. A cost allocation plan is the means by which costs related to more than one program or cost category are distributed appropriately. All costs included in a cost allocation plan must be supported by formal accounting records that substantiate the propriety of eventual charges. Each subrecipient must develop a written plan that addresses how joint costs will be allocated during the fiscal year. The plan must include:

(1) The time period involved;

(2) Programs that must be allocated;

(3) Basis to be used for allocation; and

(4) Exceptions to the general rules.

Any cost that cannot be identified as a direct cost of a particular program or a cost category is allocated based on one of the acceptable methods discussed above and must be included in the cost allocation plan.

b. Cost allocation plans are based on a documented basis. The basis upon which a given cost is allocated is relevant to the nature of the cost being allocated, and whether the cost is a legitimate charge to the program(s) and cost category to which it is being allocated. The basis upon which costs are allocated is consistent throughout the fiscal year.

c. Possible acceptable actual bases for allocating costs include:

(1) Staff timesheet allocation basis (fixed or variable).

(2) Service level allocation basis (fixed or variable).

(3) Usage rate allocation basis (fixed or variable).

(4) Full-time employees basis (fixed only).

d. Funds received under various programs may be allocated using the cost pooling method. Under a cost pooling method, expenditures that cannot be identified to a particular cost category or program may be pooled and allocated in total on a monthly basis. If this method is established, the expenditures must be allocated to each program based upon the benefit derived by each program. Cost pools may be established for a cost category, a line item in an agency's budget or to include multiple programs. The process used to allocate pool costs must ensure that no program or cost category is charged an amount in excess of what is allowed by law or regulation. Examples include:

(1) Administrative, program services or combined cost category pool. (An administrative pool may be used if an entity also has administrative costs associated with programs other than WIA Title I programs.)

(2) Facility or supplies line item cost pool.

(3) Workforce (multiple) programs.

e. Cost allocation plans must be submitted by August 31 of each year to Bureau of Administrative Support, Budgeting and Reporting, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

7.17(5) Indirect costs may be charged to programs, if the contractor has an approved indirect cost agreement with a federal cognizant agency or another state agency and the agreement covers the term of the grant. The plan must be in compliance with the applicable OMB circular for the entity charging indirect costs.

7.17(6) Time and attendance documentation must be maintained for any individual who receives any part of the individual's wage from programs funded by WIA and for all participants receiving payments based in whole or in part on attendance in programs funded by WIA.

7.17(7) A contractor receiving federal or state funds from the department and conducting its own procurement must have written procurement procedures. The procedures must be consistent with applicable state and local laws and regulations; the procurement standards set forth in this subrule; and the regulations as described in 29 CFR Part 95 for institutions of higher education and nonprofit organizations; or 29 CFR Part 97 for state and local government organizations.

a. State and federal procurement laws and regulations, including the procurement standards set forth in this subrule, take precedence over any contractor procurement policies and procedures.

b. The written procurement policies and procedures of each contractor must include, at a minimum, the following elements:

(1) Authority to take procurement actions;

(2) Standards of conduct;

(3) Methods of procurement;

(4) Solicitation procedures; and

(5) Documentation requirements.

c. There are three types of allowable procurement procedures: request for quotations (RFQ), request for proposals (RFP), and sole source. Contractors must conduct competitive procurement except as outlined in *"d"* below.

d. The circumstances or situations under which sole source procurement is allowable are limited to the following:

(1) Any single purchase of supplies, equipment, or services totaling less than $2,000 in the aggregate;

(2) Single participant work experience, vocational exploration, limited internship and on-the-job training contracts;

(3) Enrollment of individual participants in institutional skills training;

(4) All other individual training or services contracts involving only one participant, except where such contracts include the purchase of property. Such property must be purchased through competitive procedures;

(5) Activities and services that are provided by the fiscal agent, designated service provider, or subrecipient when a determination of demonstrated performance clearly documents the staff's ability to provide the training or services;

(6) A modification to a contract that does not substantially change the statement of work of that contract;

(7) After solicitation of an adequate number of sources, only one acceptable response was received;

(8) Any single service or workshop costing less than $5,000 identified in the regional customer service plan;

(9) Supplies, property and services which have been determined to be available from a single source; and

(10) An emergency situation for which the department or applicable governing boards provide written approval.

