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

In addition to the changes adopted by agencies, the replacement 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 imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

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) 281-8157

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191—70.1(505,514F) Purpose. The purpose of this chapter is to:

1. Promote the delivery of appropriate health care in a cost-effective manner.
2. Ensure that any utilization review system used by a third-party payor adheres to reasonable standards for conducting orderly and efficient utilization review processes.
3. Ensure that any utilization review system used by a third-party payor does not result in an unfair discrimination between enrollees of essentially the same class or risk in the benefits payable under a contract for health benefits.
4. Foster greater coordination and cooperation between health care providers and utilization reviewers.
5. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred.

191—70.2(505,514F) Definitions. As used in this chapter, unless the context otherwise requires:

"Commissioner" means the commissioner of insurance.

"Enrollee" means an individual who has contracted for or who participates in health benefits coverage provided through any third-party payor.

"Third-party payor" means any of the following entities:

1. An insurer subject to Iowa Code chapter 509 or 514A.
2. A health service corporation subject to Iowa Code chapter 514.
3. A health maintenance organization subject to Iowa Code chapter 514B.
4. A preferred provider arrangement subject to 191—Chapter 27, Iowa Administrative Code.
5. A multiple employer welfare arrangement.
6. A third-party administrator.
7. A fraternal benefit society.
8. Any other benefit program providing payment, reimbursement, or indemnification for health care costs for an enrollee or an enrollee's eligible dependents.

"Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. These standards do not apply to requests by any person or provider for a clarification, guarantee or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically so stated, verification of benefits, preauthorization, and prospective or concurrent utilization review programs shall not be construed in any context as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

191—70.3(505,514F) Application.

70.3(1) A third-party payor which provides health benefits to enrollees residing in the state of Iowa shall not conduct utilization review, either directly or indirectly, by contract with a third party that does not meet the requirements established for accreditation by the Utilization Review Accreditation Commission (URAC) or another national accreditation entity recognized and approved by the commissioner.

70.3(2) On or before March 1 of each year, a third-party payor conducting utilization review shall provide the commissioner with a certification that it is in compliance with this chapter, and shall continuously meet all requirements of the relevant standards in addition to the following information:

a. Name, address, telephone number and normal business hours of the third-party payor and of the utilization review agent if not the same as the third-party payor.

b. Name, address, and telephone number of a person for the commissioner to contact in connection with utilization review compliance.

Any material changes in the information filed in accordance with this rule shall be filed with the commissioner within 30 days of the change.

70.3(3) This chapter does not apply to any utilization review performed solely under contract with the federal government for review of patients eligible for services under:

a. Title XVIII (Medicare) of the federal Social Security Act;

b. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

c. Any other federal employee health benefit plan.

191—70.4(505,514F) Standards. For the purpose of certification and compliance under rule 70.3(505,514F), the most recently available utilization review standards adopted by URAC shall be used.

A copy of the standards and application for accreditation may be obtained from the Utilization Review Accreditation Commission, 1227 25th Street N.W., Suite 610, Washington, D.C. 20037. A copy of the standards shall be readily available and maintained on the premises of any third-party payor conducting utilization review.

191—70.5(505,514F) Retroactive application. A third-party payor shall not impose a retroactive change in procedure that creates an impossibility or impracticability of compliance that would result in a refusal of payment.

191—70.6(505,514F) Variances allowed. Upon application by a third-party payor, the commissioner may approve a variance from the URAC standards for good cause shown, provided such conditions are consistent with the purpose of this chapter. The commissioner shall require the third-party payor to provide reasonable written notice to providers of any approved variance.

70.6(1) Notification of allowed coverage and denials. Notification of the attending physician and treatment facility (as used and defined in the URAC standards) by telephone within one working day is not required provided a documented communication with the physician or the physician's staff and treatment facility is made within one working day of a determination not to certify an admission or extension of a hospital stay.

70.6(2) Individuals who are not licensed health care professionals, but who are otherwise qualified, may perform routine utilization review under the following conditions:

a. They have received full orientation by the utilization review organization relating to administrative practices and policies;

b. They have been fully trained in the application of the medical and/or benefit screening criteria established or endorsed by the utilization review organization;

c. They are trained to refer review requests to licensed health care professionals when the required review exceeds their own expertise, when not addressed in the criteria established or endorsed by the utilization review organization, or when requested by the provider; and

d. They are under the direct supervision of a licensed health care professional.

191—70.7(505,514F) Confidentiality. A third-party payor shall require a contract utilization review agent to adhere to the same standards of patient medical record confidentiality as are directly applicable to the third-party payor.

191—70.8(76GA,ch1202) Utilization review of postdelivery benefits and care. When performing utilization review of inpatient hospital services related to maternity and newborn care, including but not limited to length of postdelivery stay and postdelivery follow-up care, a third-party payor shall use the guidelines adopted under the provisions of 191—81.3(76GA,ch1202) and shall not deselect, require additional documentation, require additional utilization review, terminate services to, reduce payment to, or in any manner provide a disincentive to an attending physician solely on the basis that the attending physician provided or directed the provision of services in compliance with those guidelines. This does not preclude a third-party payor from monitoring a patient's stay or making

reasonable inquiries necessary to assess patient progress in accordance with the guidelines and to coordinate discharge planning or postdischarge care.

191—70.9(505,507B,514F) Enforcement. The remedy for noncompliance with this chapter shall be those remedies authorized by Iowa Code chapters 505 and 507B, including, upon order of the commissioner, payment of outstanding charges, as determined to be reasonable by the commissioner. Upon a finding of a pattern or practice of noncompliance with this chapter, the commissioner may also suspend a person's authority to conduct utilization review.

191—70.10(514F) Credentialing—retrospective payment.

70.10(1) *Purpose.* This rule implements Iowa Code section 514F.6 [2008 Iowa Acts, House File 2555, section 28] which requires the commissioner to adopt rules to provide for the retrospective payment of clean claims for covered services provided by a physician during the credentialing period, once the physician is credentialed.

70.10(2) *Definitions.* For purposes of this rule, the definitions found in Iowa Code section 514F.6 [2008 Iowa Acts, House File 2555, section 28] shall apply. In addition, the following definitions shall apply:

"Application date" means the date on which the health insurer or other entity responsible for the credentialing of physicians on behalf of the health insurer receives the physician's completed application for credentialing.

"Clean claim" means clean claim as defined in Iowa Code section 507B.4A(2)*"b."*

"Health insurer" means the same as a carrier, as defined in Iowa Code section 513B.2(4), that provides health insurance coverage, as defined in Iowa Code section 513B.2(12).

70.10(3) *Retrospective payment of clean claims.* A health insurer shall make retrospective payment for all clean claims submitted by a physician after the credentialing period for covered services provided by the physician during the credentialing period subject to all of the following:

a. The credentialing period shall begin on the application date and end on the date the health insurer or other entity responsible for credentialing physicians on behalf of the health insurer makes a final determination approving the physician's application to be credentialed.

b. The health insurer or other entity responsible for credentialing physicians on behalf of the health insurer shall notify an applicant of its determination regarding a properly completed application for credentialing within 90 days of receipt of an application containing all information required by the health insurer's credentialing form.

c. The physician shall not submit any claims to the health insurer during the credentialing period.

d. A health insurer shall not be required to pay any claims submitted by a physician during the credentialing period.

e. The health insurer's time period for timely submission of claims shall not start until the credentialing period has ended. The health insurer's rules pertaining to timely submission shall not be used to deny payment of any clean claims for medical services provided by a physician during the credentialing period, so long as the physician submits all such claims within the time period required by the health insurer's rules beginning on the date the physician is credentialed.

f. After the physician has been credentialed, the physician shall submit all claims to the health insurer for covered services provided by the physician during the credentialing period.

g. After the physician has been credentialed, a health insurer shall pay all clean claims submitted by the physician for covered services provided by the physician during the credentialing period within the time periods specified in 191—15.32(507B).

70.10(4) *Applicability.*

a. This rule shall not apply to services provided by a physician that are covered by Medicaid, Medicare, TRICARE, or other health care benefit programs subject to federal regulations regarding eligibility and provider payments.

b. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing physicians on behalf of the health insurer to take any action in violation of the requirements

of the National Committee for Quality Assurance (NCQA) or Utilization Review Accreditation Commission (URAC).

c. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing physicians on behalf of the health insurer to credential a physician or to permit a noncredentialed physician to participate in the health insurer's provider network.

70.10(5) *Effective date.* This rule shall become effective on July 22, 2009.

[**ARC 7880B**, IAB 6/17/09, effective 7/22/09]

These rules are intended to implement Iowa Code chapter 507B and sections 505.8, 514C.12, and 514F.2.

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

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261—27.1(15) Purpose. The purpose of the neighborhood stabilization program is to prevent or reduce the decline of neighborhoods caused by abandoned and foreclosed homes, primarily by providing assistance for the redevelopment of the abandoned and foreclosed properties.
[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Act" or *"HERA"* means Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009.

"Activity" means a discrete category of work as determined to be eligible under program guidelines.

"Blighted structure" means a structure exhibiting objectively determinable signs of deterioration sufficient to constitute a threat to public health, safety or welfare.

"CDBG" means the community development block grant program, authorized by Title I of the Housing and Community Development Act of 1974, as amended as of February 28, 2009.

"Contract" means the document executed between IDED and a recipient and all other instruments or documents executed by a recipient or otherwise required in connection with the contract, including the NSP plan or application together with any related submittal documents.

"Entitlement community" means principal cities of metropolitan statistical areas (MSAs); other metropolitan cities with populations of at least 50,000; and qualified urban counties with populations of at least 200,000 (excluding the population of entitled cities).

"Foreclosed property" means a home or residential property for which any mortgage or tax foreclosure with respect to such property is complete, and the title of such property has transferred to the appropriate person as determined under the mortgage or tax foreclosure proceeding.

"Home" means any type of permanent residential dwelling unit including, but not limited to, detached single-family structures, townhouses, condominium units, multifamily rental apartments (covering the entire property), and manufactured homes which are treated under state law as real estate and not personal property.

"HUD" means the federal Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development established in Iowa Code chapter 15.

"Land bank" means any governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of homes and residential properties that have been foreclosed upon.

"Low-income household" means a household earning no more than 50 percent of the area median income as defined by HUD.

"Low-income person" means a member of a low-income household as defined above.

"Low-, moderate-, and middle-income household" or *"LMMH"* means a household earning no more than 120 percent of the area median income as defined by HUD.

"Low-, moderate-, and middle-income person" means a member of a low-, moderate-, and middle-income household as defined above.

"Non-entitlement community" means a unit of general local government which does not receive CDBG funds directly from HUD as part of the entitlement program (entitlement cities and urban counties). Non-entitlement areas are cities with populations of less than 50,000 (except cities that are designated principal cities of metropolitan statistical areas) and counties with populations of less than 200,000.

"Residential property" means, collectively, homes and vacant land currently designated for residential use, such as through a zoning ordinance.
[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.3(15) Program eligibility.

27.3(1) *Eligible applicants.* Eligible applicants are those communities within the state with the greatest need, as determined by IDED using the methodology specified by HUD, which would include the following factors: areas with the greatest percentage of home foreclosures, areas with the highest percentage of homes financed by a subprime mortgage-related loan, and areas likely to face a significant rise in the rate of home foreclosures.

27.3(2) *Eligible activities.* Eligible activities, as limited by federal law and regulation, are the following:

a. Financing mechanisms for the purchase and redevelopment of foreclosed homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;

b. Purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;

c. Establishment and operation of land banks for homes and residential properties that have been foreclosed upon;

d. Demolition of blighted structures;

e. Redevelopment of demolished or vacant properties.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.4(15) Allocation of funding. IDED will allocate the available federal funding between the large entitlement communities and the smaller non-entitlement communities based on measurable statistics relating to the three factors required by federal law relating to the determination of need as described in 27.3(1). After that division of funding has been determined, IDED will determine an amount to be allocated to each of the entitlement communities based upon the need factors for each of the respective communities. If allocation results in an amount of funding to a community or communities that is too small to result in an effective program, IDED may reallocate those funds to the other entitlement communities according to the percentages calculated based on the need factors. The funding available to the smaller non-entitlement communities will be distributed on a competitive basis, upon receipt and review of applications from each community. The maximum award to a non-entitlement community will be $1 million.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.5(15) Application procedures.

27.5(1) *Application procedures for entitlement communities.* Eligible entitlement communities shall submit to IDED a neighborhood stabilization plan that provides details on their proposed activities, includes a project budget, and demonstrates compliance with federal rules and regulations governing the program.

27.5(2) *Application procedures for non-entitlement communities.* Non-entitlement communities requesting funds must complete an application similar in content to the plan submitted by the entitlement communities.

27.5(3) *Application/plan contents.* The plan submitted by the entitlement communities, and the application submitted by the non-entitlement communities, shall include at least the following information:

a. General project description;

b. Budget for all activities;

c. Projected start and end dates;

d. Demonstration of how the project will meet all federal requirements, including the requirements to benefit households with incomes of less than 120 percent of area median income and that at least 25 percent of the funding will benefit households with incomes of less than 50 percent of area median income;

e. Targeted geographical area of the community for the proposed activities;

f. Additional detail on each of the separate proposed activities.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.6(15) Plan and application review process.

27.6(1) *Entitlement communities.* IDED will review each plan from an entitlement community to ensure that the proposed activities are eligible activities and that the plan as proposed is in conformance with federal law and regulations. Plans that meet both tests will be approved.

27.6(2) *Non-entitlement communities.* Applications from non-entitlement communities will be reviewed on a competitive basis. Each application will be reviewed, rated, and ranked by an IDED review committee on the following factors:

a. Need for assistance;

b. Impact of the proposed activities;

c. Degree of targeting of the activities within the community;

d. Timeliness of the proposed project;

e. Degree to which green development concepts are incorporated into the proposal.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.7(15) Award process. Upon award decisions, each community that submitted a plan or an application will be notified in writing of the department's decision. Successful applicants will be required to execute a contract with IDED, which will include the proposed activities and budget, the terms of fund disbursement, the reporting requirements, and the federal and state compliance requirements.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.8(15) Project management.

27.8(1) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED.

27.8(2) *Record keeping and retention.* Recipients shall retain all financial records, supporting documents and all other records pertinent to the NSP activities for five years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to NSP funds.

27.8(3) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

27.8(4) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Such changes would include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by a recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between a recipient and IDED.

27.8(5) *Contract closeout.* Upon contract expiration, IDED will initiate contract closeout procedures.

27.8(6) *Compliance with federal, state and local laws and regulations.* Recipients shall comply with all applicable laws and rules, including the applicable federal CDBG and HERA regulations, any provisions of the Iowa Code governing activities performed under this program, and with applicable local regulations.