7.17(8) Property purchased with funds received through the department must be acquired in accordance with the department standards.

a. Prior approval must be obtained from the department before purchasing any property with a unit acquisition value of $5,000 or more.

b. Real property (real estate and land) shall not be purchased with funds received through the department.

c. Title to all property purchased with the department funds, including participant property, is vested with the state if the state is the majority owner. (If more than one agency contributed funds for the purchase of property, the majority owner is the entity that provided the largest portion of funds. In instances in which entities contributed the same amount of funding, the state is considered the majority owner.)

d. Prenumbered department property tags shall be affixed to all property with a unit acquisition value of $2,000 or more, and to all personal computer logic units and monitors. Unnumbered department property tags shall be affixed to all property with an aggregate value of $2,000 or more at time of purchase. Prenumbered and unnumbered tags will be provided to each region.

e. At a minimum, an inventory of all property must include the following:

1. Property tag number, if applicable;

2. Description of the property;

3. Stock or identification number, including model and manufacturer's serial number, when applicable;
4. Manufacturer;
5. Purchase date;
6. Purchase order number, when applicable;
7. Unit cost;
8. Location of property;
9. Condition of property;
10. Disposition of property as applicable; and
11. Grant agreement number.

f. A physical observation of all property must be conducted by the program operator prior to the end of each fiscal year (June 30). A complete inventory list must be provided to the department in each fiscal year's close-out package.

g. All property purchased with the department funds or transferred from programs under the authority of the department must be used to meet program objectives and the needs and priorities identified in the regional customer service plan. Property purchased with the department funds must be used by the coordinating service provider or program operator in the program or project for which it was acquired, as long as it is needed for that project or program. When no longer needed for the original program or project, the property may be used in other activities supported by the department.

h. The department-purchased property may be made available for use on other projects or programs providing such use does not interfere with the work on the project or program for which it was originally acquired. Priority should be given to other programs or projects supported by the department.

i. Disposition of any property, including participant property, is allowable only with the written concurrence of the department. The request to dispose of property must be in writing and include:
1. A description of the property;
2. Its purchase price;
3. Property tag number;
4. Current condition; and
5. Preference for the method of disposal.

j. The method of disposal may be the outright disposal by local waste agencies of items that are either unusable or unsafe or are currently of immaterial value. Those items that do not fit this definition may be sold locally, using a public process, to generate program income.

k. Requests to dispose of property are to be sent to Business Management, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

l. Any funds generated from sale of property are to be considered program income and must be used to further the objectives of the program(s) that paid for that property originally. If that funding source no longer exists, then the program income generated must be used for other allowable employment or training activities. In cases where the property was purchased from multiple funding sources, the program income generated may be attributed to the funding source that paid the greatest share of the cost of the property. Otherwise, the program income must be allocated by the same percentages as were used to purchase the property originally.

7.17(9) Certifications. All contractors must certify, as a condition to receive funding, compliance with the following laws and implementing regulations:

a. Workforce Investment Act of 1998 (P. L. 105-220) and all subsequent amendments.
b. U.S. Department of Labor implementing regulations.
c. Iowa Code chapters 84, 84A, and 96.
d. Iowa Administrative Code 877—Chapter 11.
e. Iowa Civil Rights Act of 1965.
f. OMB Circular A-87 for State and Local Governments.
g. OMB Circular A-122 for Non-Profit Entities.
h. OMB Circular A-21 for Institutions of Higher Education.
i. Appendix E of 45 CFR Part 74 for hospitals receiving research and development grants.

j. 29 CFR Part 97 for State and Local Governments.

k. 29 CFR Part 95 for Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

l. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

m. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

n. Americans with Disabilities Act of 1990.

o. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

p. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

q. Debarment and suspension; restrictions on lobbying (29 CFR Part 93).

r. Drug-Free Workplace (29 CFR Part 98).

s. Other relevant regulations as noted in the department's handbook for grantees and contracts for services with the department.

7.17(10) Unallowable costs. WIA funds shall not be spent on the following:

a. Wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system.

b. Expenses prohibited under any other federal, state or local law or regulation.

c. Foreign travel, if the source of funds is formula funds under Subtitle B, Title I of WIA.

d. Financial assistance for any program involving political activities.

e. The encouragement of a business to relocate from any location in the United States if the relocation results in any employees losing their jobs at the original location.

f. Customized, skill, or on-the-job training or company-specific assessments of job applicants or employees of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employees losing their jobs at the original location.

g. Any region may enter into an agreement with another region within the same labor market to pay or share costs of program services, including supportive services. The agreement must be approved by each regional board providing guidance to the area and shall be described in the regional customer service plan.

h. WIA funds cannot be used for public service employment except for disaster relief employment.

i. Fees may not be charged for placement or referral to a WIA activity. However, services, facilities, or equipment funded under the WIA may be used on a fee-for-service basis by employers in a region in order to provide employment and training activities to incumbent workers when such services, facilities, or equipment is not in use to provide services for WIA participants; if such use for incumbent workers would not have an adverse affect on providing services to WIA participants; and if the income derived from such fees is used to carry out WIA programs.

j. WIA funds may not be spent on employment generating activities, economic development, and other similar activities, unless they are directly related to training for eligible individuals. Employer outreach and job development activities are directly related to training for eligible individuals. Allowable employer outreach and job development activities include:

(1) Contacts with potential employers for the purpose of placement of WIA participants;

(2) Participation in business associations (such as chambers of commerce);

(3) Staff participation on economic development boards and commissions, and work with economic development agencies to provide information about WIA programs, to assist in making informed decisions about community job training needs, and to promote the use of first source hiring agreements and enterprise zone vouchering services;

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small and new business to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information of WIA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIA activities in the private sector.

k. The employment or training of participants in sectarian activities is prohibited, as is the construction, operation or maintenance of any part of any facility that is used for sectarian instruction or religious worship. However, WIA funds may be used for the maintenance of a facility that is not primarily devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants.

l. WIA Title I funds may not be used for the encouragement of a business to relocate from any location in the United States if the relocation results in any employee's losing a job at the original location. Also, WIA Title I funds may not be used for customized, skill, or on-the-job training or company-specific assessments of job applicants or employees of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee's losing a job at the original location. Pre-award reviews must be conducted to verify that employers are new or expanding and are not relocating from another area.

m. A participant in a program or activity authorized under Title I of WIA shall not displace (including a partial displacement) any current employee as of the date of the participation. In addition, a program or activity authorized under Title I of WIA must not impair existing contracts for services or collective bargaining agreements. If so, the appropriate labor organization and employer must provide written concurrence before the program or activity begins. Regular employees and program participants alleging displacement may file a complaint under WIA grievance procedures.

7.17(11) Record retention. Contractors must maintain all records pertinent to funds received from IWD, including financial, statistical, property, and participant records and supporting documentation.

a. Contractors shall maintain books, records, and documents that sufficiently and properly document and calculate all charges billed for a period of at least five years after the end of each contractor's fiscal year.

b. All records must be retained for a longer period of time if any litigation, audit, or claim is started and not resolved during that period. In these instances, the records must be retained either for five years after the end of the entity's fiscal year or for three years after the litigation, audit, or claim is resolved, whichever is longer.

c. Records for property must be retained for a period of three years after the final disposition of the property.

7.17(12) Disaster recovery system. The contractor must ensure that a satisfactory plan is in place for record recovery in the event that critical records are lost due to fire, vandalism, or natural disaster. All computerized or microfilmed MIS and accounting records must be safeguarded by off-site or multiple-site storage of such records.

7.17(13) Access to records. The state, U.S. Department of Labor, Director—Office of Civil Rights, the Comptroller General of the United States, and any of their authorized representatives must have timely and reasonable right of access to any pertinent books, documents, papers, or other records of the contractor to make audits, examinations, excerpts or transcripts. These rights are not limited to the record retention policies, but may last as long as the records are actually retained by the contractor. If the contractor has established a retention period longer than that required by the regulations, access to those records, by any of the above organizations, does not cease until the records are actually destroyed or discarded.

7.17(14) Records substitution. Substitution of original records can be made by microfilming, photocopying, film imaging or other similar methods.

877—7.18(84A,PL105-220) Auditing.

7.18(1) State and local governments, nonprofits, institutions for higher education and hospitals. Contractors that expend $300,000 or more in a fiscal year in federal funds shall have a single or program-specific audit conducted for that year. Contractors that expend $300,000 or more in federal funds in a fiscal year shall have a single audit conducted, in compliance with OMB Circular A-133 (A-133), except when they elect to have a program-specific audit conducted. Program-specific audits are allowed under the following circumstances:

a. A contractor expends federal funds under only one federal program; and

b. Federal program laws, regulations, or grant agreements do not require a financial statement audit of the contractor.

Contractors that expend less than $300,000 in federal funds in a fiscal year are exempt from federal audit requirements for that year. However, records must be made available for review or audit by the state and federal agencies and the General Accounting Office.

7.18(2) Commercial organizations. If such entities expend more than $300,000 in federal funds in their fiscal year, then either an A-133 audit or a program-specific audit must be conducted.

7.18(3) Vendors. In most cases, contractors need only ensure that procurement, receipt, and payment for goods or services comply with the laws, regulations, and the provisions of contracts or agreements. However, the contractor is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine compliance. If these transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of the contract or agreement.

7.18(4) Relation to other audits. Audits performed in accordance with A-133 are in lieu of any financial audit required under individual federal awards. To the extent that this audit meets a federal agency's needs, it shall rely upon and use such audits. However, this does not limit the authority of the federal agency, including the General Accounting Office, to conduct or arrange for additional audits. Federal agencies that conduct additional audits shall ensure that they build upon audit work previously conducted and be responsible for costs incurred for the additional audit work.

7.18(5) Frequency of audits. With the following exceptions, the audit is normally conducted on an annual basis. Entities which are required by constitution or statute, in effect on January 1, 1987, to have audits performed less frequently are permitted to undergo audits biennially. Also, nonprofit entities that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, are permitted to undergo audits biennially.