27.8(7) *Remedies for noncompliance.* At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include, but are not limited to, the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

27.8(8) *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include

reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

These rules are intended to implement Iowa Code sections 15.108(11) and 15.109 and the Housing and Economic Recovery Act of 2008.

[Filed Emergency ARC 7709B, IAB 4/8/09, effective 3/20/09]

[Filed ARC 7845B (Notice ARC 7710B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]

CHAPTER 65
BROWNFIELD REDEVELOPMENT PROGRAM

261—65.1(15) Purpose. The brownfield redevelopment program is designed to provide financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield sites.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.2(15) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15.292 shall apply to this chapter. The following definitions shall also apply:

"Acquisition" means the purchase of brownfield property.

"Advisory council" means the brownfield redevelopment advisory council as established in Iowa Code section 15.294 consisting of five members.

"Board" means the Iowa economic development board pursuant to Iowa Code section 15.103.

"Brownfield site" means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site shall not include property which has been placed, or is proposed for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq.

"CERCLA" means Comprehensive Environmental Response, Compensation, and Liability Act as defined at 42 U.S.C. 9601 et seq.

"Characterization" means determination of both the nature and extent of contamination in the various media of the environment.

"Community" means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Contaminant" means any hazardous substance found in the various media of the environment.

"Council" means the brownfield redevelopment advisory council, as established in Iowa Code section 15.294.

"Department" or *"IDED"* means the Iowa department of economic development.

"Fund" means the brownfield redevelopment fund established pursuant to Iowa Code section 15.293.

"Grant" means the donation or contribution of funds with no expectation or requirement that the funds be repaid.

"Grayfield site" means an industrial or commercial property meeting all of the following requirements:

1. Infrastructure on the property is outdated or prevents an efficient use of the property, including vacant, blighted, obsolete, or otherwise underutilized property.
2. Property improvements and infrastructure are at least 25 years old and one or more of the following conditions exist:

- Thirty percent or more of a building located on the property is available for occupancy and has been vacated or unoccupied for at least 12 months;
- Assessed value of improvements on the property has decreased by 25 percent or more;
- The property is used as a parking lot;
- Improvements on the property no longer exist.

"Green development" means development which meets or exceeds the sustainable design standards as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

"Hazardous substance" means "hazardous substance" as defined in 567—Chapter 137 and includes petroleum substances not addressed in 567—Chapter 135.

"Loan" means an award of assistance with the requirement that the award be repaid, and with term, interest rate, and any other conditions specified as part of the award. A deferred loan is one for which the payment of principal or interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

A loan guarantee is a third-party commitment to repay all or a portion of the loan in the event that the borrower defaults on the loan.

"Qualifying investment" means the purchase price, cleanup cost(s), and redevelopment cost(s) directly related to a qualifying redevelopment project.

"Qualifying investor" means an applicant who has been accepted by the department to receive a redevelopment tax credit.

"Qualifying redevelopment project" means a brownfield or grayfield site being redeveloped or improved by the property owner. "Qualifying redevelopment project" does not include a previously remediated or redeveloped brownfield site.

"Redevelopment" means projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

"Remediation" includes characterization, risk assessment, removal and cleanup of environmental contaminants located on and adjacent to a brownfield site. Funding awards used for remediation must comply with appropriate Iowa department of natural resources requirements and guidelines.

"Risk evaluation" means assessment of risks to human health and environment by way of guidelines established in 567—Chapter 137.

"Sponsorship" means an agreement between a city or county and an applicant for assistance under the brownfield redevelopment program in which the city or county agrees to offer assistance or guidance to the applicant. Sponsorship is not required if the applicant is a city or county.

"Sustainable design" means construction design intended to minimize negative environmental impacts and to promote the health and comfort of building occupants including, but not limited to, measures to reduce consumption of nonrenewable resources, minimize waste, and create healthy, productive environments. Sustainable design standards are also known as green building standards pursuant to Iowa Code section 103A.8B.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.3(15) Eligible applicants. To be eligible to apply for program assistance, an applicant must meet the following eligibility requirements:

65.3(1) *Site owner.* A person owning a site is an eligible applicant if the site for which assistance is sought meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(2) *Nonowner of site.* A person who is not an owner of a site is an eligible applicant if the site meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(3) *Agreement executed.* Prior to applying for financial assistance under this program, an applicant shall enter into an agreement with the owner of the brownfield site for which financial assistance is sought. The agreement shall at a minimum include:

1. The total cost for remediating the site.
2. Agreement that the owner shall transfer title of the property to the applicant upon completion of the remediation of the property. Title transfer is not required when the applicant is the owner of the property and no title transfer occurs.
3. Agreement that upon the subsequent sale of the property by the applicant to a person other than the original owner, the original owner shall receive not more than 75 percent of the estimated total cost of the remediation, acquisition or redevelopment.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.4(15) Eligible forms of assistance and limitations.

65.4(1) *Financial assistance.* Eligible forms of financial assistance under this program include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program established in Iowa Code section 15.292.

65.4(2) *Technical assistance.* Technical assistance under this program is available in the form of providing an applicant with assistance in identifying alternative forms of assistance for which the applicant may be eligible.

65.4(3) *Limitation on amount.* An applicant shall not receive financial assistance of more than 25 percent of the agreed-upon estimated total cost of remediation, acquisition or redevelopment.

65.4(4) *Exclusions.* Program funds shall not be used for the remediation of contaminants being addressed under Iowa's leaking underground storage tank (UST) program. However, a site's being addressed under the UST program does not necessarily exclude that site from being addressed under the Iowa brownfield redevelopment Act if other nonpetroleum contaminants or petroleum substances not addressed under 567—Chapter 135 are present.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.5(15) Repayment to IDED. Upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the department for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance received by the applicant.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.6(15) Application and award procedures. Subject to availability of funds, applications will be reviewed and rated by IDED staff on an ongoing basis and reviewed quarterly by the advisory council. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.7(15) Application.

65.7(1) Every application for assistance shall include, but not be limited to, evidence of sponsorship. In addition, applications for assistance other than tax credits shall include the following information:

a. A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

65.7(2) The department shall accept applications and determine application eligibility. The council shall make application recommendations to the board. The board shall approve or deny applications.

65.7(3) Approved applicants shall enter into an agreement with the department. The agreement shall specify the maximum amount of tax credit available.

65.7(4) The department shall issue a tax credit certificate upon written notification of project completion.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.8(15) Application forms. Application forms for the brownfield redevelopment program shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309. IDED may provide technical assistance as necessary to applicants. IDED staff may conduct on-site evaluations of proposed activities.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.9(15) Application review criteria. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed and prioritized based on the following criteria:

1. Whether the project meets the definition of a brownfield site.
2. Whether alternative forms of assistance have been explored and used by the applicant.
3. The level of distress or extent of the problem on the site has been identified.
4. Whether the site is on or proposed to be added to the U.S. Environmental Protection Agency's list of CERCLA sites.
5. The degree to which awards secured from other sources are committed to the subject site.

6. The leveraging of other public and private resources beyond the 75 percent minimum required.
7. Type and terms of assistance requested.
8. Rationale that the project serves a public purpose.
9. The level of economic and physical distress within the project area.
10. Past efforts of the community/owner to resolve the problem.
11. Ability of the applicant to outline the goals and objectives of the project and describe the overall strategy for achieving the goals and objectives.
12. Ancillary off-site development as a result of site remediation.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.10(15) Administration of awards.

65.10(1) A contract shall be executed between the recipient and IDED. These rules and applicable state laws and regulations shall be part of the contract.

65.10(2) The recipient must execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for the board to terminate the award.

65.10(3) Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

65.10(4) Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity.

65.10(5) Awards may be conditioned upon IDED's receipt and approval of an implementation plan for the funded activity.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.11(15) Redevelopment tax credit.

65.11(1) *Purpose.* The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The department may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

65.11(2) *Eligible applicant.* An individual, partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual may claim a redevelopment tax credit. Once an applicant is deemed eligible, the applicant shall be considered a qualifying investor for a redevelopment tax credit. A city or county may not apply for a redevelopment tax credit.

65.11(3) *Tax credit certificate.*

a. *Issuance.* The department shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

b. *Acceptance.* The tax credit certificate, unless rescinded by the board, shall be accepted by the Iowa department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and for the moneys and credits tax imposed in Iowa Code section 533.329, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of this rule, for a portion of a taxpayer's equity investment in a qualifying redevelopment project.

c. *Transfer.* Tax credit certificates issued under this rule may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the Iowa department of revenue, including a statement with the transferee's name, tax identification number, address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the Iowa department of revenue.

d. *Replacement certificate.* Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax

credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate.

e. Claiming a transferred tax credit. A tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration paid or received for the transfer of the tax credit shall not be included or deducted as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.329.

65.11(4) *Amount of tax credit.*

a. Pro rata share. The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the qualified investor's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the qualified investor receives the tax credit.

b. Percentage. The amount of the tax credit shall equal one of the following:

(1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.

(2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

(3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

(4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

c. Maximum credit per project. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4)*"d."*

d. Maximum credit total. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the department shall not exceed $1 million. The department shall not issue tax credits pursuant to this rule in subsequent fiscal years unless authorized pursuant to this subrule.

65.11(5) *Claiming a tax credit.* The qualified investor must attach one or more tax credit certificate(s) to the qualified investor's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2009. The tax credit certificate or certificates attached to the qualified investor's tax return shall be issued in the qualified investor's name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor's tax return.

65.11(6) *Reduction of tax credit.*

a. Taxes imposed under Iowa Code section 422.11V, less the credits allowed under Iowa Code sections 422.12, 422.33, 422.60, 432.12L, and moneys and credits imposed under Iowa Code section 533.329 shall be reduced by a redevelopment tax credit allowed under Iowa Code sections 15.291 to 15.294.

b. For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the redeveloped property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the credit computed under this rule.

65.11(7) *Project completion.*

a. An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, or after June 30, 2010, shall not qualify for a tax credit under this rule.

b. A qualifying redevelopment project not completed within 30 months after board approval shall not be eligible for a tax credit pursuant to this rule. The board has the discretion to allow an additional 12-month extension period to complete a project.

c. Failure to comply. If a taxpayer receives a tax credit pursuant to Iowa Code section 15.293A but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

65.11(8) *Tax credit carryover.* If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the department may prorate the remaining credit amount among other eligible applicants.

65.11(9) *Department registration and authorization.* The department shall develop a system for registration and authorization of tax credits. The department shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in an ensuing year.

65.11(10) *Other financial assistance considerations.* If a qualified investor has also applied to the department, the board, or any other agency of state government for additional financial assistance, the department, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.12(15) Council approval and repayment requirements of redevelopment tax credit.

65.12(1) A qualified investor seeking to claim a tax credit pursuant to Iowa Code sections 15.293A and 15.293B shall apply to the council, as established in Iowa Code section 15.294. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

65.12(2) A qualified investor shall provide the council with the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in Iowa Code section 15.293A.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

These rules are intended to implement Iowa Code sections 15.291 to 15.295.

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CHAPTER 71
TARGETED JOBS WITHHOLDING TAX CREDIT PROGRAM

261—71.1(403) Definitions.

"Act" means Iowa Code section 403.19A.

"Board" means the Iowa economic development board created in Iowa Code section 15.103.

"Business" means any professional services or industrial enterprise, including medical treatment facilities, manufacturing facilities, corporate headquarters, and research facilities. "Business" does not include a retail operation or a business which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation to another area of this state.

"Countywide average wage" means the average that the department calculates using the most current four quarters of wage and employment information as provided in the quarterly covered wage and employment data report as provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Department" means the Iowa department of economic development.

"Employee" means the individual employed in a targeted job that is subject to a withholding agreement.

"Employer" means a business creating or retaining targeted jobs in an urban renewal area of a pilot project city pursuant to a withholding agreement.

"Employer's taxable capital investment" means a capital investment in real property, including but not limited to the purchase of land and existing buildings and building construction included in the project, that is subject to taxation by the local taxing authority.

"Local financial support" or *"local match"* means cash or in-kind contributions to the project from a private donor, a business, or the pilot project city. "Cash" includes but is not limited to loans, forgivable loans or grants. "In-kind contributions" includes but is not limited to the construction of private or public infrastructure or other amenities and improvements directly related to a project.

"Pilot project city" means a city that has applied and been approved as a pilot project city pursuant to rule 71.2(403).

"Qualifying investment" means a capital investment in real property including the purchase price of land and existing buildings, site preparation, building construction, and long-term lease costs. "Qualifying investment" also means a capital investment in depreciable assets.

"Targeted job" means a job in a business which is or will be located in an urban renewal area of a pilot project city that pays a wage at least equal to the countywide average wage. "Targeted job" includes new or retained jobs from Iowa business expansions or retentions within the city limits of the pilot project city and those jobs resulting from established out-of-state businesses, as defined by the department, that are moving to or expanding in Iowa.

"Urban renewal area" means the same as defined in Iowa Code section 403.17.

"Withholding agreement" means an agreement authorized in rule 71.4(403) between a pilot project city and an employer concerning the targeted jobs withholding tax credit.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); **ARC 7848B**, IAB 6/17/09, effective 7/1/09]

261—71.2(403) Eligibility requirements. An eligible city may apply to the department to be designated as a pilot project city. An eligible city is a city that contains three or more census tracts and is located in a county meeting one of the following requirements:

1. A county that borders Nebraska.
2. A county that borders South Dakota.
3. A county that borders a state other than Nebraska or South Dakota.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter)]

261—71.3(403) Application process and review.

71.3(1) *Application.* The department shall develop a standardized application and make the application available to eligible cities. The application procedures are as follows:

a. An eligible city seeking approval as a pilot project city will submit an application to the department. The department shall determine if the application is complete.

b. The department will review the application and consider the following criteria:

(1) Need for pilot project status. The city shall demonstrate why status as a pilot project city is necessary, including how the city will utilize the program to attract and retain employers.

(2) Planned and current projects. The city shall provide information on planned and current economic development projects that are taking place or will take place in an urban renewal area. The city shall demonstrate its ability to enter into a withholding agreement with an eligible business within one year of the city's approval as a pilot project city.

(3) Use of withholding funds. If approved as a pilot project city, the city shall indicate how the city plans to utilize withholding funds generated from the program. The city shall provide an estimate of the number of withholding agreements the city anticipates executing, the amount of withholding funds the city expects to generate as a result of the program, and the investment to be leveraged by use of the program.

(4) Urban renewal areas. The city shall identify the number of urban renewal areas in the city and the location of the urban renewal areas where withholding funds may be utilized.

(5) Matching funds. The city shall identify its ability to provide matching funds for projects involving withholding credits, including the potential sources of matching funds.

c. A resolution of support from the city applying for approval as a pilot project city is required as part of the application. This resolution shall include approval of the submission of the application to the department for status as a pilot project city.

d. The department may request additional information from a city that is applying for pilot project city status or may use other resources to obtain the needed information.

e. Applications filed on or after October 1, 2006, shall not be considered.