7.18(6) Completion and submittal. The audit must be completed and data collection/reporting package forms are to be submitted the earlier of 30 days after the completion of the audit or within nine months after the period covered by the audit. The data collection form and reporting package must also be submitted to the federal clearinghouse designated by the Office of Management and Budget. In addition, one copy of the reporting package and any management letters issued by the auditors are to be submitted to Budgeting and Reporting Bureau, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50319. Each contractor shall provide one copy of the reporting package to the contracting entity that provided the contractor with WIA funds.

7.18(7) Data collection form. Each contractor shall submit a data collection form to the contracting entity that provided the contractor with WIA funds. This form should state whether the audit was completed in accordance with A-133 guidelines and provide information concerning the federal funds and the results of the audit. The form used shall be approved by the Office of Management and Budget, available from the clearinghouse designated by OMB, and include a signature of a senior level representative of the contractor. Also, a certification must be submitted which states that the entity audited complied with the requirements of A-133, that the form was prepared in accordance with A-133, and that the form, in its entirety, is accurate and complete.

The auditors must sign a statement to be included with the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, the form is not a substitute for the reporting package, and the content of the form is limited to the data elements prescribed by OMB.

7.18(8) Reporting package. Auditors are required to complete a reporting package that includes:

1. Financial statements and schedule of expenditures of federal awards;
2. Summary schedule of prior audit findings;
3. Auditor's report(s); and
4. Corrective action plan.

7.18(9) Records retention. One copy of the data collection form and one copy of the reporting package must remain on file for three years from the date of submission to the federal clearinghouse.

7.18(10) Audit resolution. If an audit is completed with no findings, the department shall receive a notification of audit letter from the appropriate audit firm. The auditee shall be notified of the acceptance of that letter. In no case shall the date from receipt of an acceptable audit report or notification letter to the date of the final determination exceed 180 days. The department shall issue an initial determination within 30 days of receipt of each audit report with negative findings. Such initial determination shall identify costs questioned under the audit and either propose corrective actions to be taken or request additional documentation from the auditee.

a. Each initial determination shall include:

(1) Relevant statutory, regulatory or grant agreement citations supporting the findings and determinations;

(2) Necessary corrective actions required by the auditee to achieve compliance;

(3) A request for additional documentation, as necessary, to adequately respond to the findings; and

(4) Notice of the opportunity for an audit resolution conference with the department.

Each auditee shall be allowed a 30-day period in which to respond. An additional 30 days in which to respond may be requested in writing prior to the end of the initial 30 days. Such request shall include the reason the extension is needed and the date by which the response will be completed. Such a request must be received by the department no later than 30 days after the issuance of the initial determination. The auditee shall be notified in writing of the approval or disapproval of the request.

b. Within 30 days after the due date of the response to the initial determination, a final determination shall be issued and sent to the auditee. A final determination shall be issued whether or not a response to the initial determination has been made. The final determination shall include:

(1) Identification of those costs questioned in the audit report that will be allowed and an explanation of why those costs are allowed;

(2) Identification of disallowed costs, a listing of each disallowed cost and a description of the reasons for each disallowance;

(3) Notification to the chief elected official board and auditee of final determination and debt establishment, if relevant; and

(4) Information on the auditee's and chief elected official board's right to appeal through the department's appeals process.

When a debt has been established, the final determination will be used to set up a debt account in the amount of the debt.

7.18(11) The decision to impose the disallowed cost sanction shall take into consideration whether or not the funds were expended in accordance with that program's rules and regulations, the contract agreement, the Iowa Administrative Code and generally accepted accounting practices. Ignorance of the requirements is not sufficient justification to allow a previously questioned cost nor will the auditee's inability to pay the debt be a consideration in the decision to impose the disallowed cost sanction.

7.18(12) An audit file shall be maintained for each audit or notification letter received from each auditee. The audit may not be considered closed until such time as the federal clearinghouse designated by the Office of Management and Budget accepts the state's resolution report.

877—7.19(84A,PL105-220) Debt collection procedures.

7.19(1) Debt collection begins once the debt has been established by either an audit final determination or financial/program monitoring final decision letter. Debts arising from other forms of oversight will be identified through written communication to the chief elected official board.

7.19(2) If the debt is appealed, debt collection is suspended until that appeal is resolved. If the appeal is granted, debt collection shall not be established.

7.19(3) No earlier than 15 days, but not later than 20 days, after the debt has been established, an initial demand for repayment letter shall be sent to the chief elected official board by certified mail with return receipt requested. The initial demand letter informs the chief elected official board that a debt has been established and references the previous letter that established the debt. When applicable, instructions for requesting a waiver from debt shall be provided in the letter. The chief elected official board shall be granted 15 days from the date of the initial demand letter either to submit payment in full

or to forward the applicable request for waiver. If the chief elected official board refuses those options, does not accept the letter, or if no response is received within the required time frame, a final demand for payment shall be issued.