71.3(2) *Approval of applications.* The department shall approve four eligible pilot project cities: one pursuant to 71.2"1," one pursuant to 71.2"2," and two pursuant to 71.2"3." If more than two cities meeting the requirements of 71.2"3" apply to be designated as a pilot project city, the department of management, in consultation with the department, shall determine which two cities hold the most potential to create new jobs or generate the greatest capital in their areas. Department staff will prepare a recommendation for each of the cities to be approved as pilot project cities. The board will make the final decision to approve, defer or deny applications. Once applications are approved by the board, all communities applying for pilot project city status will be notified of the status of their applications.

71.3(3) *Status as a pilot project city.* If a pilot project city does not enter into a withholding agreement within one year of its approval as a pilot project city, the city shall lose its status as a pilot project city. Upon such occurrence, the department shall take applications from other eligible cities to replace that city. Another city shall be designated within six months.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter)]

261—71.4(403) Withholding agreements.

71.4(1) *Designated account.* An approved pilot project city may provide by city ordinance for a designated account for the deposit of funds generated through withholding agreements under the targeted jobs withholding tax credit program.

71.4(2) *Entering into a withholding agreement.*

a. Agreement between pilot project city and business. A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least $500,000 within the urban renewal area.

b. Total amount of withholding tax credits. The withholding agreement shall provide for the total amount of withholding tax credits awarded. An agreement shall not provide for an amount of withholding tax credits that exceeds the amount of qualifying investment made in the project.

c. Ineligiblity if there is competition between pilot project city and non-pilot project city. A withholding agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the department.

d. Option of a business to enter into withholding agreement. A business shall not be obligated to enter into a withholding agreement with a pilot project city.

e. 2013 sunset date. A pilot project city shall not enter into a withholding agreement with a business after June 30, 2013.

f. Department approval of withholding agreements. Prior to entering into a withholding agreement with a business, a pilot project city shall request department approval of the withholding agreement. The process for requesting approval from the department is described in subrule 71.5(1).

71.4(3) *Required components of a withholding agreement.* A withholding agreement shall be disclosed to the public and shall contain all of the following:

a. A copy of the adopted development agreement between the pilot project city and employer, including how withholding funds generated by the city will be used.

b. A list of all other incentives or financial assistance the business has requested or is receiving from other federal, state, or local economic development programs including loans, grants, forgivable loans, and tax credits.

c. The amount of assistance provided by the pilot project city for the project.

d. Documentation of the approval of the project by local participating authorities.

e. The total amount of withholding tax credits awarded.

f. The total number of created and retained jobs included in the project.

g. The required countywide average wage.

h. The total qualifying investment included in the project.

i. The total required matching local financial support for the project.

71.4(4) *Length of withholding agreements.* A withholding agreement may have a term of up to ten years.

71.4(5) *Withholding generated through the program.*

a. Once a pilot project city and an employer have entered into a withholding agreement, an amount equal to 3 percent of the gross wages paid by the business to each employee under a withholding agreement shall be credited from the payment made by the employer pursuant to Iowa Code Supplement section 422.16. If the amount of withholding by the employer is less than 3 percent of the gross wages paid to the employees covered by the withholding agreement, the employer shall receive a credit against other withholding taxes due by the employer or may carry the credit forward for up to ten years or until depleted, whichever occurs first.

b. The employer shall submit the amount of the credit quarterly, in the same manner as withholding payments are made to the department of revenue, to the pilot project city.

c. An employee whose wages are subject to a withholding agreement shall receive full credit for the amount withheld under the targeted jobs withholding tax credit program as provided in Iowa Code Supplement section 422.16.

71.4(6) *Use of withholding funds.* A pilot project city shall allocate the withholding funds into a designated account in the special fund for the urban renewal area in which the targeted jobs are located. All funds deposited shall be used or pledged by the pilot project city for an urban renewal project related to the employer pursuant to the withholding agreement.

71.4(7) *Local match requirement.*

a. A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required shall be in an amount equal to one dollar for every one dollar of withholding tax credit received by the pilot project city.

b. If the project, when completed, will increase the amount of an employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least 10 percent of the local match amount computed under paragraph *"a."*

c. If the project, when completed, will not increase the amount of the employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

d. A pilot project city's contribution, if any, to the local match may include the dollar value of any new tax abatement provided by the city to the business for new construction. For purposes of this paragraph, new construction includes building additions, remodeling, renovations, and updates.

71.4(8) *Termination of a withholding agreement.* Following the termination of a withholding agreement, the employer credits shall cease and any funds received by the pilot project city after the agreement has been terminated shall be remitted to the state treasurer to be deposited in the general fund of the state. The pilot project city shall notify the department of revenue and the department of economic development within 30 days of the termination of the withholding agreement. If the employer does not meet the requirements of the withholding agreement, the agreement shall be terminated and any withholding credits for the employer shall cease. If the employer has created or retained the required number of new jobs under the agreement, and the number of jobs falls below the required level, the employer shall not be considered in default until 18 months after the date of the decrease in new jobs.

71.4(9) *Participation in other programs.* An employer may participate in the Iowa industrial new jobs training program under Iowa Code Supplement section 260E.5 or may claim a supplemental withholding credit under Iowa Code Supplement section 15E.197, at the same time the employer is participating in the targeted jobs withholding tax credit program. The withholding credit under section 260E.5 and the supplemental withholding credit under section 15E.197 shall be collected and disbursed prior to the collection and disbursement of the withholding credit under the targeted jobs withholding tax credit program.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09(See Delay note at end of chapter); **ARC 7847B**, IAB 6/17/09, effective 5/21/09; **ARC 7848B**, IAB 6/17/09, effective 7/1/09]

261—71.5(403) Project approval.

71.5(1) *Request for department approval of withholding agreement.*

a. *Request for approval form.* Prior to entering into a withholding agreement with an employer, a pilot project city must receive approval from the department. The department shall develop and make available to the pilot project cities a standardized form to request department approval of a proposed withholding agreement. To request department approval of a proposed withholding agreement, a pilot project city shall provide the department with the following information:

(1) A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

(2) Base employment of the number of full-time equivalent positions at a business as established by the department and the pilot project city, using the business's payroll records, as of the date that a business files an application with a pilot project city for financial assistance under the program.

(3) Information regarding the number of targeted jobs in the project, the wages of the targeted jobs, and the types of jobs created by the project.

(4) A budget for the project, showing the total project cost, the amount of local matching funds committed to the project, and the amount of withholding funds the pilot project city will receive from the project.

(5) A copy of the proposed withholding agreement to be entered into between the pilot project city and the employer.

(6) A letter or resolution of support from the local government showing support for the project.

b. *Timing of submittal.* Requests for department approval of a proposed withholding agreement may be submitted at any time. The department will review requests for approval of a proposed withholding agreement in as timely a manner as possible.

c. *Department action on requests for approval.* The department may approve, deny, or suggest changes to a withholding agreement. The department shall only deny an agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) or the local match requirement as stated in

subrule 71.4(7) or if an employer is not in good standing as to prior or existing agreements with the department. A pilot project city will be notified in writing of the department's decision regarding the proposed withholding agreement.