7.19(4) The final demand letter, also sent by certified mail with return receipt requested, shall ask for payment within 10 days from the date of that letter. If the chief elected official board refuses the options identified in the final demand letter, does not accept the letter or does not respond, legal action shall be taken. Such action will seek payment of the debt as well as applicable court costs and accrued interest.

7.19(5) The debt collection process is suspended if a request for waiver is received by the department in accordance with waiver policies applicable to that program. If the request for waiver is denied, the debt collection process will continue.

7.19(6) Payment options. Payment options include the following:

a. Payment in full. Payment of debts is generally a one-time cash payment due at the time of final determination by the department. In cases of documented financial hardship or for other reasons as allowed by law, the department may grant repayment as outlined in *"b"* or *"c"* below. However, the department may charge interest on debts from the date they are established.

b. Repayment agreement. A repayment agreement may be negotiated for a time period not to exceed one year. The agreement must be written and signed by both parties. The agreement must include a schedule of payments which includes exact payment dates, amount of debt and each payment, interest, dates of agreement and a requirement for payment in full for breach of the agreement by the chief elected official board.

c. Allocation reduction. Where allowable, a reduction may be made in a chief elected official board's budget to offset a debt. This may be done in cases where the misexpenditure of funds was not due to willful disregard of the Act or regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure. Such allocation reductions will come from administrative funds only.

877—7.20(84A,PL105-220) Grantee report requirements.

7.20(1) *Financial reports.* Financial status reports and funds verification forms are tools used by the department for oversight of financial activity, as well as providing the documentation necessary to complete state and federal reports. Failure to report in a timely manner may result in advance payment delays, negative performance evaluations or possible termination of the contract.

a. Financial status reports. Expenditures must be reported according to the programs and cost categories identified in the budget summary section of each contract. Revenue is reported according to the amount drawn from the department, via wire transfer, at the end of the reporting period. At least quarterly (September, December, March and June reports) expenditures must be reported on an accrued cost basis. Expenditures should further be reported on a modified first-in, first-out basis, which means the oldest year's funds, by cost category, are to be expended first. Financial status reports and fund source pages are to be submitted to Department of Workforce Development, Bureau of Financial Management, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

b. Funds verification forms. Funds drawn by the contractor from the department are done so by electronic funds transfer. The funds are generally requested on Monday of each week and distributed on Friday of the same week. Exceptions are made for weeks that include holidays, and those are addressed on a case-by-case basis. The financial management bureau of the department shall notify contractors in advance of call-in date changes. Funds are requested by preparation of an electronic funds verification form that is attached to an E-mail request. This is sent to the financial management bureau and is the basis for the Friday wire transfer. In order to establish a wire transfer system for a contractor, bank account information must be received by the department two weeks prior to the first wire transfer of funds. The timing of the contractor's receipt of funds and the disbursement of those funds must be done in a manner that minimizes the time that elapses between those two transactions.

7.20(2) *Program reports.* The information entered into the department's management information system is the official database to be used for reporting. Reports are to be submitted to the program coordinator responsible for each individual program. Monthly expenditure reports are due the twentieth

of the month following the month that is being reported. Final federal program reports for adult and dislocated worker programs are due August 15 of each year.

Final federal program reports for youth programs are due May 15 of each year.

7.20(3) *Performance reports.* Progress on performance objectives must be reported to the department on a quarterly basis. Quarterly progress reports are due from each regional workforce investment board on October 30, January 31, and April 30 of each year. The annual progress report is due from each region to the department on August 15 of each year.

877—7.21(84A,PL105-220) Compliance review system. The department shall conduct annual financial, program, and quality reviews.

7.21(1) *Financial compliance reviews.* An annual financial compliance review shall be conducted by the department. The on-site reviews will be of all programs administered through written agreement between the department, the subrecipient, and the fiscal agents. Monitoring of non-fiscal agent entities will be limited to those subcontractors of the department that receive $100,000 or more during the fiscal year. The monitoring will be performed to ensure compliance with, but is not limited to, federal and state laws and regulations, the workforce development center system handbook, welfare-to-work handbook, contractual agreements with the department, and generally accepted accounting principles, memorandum(s) of understanding, resource sharing agreements and cost allocation plans.

7.21(2) *Program compliance reviews.* An annual program compliance review shall be conducted by the department. The reviews will focus on the designated service providers for various programs. The on-site reviews include, but are not limited to, the following: activities and services; applicant and participant processes; participant eligibility; participant file review; procurement procedures; management information systems; local plans; and verifications of program performance. The review will ensure local compliance with the applicable state and federal laws and regulations.

7.21(3) *Initial determination.* Separate initial determination letters are completed for each on-site visit. The report shall include a description of findings, which includes specific references to the standards, policies or procedures which have been violated; if necessary, recommended and required corrective action to be implemented by the contractor, designated service provider or coordinating service provider; a description of any questioned costs, including the amount; and time frames for completing any corrective action and responding to the initial report. Responses to the initial determination letter shall be submitted to the department within 20 days from the date of receipt of the letter.