71.5(2) *Certification to the department of revenue.*

a. The employer shall certify to the department of revenue that the targeted jobs withholding tax credit is in accordance with the withholding agreement and shall provide other information the department of revenue may require.

b. A pilot project city shall certify to the department of revenue the amount of the targeted jobs withholding tax credit an employer has remitted to the city and shall provide other information the department of revenue may require.

c. Notice of any withholding agreement shall be provided promptly to the department of revenue following its execution between a pilot project city and an employer.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); **ARC 7847B**, IAB 6/17/09, effective 5/21/09; **ARC 7848B**, IAB 6/17/09, effective 7/1/09]

261—71.6(403) Reporting requirements.

71.6(1) *Required reports.*

a. At the time the pilot project city submits its budget to the department of management, the pilot project city shall submit to the department of management and the department a description of the activities involving the use of withholding agreements. The description shall include, but not be limited to, the following:

(1) The total number of targeted jobs associated with withholding agreements and the wages of those targeted jobs.

(2) A breakdown of the number of targeted jobs that are associated with Iowa business expansions or retentions within the city limits of the pilot project city and the number of targeted jobs resulting from out-of-state businesses moving to or expanding in Iowa.

(3) The number of withholding agreements and the amount of withholding credits associated with those agreements.

(4) The types of businesses that entered into withholding agreements with the city and the types of businesses that declined the city's proposal to enter into a withholding agreement with the city.

b. The pilot project city shall provide information documenting the total amount of payments and receipts from the special fund under the withholding agreement, including all agreements with an employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes, a grant not related to property taxes, or to make a direct payment of taxes. The pilot project city shall submit this information to the department annually by September 1 covering the prior fiscal year (July 1 to June 30). The department shall verify the information provided by the pilot project city. The department will verify job creation or retention using the method described in 261—Chapter 188.

c. The department may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.

d. The department shall make, at minimum, an annual on-site monitoring visit to each pilot project city to verify the documented information. The pilot project city shall provide the following:

(1) Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;

(2) Information substantiating the total amount of qualifying investment made in the project;

(3) Information substantiating the total amount of local financial support made in the project;

(4) Payments and receipts as described in paragraph 71.6(1)*"b."*

71.6(2) *Annual report.* As required by Iowa Code section 15.104(9)*"k,"* the department includes in its annual report information about the targeted jobs withholding tax credit program. This report is due on January 31 of each year.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); **ARC 7848B**, IAB 6/17/09, effective 7/1/09]

These rules are intended to implement Iowa Code section 403.19A.

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[1] The March 18, 2009, effective date of **ARC 7561B** was delayed 70 days by the Administrative Rules Review Committee at its meeting held March 6, 2009.

CHAPTER 19
STATE HOUSING TRUST FUND

265—19.1(16) Trust fund allocation plans. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated May 2009 shall be the allocation plan for the award, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Project-Based Housing Program dated September 2008 shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).
[**ARC 7850B**, IAB 6/17/09, effective 5/26/09]

265—19.2(16) Location of copies of the plans. The trust fund allocation plans for the local housing trust fund program and the project-based housing program may be reviewed and copied in their entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the trust fund allocation plans for the local housing trust fund program and the project-based housing program, the applications, and all related attachments and exhibits, if any, shall be deposited with the administrative rules coordinator and at the state law library. The plans incorporate by reference Iowa Code section 16.181.

These rules are intended to implement Iowa Code Supplement sections 16.5(1)*"r"* and 16.181.

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CHAPTER 29
JUMP-START HOUSING ASSISTANCE PROGRAM

265—29.1(16) Purpose. This chapter defines and structures the jump-start housing assistance program to aid individuals whose homes, located in parts of Iowa declared by the President of the United States to be disaster areas, were destroyed or damaged by the natural disasters of 2008. Under the program, the authority may grant funds in accordance with this chapter to local government participants, including certain Iowa councils of governments, cities, and counties. The local government participants shall, in turn, loan funds to eligible residents under the conditions specified in this chapter to assist those eligible residents in purchasing homes generally comparable to those they lived in prior to the occurrence of the natural disasters of 2008, in repairing or rehabilitating disaster-affected homes, and in making mortgage payments and paying for other eligible property-carrying costs while the eligible residents await a property acquisition of their disaster-affected homes.

265—29.2(16) Definitions. For purposes of this chapter, the following definitions apply.

"Authority" means the Iowa finance authority.

"COG" means an Iowa council of governments as identified by Iowa Code chapter 28H.

"Disaster-affected home" means a primary residence that was destroyed or damaged by the natural disasters of 2008.

"Disaster compensation" means moneys received by an eligible resident as a result of damage caused to the eligible resident's disaster-affected home by the natural disasters of 2008 from any of the following sources: (1) FEMA, (2) any other governmental assistance, or (3) proceeds of any insurance policy. "Disaster compensation" shall not include rental assistance received from FEMA or other sources.

"Eligible energy-efficient home appliances and improvements" means energy-efficient furnaces, boilers, appliances, air conditioners, hot water heaters, windows, and insulation that meet standards set by the office of energy independence.

"Eligible property-carrying costs" means the following expenses associated with the ownership of a disaster-affected home: liability insurance premiums, flood insurance premiums, property tax payments, installment payments on a real estate purchase contract for the disaster-affected home provided that the real estate purchase contract was executed prior to the first date on which the disaster-affected home sustained damage as a result of the natural disasters of 2008, and special assessments.

"Eligible repair expenses" means the reasonable cost of repairing damage to a disaster-affected home necessitated by the natural disasters of 2008. "Eligible repair expenses" shall not include additions to or expansions of a disaster-affected home or the purchase or installation of luxury items that were not part of the disaster-affected home prior to the natural disasters of 2008.

"Eligible resident" means an individual or family who resided in a disaster-affected home at the time of the natural disasters of 2008 and who:

1. Is the owner of record of a right, title or interest in the disaster-affected home; and
2. Has been approved by FEMA for housing assistance as a result of the natural disasters of 2008.

In cases where multiple persons own a disaster-affected home together, such as by a tenancy in common or joint tenancy, such persons will generally be deemed collectively to be the "eligible resident," provided the requirements set forth above are met. In the event that multiple persons assert inconsistent claims as to who the owner of a disaster-affected home is, the local government participant shall review the facts and, if necessary, make an allocation among the various applicants.

"FEMA" means the Federal Emergency Management Agency.

"Forgivable loan" means a loan made to an eligible resident pursuant to the requirements of this chapter.

"Local government participant" means:

1. Any of the following Iowa cities: Ames, Cedar Falls, Cedar Rapids, Council Bluffs, Davenport, Des Moines, Dubuque, Iowa City, Waterloo, and West Des Moines;

2. Any COG whose territory encompasses one or more Iowa counties that have been declared by the President of the United States to be disaster areas; and

3. Any county that is not part of any Iowa council of governments and has been declared by the President of the United States to be a disaster area.

"Natural disasters of 2008" means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR.

"Program" means the jump-start housing assistance program described in this chapter.

"Retention agreement" means an agreement, to be recorded as a lien against the property for which assistance is provided, requiring that if an eligible resident sells a home that was purchased or repaired or for which a mortgage loan was paid with the assistance of a loan made under this chapter, then that portion of the original principal amount that has not been forgiven, if any, shall be repaid.

265—29.3(16) Grants to local government participants.

29.3(1) *Initial allocation, loans to local government participants.* The authority shall make an initial allocation of the funds made available for the program to the local government participants pro rata based on the funds awarded by FEMA under its housing assistance program to each local government participant's jurisdiction as a percentage of the total amount of funds awarded as a result of the natural disasters of 2008. The authority shall enter into a grant agreement with each local government participant, pursuant to which the authority may disburse funds to the local government participant for the purposes described in this chapter. The grant agreement shall be prepared by the authority and may contain such terms and conditions, in addition to those specified in this chapter, as the executive director may deem to be necessary and convenient to the administration of the program and to the efficient and responsible use of the granted funds.

29.3(2) *Review of requests for assistance.* The local government participant shall accept and review each request for assistance and shall determine whether the requesting party is an eligible resident. If the requesting party is determined an eligible resident, the local government participant shall determine whether the funds are being requested for a use permitted under the program and the amount available to the eligible resident under the terms of the program.

29.3(3) *Coordination with the jump-start business assistance program.* For presidentially declared disaster areas outside a COG region, counties may elect to apply singly, join with other counties, or join with an adjacent COG region. Likewise, a city named in the definition of "local government participant" in rule 265—29.2(16) may join with a COG, county, or multicounty entity. To the extent local government participants act jointly or cooperatively in their participation in the small business disaster recovery financial assistance program administered by the Iowa department of economic development pursuant to 261—Chapter 78, Iowa Administrative Code, the authority may require the local government participants to similarly act jointly or cooperatively in their participation under this chapter.

29.3(4) *Reallocation of unused funds.* Following one year, or following any three-month period during which a local government participant has requested no draws, the authority may reallocate all or part of any remaining portion of funds allocated to that local government participant to another local government participant with a demonstrated need for program funds.

29.3(5) *Administrative fees.* Each local government participant shall be entitled to receive an administrative fee equal to 5 percent of its initial disbursement, which shall consist of 30 percent of the local government participant's initial allocation. Subsequent thereto, each local government participant shall receive 5 percent of the funds loaned by the local government participant to eligible residents under the program from subsequent disbursements. The administrative fee shall be paid from the allocation made to each such local government participant by the authority pursuant to subrule 29.3(1).

29.3(6) *Proceeds of repayments.* All loan amounts repaid to a local government participant by an eligible resident pursuant to this chapter shall be returned to the authority's housing assistance fund created by Iowa Code Supplement section 16.40.

265—29.4 Reserved.

265—29.5(16) Eligible uses.

29.5(1) *Forgivable loans.* Local government participants may make forgivable loans, pursuant to the conditions set forth in rule 265—29.7(16), to eligible residents for the following eligible uses:

a. Down payment assistance. An eligible resident whose disaster-affected home was destroyed or damaged beyond reasonable repair may be provided down payment assistance for the purchase of replacement housing located within the local government participant's jurisdiction and, if necessary, for the cost of making reasonable repairs to the home being purchased to make it safe, decent, and habitable. The amount of down payment assistance available to an eligible resident shall generally not exceed 25 percent of the purchase price of the home being purchased and, in no event, shall the down payment assistance and any amount allowed for repairs collectively exceed $50,000.

(1) For purposes of calculating the amount of down payment assistance available to the eligible resident, the amount of the down payment assistance shall be reduced by the amount of any disaster compensation received by the eligible resident in excess of any amount necessary to pay off a mortgage or real estate purchase contract on the disaster-affected home.

(2) As a condition of receiving down payment assistance, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan, if not applied toward repayment of a mortgage on the disaster-affected home, shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) Down payment assistance shall be allowed only for the purchase of a primary residence by means of a fully amortized mortgage loan from a regulated lender featuring a rate of interest that is fixed for at least 5 years and that has a term not to exceed 30 years.

(4) Eligible residents who receive down payment assistance under this subrule may also receive the assistance available under subrule 29.5(2), but not the assistance available under paragraph 29.5(1)*"b."*

(5) An eligible resident shall not use the assistance allowed under this subrule for the purchase of more than one home.

b. Housing repair or rehabilitation. An eligible resident whose disaster-affected home is not proposed, or located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance to pay for eligible repair expenses up to an amount not to exceed the lesser of $50,000 or 60 percent of the latest available assessed value of the disaster-affected home, not including the assessed value of the land on which it is situated, dated prior to the natural disasters of 2008. The eligible resident shall establish the necessity and reasonable cost of the repairs or rehabilitation to the reasonable satisfaction of the local government participant.

(1) For purposes of calculating the amount of assistance available to the eligible resident pursuant to this paragraph, the cost of repairs to, or rehabilitation of, the disaster-affected home shall be reduced by the amount of any disaster compensation received.

(2) As a condition of receiving assistance pursuant to this paragraph, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) An eligible resident who receives assistance pursuant to this paragraph shall not be eligible for assistance under either paragraph 29.5(1)*"a"* or subrule 29.5(2).

29.5(2) *Interim mortgage assistance loans.* An eligible resident whose disaster-affected home is proposed, or is located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance equivalent to an amount of up to $1,000 per month for the purpose of paying mortgage payments and other eligible property-carrying costs for the disaster-affected home for a period not to exceed

12 months. An eligible resident who receives assistance pursuant to this subrule shall not be eligible for assistance under paragraph 29.5(1)*"a."* If, however, it subsequently is determined by the Iowa homeland security and emergency management division that the disaster-affected home of the eligible resident will not be acquired under the hazard mitigation grant program, then the eligible resident shall be eligible for assistance under paragraph 29.5(1)*"a"* on the condition that the amount of assistance available under that paragraph shall be reduced by the amount of assistance received by the eligible resident under subrule 29.5(2). Financial assistance provided pursuant to this subrule shall be in the form of a forgivable loan.

a. Notwithstanding the foregoing, with the approval of the applicable local government participant, an eligible resident may receive financial assistance under this subrule for up to an additional 6 months (beyond the usual 12-month limit set forth above), provided that all of the following conditions are met:

(1) The eligible resident must reapply for or request an extension of financial assistance on forms to be provided by the applicable local government participant;

(2) The disaster-affected home for which an extension of financial assistance is sought must continue to be on the current hazard mitigation grant program (or comparable program) property acquisition list (i.e., it must continue to be proposed for buyout);

(3) The disaster-affected home for which an extension of financial assistance is sought must have been destroyed or damaged beyond reasonable repair such that the eligible resident is displaced from the home;

(4) The eligible resident must have contacted or must agree to contact the mortgage holder or an Iowa Mortgage Help counseling agency (Web site: www.iowamortgagehelp.com) to discuss the situation and, if possible, negotiate better terms.

b. Local government participants may fund extensions of financial assistance only from funds already allocated to their region. Local government participants shall give priority for extensions of financial assistance to those eligible residents who are supporting the costs of both the disaster-affected home and a new primary residence through a second mortgage payment or a rental payment.

29.5(3) *Energy efficiency assistance.* An eligible resident who receives either down payment assistance pursuant to paragraph 29.5(1)*"a"* or housing repair or rehabilitation assistance pursuant to paragraph 29.5(1)*"b"* shall also be eligible to receive an additional loan amount, up to a maximum of $10,000, as reimbursement for the purchase and installation costs for eligible energy-efficient home appliances and improvements. Any amount allowed pursuant to this subrule shall be added to the principal balance of the forgivable loan. Amounts loaned pursuant to this subrule may be loaned either at the time the forgivable loan is first made or subsequent thereto within three months.

29.5(4) *Expenses incurred prior to September 19, 2008.* In the event an eligible resident purchased a home, made or caused to be made repairs to a disaster-affected home, or made mortgage payments (or paid for other eligible property-carrying costs) for a disaster-affected home located within the jurisdiction of a local government participant prior to September 19, 2008 (the effective date of this chapter), the eligible resident shall be eligible for reimbursement therefor under this chapter as though the purchase, repairs, or payments had taken place following September 19, 2008.