7.21(4) *Final determination.* A final determination letter shall be issued to the subrecipient within 20 days after receipt of the response from the fiscal agent. The letter shall state the department's determination on all findings that required a response and the notification of the right to appeal the final determination. If any findings are unresolved or if costs are disallowed, the letter shall also include a description of the unresolved finding(s); a citation or reference to the applicable regulations or policies on which the finding was based; the final determination of the department on each unresolved finding; and, if there are disallowed costs, the amount of costs disallowed and notification that an initial demand letter shall be sent. Copies of the final determination letter shall be sent to each region's regional workforce investment board, chief elected official board, and coordinating service provider chairs.

7.21(5) *Follow-up.* Follow-up on findings identified shall be conducted during the following fiscal year's review. The department's follow-up will review corrective actions taken in response to those findings.

7.21(6) *Appeals.* The subrecipient may submit an appeal of a final determination within ten days of receipt of the final determination. The appeal may be on behalf of a designated service provider, coordinating service provider or the fiscal agent. The appeal must be directed to the Division Administrator, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. The request for an appeal must also include a copy of the final determination and the basis for the appeal. Appeals shall be reviewed by a three-member appeal committee which shall include one staff member from three different bureaus in the department. Appeals shall be reviewed by staff not actually involved in the on-site monitoring

that resulted in the original finding and subsequent final determination. A decision on the appeal shall be rendered by a majority vote of the appeal committee. If the appeal committee cannot arrive at a decision, the division administrator shall make the final decision.

7.21(7) *Quality reviews.* The department shall conduct annual quality reviews. The reviews will focus on overall workforce development center system performance, customer satisfaction, and continuous improvement.

a. System performance measures will be reviewed with the coordinating service provider to identify areas of strength and areas that may need improvement. The review will include an interview with the required workforce development center system partners individually or the partners as a group, or both. The regional customer service plan will also be reviewed to determine what progress is being made to meet the needs and priorities identified by the regional workforce investment board and chief elected official board. In the event system performance standards are not being met, the objective of the review will be to help identify methods for improvement. Should the same issues be identified for two consecutive years, a corrective action plan will be required by the department. All other issues will be referred to the regional workforce investment board for its action.

b. The memorandum(s) of understanding between the workforce development center system partners and the regional workforce investment board will be reviewed. The purpose is to ensure that the products and services offered through the system are available, accessible, and being used.

c. The review will look at efforts being made to coordinate workforce development services throughout the region, to build new partnerships, and to assess the results of these efforts. This may include, but is not limited to, joint grant applications, efforts to integrate services and minimize duplication from the system, level of participation in the system by required and voluntary partners, and unique funding or service delivery methods involving multiple service providers.

d. Overall customer satisfaction of the workforce development center system is to be evaluated. Randomly selected program participants and employers identified in the common intake system will be interviewed. The interview will include, at a minimum, a review of the customer's file as presented on the common intake system, the customer's overall perception of how the customer was treated, an evaluation of the services offered as compared to the needs of the customer, and a review of the case file with the case manager.

e. An exit interview to review the findings will be conducted with the regional workforce investment board and coordinating service provider. Methods for improving systems will be discussed and an agreement reached on their implementation. The coordinating service provider will have 14 days to respond to the findings and recommendations, at which time a final report will be prepared and delivered to the chair of the regional workforce investment board.

877—7.22(84A,PL105-220) Equal opportunity compliance. Reserved.

877—7.23(84A,PL105-220) Regional level complaint procedures. Each coordinating service provider must establish procedures for grievances and complaints. At a minimum, the local procedures must provide:

7.23(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local workforce investment system, including one-stop partners and service providers;

7.23(2) An opportunity for an informal resolution and a hearing to be completed within two days of the filing of the grievance or complaint;

7.23(3) A process which allows an individual alleging a labor standards violation to submit a grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

7.23(4) An opportunity for a local level appeal to the department when:

a. No decision is reached within 60 days; or

b. Either party is dissatisfied with the local hearing decision.

7.23(5) Participants, service providers and other interested individuals must be informed of the local complaint procedure in writing, as well as the ability and procedures to appeal local decisions to the department.

877—7.24(84A,PL105-220) Department complaint procedures. Complaints may be filed with the department to resolve alleged violations of the Act, federal or state regulations, grant agreement, contract or other agreements under the Act. The department's complaint procedure may also be used to resolve complaints with respect to audit findings, investigations or monitoring reports.

7.24(1) Grievances and complaints from customers and other parties related to the regional workforce development center system and regional programs shall be filed through regional complaint procedures. Any party which has alleged violations at the regional level, and has filed a complaint at the regional level, may request review by the department if that party receives an adverse decision or no decision within 60 days of the date the complaint was filed at the regional level.

7.24(2) Any interested person, organization or agency may file a complaint. Complaints must be filed within 90 calendar days of the alleged occurrence. Complaints must be clearly portrayed as such and meet the following requirements:

a. Complaints must be legible and signed by the complainant or the complainant's authorized representative;

b. Complaints must pertain to a single subject, situation or set of facts and pertain to issues over which the state has authority (unless appealed from the regional level);

c. The name, address and telephone number (or TDD number) must be clearly indicated. If the complainant is represented by an attorney or other representative of the complainant's choice, the name, address and telephone number of the representative must also appear in the complaint;

d. Complaints must state the name of the party or parties complained against and, if known to the complainant, the address and telephone number of the party or parties complained against;

e. Complaints must contain a clear and concise statement of the facts, including pertinent dates, constituting the alleged violations;

f. Complaints must cite the provisions of federal or state regulations, grant agreements, or other agreements believed to have been violated, if applicable;

g. Complaints must state the relief or remedial action(s) sought;

h. Copies of documents supporting or referred to in the complaint must be attached to the complaint; and

i. Complaints must be addressed to Complaint Officer, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

7.24(3) A complaint is deemed filed with the department when it has been received by the complaint officer and meets the requirements outlined in 7.24(2). Upon receipt of a complaint, the department will send a copy of the complaint and a letter of acknowledgment and notice to the complainant and any persons or entities cited in the complaint within seven calendar days. The letter of acknowledgment and notice shall contain the filing date and notice of the following opportunities:

a. The opportunity for informal resolution of the complaint at any time before a hearing is convened; and

b. The opportunity for a party to request a hearing by filing with the complaint officer within seven calendar days of receipt of the acknowledgment of the complaint.

7.24(4) Failure to file a written request for a hearing within the time provided constitutes a waiver of the right to a hearing, and a three-member panel shall rule on the complaint based upon the information submitted. If a hearing is requested within seven calendar days of receipt of the acknowledgment of the complaint, the hearing shall be held within 20 calendar days of the filing of the complaint. The party(ies) to the complaint shall have the opportunity to submit written evidence, statements, and documents in a time and manner prescribed by the complaint officer.

7.24(5) The complaint officer shall convene a review panel of three agency staff members to review complaints within 20 calendar days of the receipt of the complaint. The review panel may, at its

discretion, request oral testimony from the complainant and the parties complained against. Within 30 calendar days of the receipt of the complaint, the review panel shall issue a written decision, including the basis for the decision and, if applicable, remedies to be granted. The decision shall detail the procedures for a review by the director if the complainant is not satisfied with the decision.

7.24(6) Party(ies) may appeal the decision by filing an appeal with the complaint officer no later than 10 calendar days from the issuance date of the decision. The complaint officer will forward the complaint file to the director for review. If no appeal of the decision is filed within the time provided, the decision shall become the final agency decision.

7.24(7) A complaint may, unless precluded by statute, be informally settled by mutual agreement of the parties at any time before a hearing is convened. The settlement must be effected by a settlement agreement or a statement from the complainant that the complaint has been withdrawn or resolved to the complainant's satisfaction. The complaint officer must acknowledge the informal settlement and notify the parties of the final action. With respect to the specific factual situation which is the subject of controversy, the informal settlement constitutes a waiver by all parties of the formalities to which they are entitled under the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A, the Act, and the rules and regulations of the Act.

7.24(8) Upon receipt of a timely request for a hearing, the complaint officer shall assign the matter to a panel. The panel will give all parties at least seven days' written notice either by personal service or certified mail of the date, time and place of the hearing. The notice may be waived in case of emergency, as determined by the panel, or for administrative expediency upon agreement of the interested parties.

a. The notice of hearing shall include:

(1) A statement of the date, time, place, and nature of the hearing;

(2) A brief statement of the issues involved; and

(3) A statement informing all parties of their opportunities at the hearing.

b. All parties are granted the following opportunities at hearing:

(1) Opportunity for the complainant to withdraw the request for hearing before the hearing;

(2) Opportunity to reschedule the hearing for good cause, provided the hearing is not held later than 20 days after the filing of the complaint;

(3) Opportunity to be represented by an attorney or other representative of choice at the complainant's expense;

(4) Opportunity to respond and present evidence and bring witnesses to the hearing;

(5) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the complaint officer;

(6) Opportunity to question any witnesses or parties;

(7) The right to an impartial review panel; and

(8) A final written agency decision shall be issued within 60 days of the filing of the complaint.

7.24(9) An appeal to the director must be filed within 10 calendar days from the issuance date of the decision and include the date of filing the appeal and the specific grounds upon which the appeal is made. Those provisions upon which an appeal is not requested shall be considered resolved and not subject to further review. Appeals must be addressed to Complaint Officer, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

Upon receipt of an appeal, the complaint officer shall forward the complaint file to the director. The complaint officer shall give written notice to all parties of the filing of the appeal and set a deadline for submission of all written evidence, statements, and documents. The director shall consider all timely filed appeals, exceptions, statements, and documents at the time the decision is reviewed. With the consent of the director, each party may present oral argument. The director may adopt, modify or reject the review panel's decision or remand the case to the review panel for the taking of such additional evidence and the making of such further findings of fact, decision and order as the director deems necessary.

Upon completing the review of the review panel's decision, the director shall issue and forward to all parties a final written decision no later than 60 days after the filing of the initial complaint.

7.24(10) The director's decision is final unless the Secretary of Labor exercises the authority of federal review in accordance with 20 CFR Part 667. Federal level review may be accepted by the Secretary if the complaint meets the requirements of 20 CFR Part 667. Upon exhaustion of the state's grievance and complaint procedure, or when the Secretary has reason to believe that the state is failing to comply with the Act, the state plan, or the region's customer service plan, the Secretary must investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true.

7.24(11) Any party receiving an adverse decision at the regional level may file an appeal within 10 calendar days to the department's complaint officer. In addition, any complaint filed at the regional level with no decision within 60 days of the date of the filing may be reviewed by the department. The request to review the complaint must be filed with the complaint officer within 15 calendar days from the date on which the decision should have been received. The appeal or request for review must comply with the procedures as prescribed in 7.24(2) for filing a complaint. The parties involved shall be afforded the rights and opportunities for filing a state level complaint.

The complaint officer shall review all complaints filed within seven calendar days. If the subject and facts presented in the complaint are most relevant to regional policy, the complaint officer shall remand the complaint to the coordinating service provider of the appropriate region for resolution.

Failure to file the complaint or grievance in the proper venue does not negate the complainant's responsibility for filing the complaint in the appropriate time frames.

7.24(12) A unit or combination of units of general local governments or a rural concentrated employment program grant recipient that requests, but is not granted automatic or temporary and subsequent designation as a local workforce investment area, may appeal to the state workforce development board within 30 days of the nondesignation. If the state workforce development board does not grant designation on appeal, the decision may be appealed to the Secretary of Labor within 30 days of the written notice of denial. The appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210. The appellant must establish that it was not accorded procedural rights under the appeal process described in the state plan or establish that it meets the requirements for designation in the Act. The Secretary shall take into account any comments submitted by the state workforce development board.

7.24(13) Training providers have the opportunity to appeal denial of eligibility by a regional workforce investment board or the department, termination of eligibility or other action by a regional workforce investment board or the department, or denial of eligibility as a provider of on-the-job training or customized training by the coordinating service provider. All appeals must be filed with the department within 30 days of receipt of written notice of denial or termination of eligibility. Appellants must follow the procedures for a complaint described in 7.24(2). Appeals shall be handled in the same manner as a complaint. State decisions issued under this subrule may not be appealed to the Secretary of Labor.

7.24(14) WIA participants subject to testing for use of controlled substances and WIA participants who are sanctioned after testing positive for the use of controlled substances may appeal to the department using the procedures for a complaint described in 7.24(2). State decisions issued under this subrule may not be appealed to the Secretary of Labor.

7.24(15) A workforce development region may appeal nonperformance sanctions to the Secretary of Labor under the following conditions:

a. The region has been found in substantial violation of WIA Title I, and has received notice from the governor that either all or part of the local plan will be revoked or that a reorganization will occur; or

b. The region has failed to meet regional performance measures for two consecutive years and has received the governor's notice of intent to impose a reorganization plan.

Revocation of the regional plan or reorganization does not become effective until the time for appeal has expired or the Secretary has issued a decision. An appeal must be filed within 30 days after receipt of written notification of plan revocation or imposed reorganization. It must be submitted by certified mail, return receipt requested, to Secretary of Labor, Attention: ASET, U.S. Department of Labor, Washington, DC 20010. A copy of the appeal must be simultaneously provided to the governor. In deciding the

appeal, the Secretary may consider comments submitted in response from the governor. The Secretary will notify the governor and appellant in writing of the Secretary's decision within 45 days after receipt of the appeal filed under 7.24(15)*"a"* above; and within 30 days after receipt of appeals filed under 7.24(15)*"b"* above.

877—7.25(260H) Regional industry sector partnerships. Rescinded **ARC 7630C**, IAB 2/7/24, effective 3/13/24.

These rules are intended to implement Iowa Code sections 84A.1 to 84A.1B, Iowa Code chapter 96, and the Workforce Investment Act of 1998.

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CHAPTER 31
STATEWIDE WORK-BASED LEARNING INTERMEDIARY NETWORK

[Prior to 8/23/23, see Education Department[281] Ch 48, Division I]

Rescinded **ARC 7631C**, IAB 2/7/24, effective 3/13/24