29.5(5) *Applications for assistance.* To apply for down payment assistance or down payment assistance plus interim mortgage assistance, the eligible resident shall apply to the local government participant in whose jurisdiction the home being purchased is located. To apply for assistance for repair or rehabilitation of a disaster-affected home, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located. To apply for interim mortgage assistance only, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located.

[**ARC 7842B**, IAB 6/17/09, effective 5/14/09]

265—29.6(16) Loan terms. Loans made under the program shall, at a minimum, contain the following terms:

29.6(1) *Forgivability.* Forgivable loans made pursuant to the program shall be forgivable over a five-year period. One-fifth of the total principal amount loaned shall be forgiven following each full year the eligible resident owns the home for which the loan was made, beginning on the date of the final disbursement of forgivable loan proceeds.

29.6(2) *Zero percent interest.* Loans made pursuant to the program shall bear no interest.

29.6(3) *Five-year term.* All loans made pursuant to the program shall be for a term of five years.

29.6(4) *Repayment due upon sale of home.* Any principal of a forgivable loan that has not yet been forgiven at the time the home for which the forgivable loan was made is sold by the eligible resident (including property acquisitions) shall be due and payable upon such sale.

29.6(5) *Retention agreement.* Each loan made pursuant to this program shall be secured by a retention agreement which shall constitute a lien on the title of the real property for which the forgivable loan is made until such time as the forgivable loan has either been fully forgiven or paid in full.
[**ARC 7842B**, IAB 6/17/09, effective 5/14/09]

265—29.7(16) Financial assistance subject to availability of funding. All financial assistance authorized pursuant to this chapter shall be subject to funds being made available to the authority for the purposes set forth herein.

These rules are intended to implement Iowa Code Supplement sections 16.5(1)*"r"* and 16.40.

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EDUCATIONAL EXAMINERS BOARD[282]

[Prior to 6/15/88, see Professional Teaching Practices Commission[640]]
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[Prior to 1/14/09, see Educational Examiners Board[282] Ch 14]

282—13.1(272) All applicants desiring Iowa licensure. Licenses are issued upon application filed on a form provided by the board of educational examiners and upon completion of the following:

13.1(1) *National criminal history background check.* An initial applicant will be required to submit a completed fingerprint packet that accompanies the application to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet will be assessed to the applicant.

13.1(2) *Iowa division of criminal investigation background check.* An Iowa division of criminal investigation background check will be conducted on initial applicants. The fee for the evaluation of the DCI background check will be assessed to the applicant.

13.1(3) *Temporary permits.* The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application, including certification from the applicant of completion of the Praxis II examination, if required; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check. The temporary permit shall serve as evidence of the applicant's authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check and the board's receipt of verification of completion of the Praxis II examination. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

282—13.2(272) Applicants from recognized Iowa institutions. An applicant for initial licensure shall complete either the teacher, administrator, or school service personnel preparation program from a recognized Iowa institution or an alternative program recognized by the Iowa board of educational examiners. A recognized Iowa institution is one which has its program of preparation approved by the state board of education according to standards established by said board, or an alternative program recognized by the state board of educational examiners. Applicants shall complete the requirements set out in rule 282—13.1(272) and shall also have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized education institution where the preparation was completed.

282—13.3(272) Applicants from recognized non-Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized non-Iowa institution shall verify the requirements of either subrule 13.18(4) or 13.18(5).

13.3(1) Non-Iowa teacher preparation program. Provided all requirements for Iowa licensure have been met, the applicant shall:

a. Have the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed, and

b. Submit a copy of a valid regular teaching certificate or license exclusive of a temporary, emergency or substitute license or certificate, and

c. Provide verification of successfully passing mandated tests in the state in which the applicant is currently licensed if the applicant has completed fewer than three years of teaching experience.

13.3(2) Requirements for an alternative preparation license for out-of-state candidates. An applicant who holds a valid license from another state and whose preparation was completed through a state-approved alternative teacher preparation program must:

a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution.

b. Provide a valid out-of-state teaching license based on a state-approved alternative preparation program.

c. Provide a recommendation from a regionally accredited institution, department of education, or a state's standards board indicating the completion of an approved alternative teacher preparation program.

d. Provide an official institutional transcript(s) to be analyzed for the requirements necessary for full Iowa licensure based on 13.9(4)*"a"*(1) to (7) and 13.9(4)*"c"*(1) to (5).

e. If the applicant has completed fewer than three years of teaching experience, provide verification from the state licensing agency/department in the state where the alternative preparation program was completed indicating that the applicant has successfully passed that state's mandated tests.

f. Verify three years of teaching experience, which will waive the student teaching requirement.

13.3(3) A recognized non-Iowa teacher preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

282—13.4(272) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution must obtain a course-by-course credential evaluation report completed by one of the board-approved credential evaluation services and then file this report with the board of educational examiners for a determination of eligibility for licensure.

282—13.5(272) Teacher licenses. A license may be issued to applicants who fulfill the general requirements set out in subrule 13.5(1) and the specific requirements set out for each license.

13.5(1) *General requirements.* The applicant shall:

a. Have a baccalaureate degree from a regionally accredited institution.

b. Have completed a state-approved teacher education program which meets the requirements of the professional education core.

c. Have completed an approved human relations component.

d. Have completed the exceptional learner component.

e. Have completed the requirements for one of the basic teaching endorsements.

f. Meet the recency requirement of subrule 13.10(3).

13.5(2) *Renewal requirements.* Renewal requirements for teacher licenses are set out in 282—Chapter 20.

282—13.6(272) Specific requirements for an initial license. An initial license valid for two years may be issued to an applicant who meets the general requirements set forth in subrule 13.5(1).

282—13.7(272) Specific requirements for a standard license. A standard license valid for five years may be issued to an applicant who:

1. Meets the general requirements set forth in subrule 13.5(1), and
2. Shows evidence of successful completion of a state-approved mentoring and induction program by meeting the Iowa teaching standards as determined by a comprehensive evaluation and two years' successful teaching experience. In lieu of completion of an Iowa state-approved mentoring and induction program, the applicant must provide evidence of three years' successful teaching experience in an Iowa nonpublic school or three years' successful teaching experience in an out-of-state K-12 educational setting.

282—13.8(272) Specific requirements for a master educator's license. A master educator's license is valid for five years and may be issued to an applicant who:

1. Is the holder of or is eligible for a standard license as set out in rule 282—13.7(272), and
2. Verifies five years of successful teaching experience, and
3. Completes one of the following options:

- Master's degree in a recognized endorsement area, or
- Master's degree in curriculum, effective teaching, or a similar degree program which has a focus on school curriculum or instruction.

282—13.9(272) Teacher intern license.

13.9(1) *Authorization.* The teacher intern is authorized to teach in grades 7 to 12.

13.9(2) *Term.* The term of the teacher intern license will be one year from the date of issuance. This license is nonrenewable. The fee for the teacher intern license is in 282—Chapter 12.

13.9(3) *Teacher intern requirements.* A teacher intern license shall be issued upon application provided that the following requirements have been met. The applicant shall:

a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution.

b. Meet the requirements of at least one of the board's secondary (5-12) teaching endorsements listed in rule 282—13.28(272).

c. Possess a minimum of three years of postbaccalaureate work experience. An authorized official at a college or university with an approved teacher intern program will evaluate this experience.

d. Successfully complete the teacher intern program requirements listed in subrule 13.9(4) and approved by the state board of education.

e. Successfully pass a basic skills test at the level approved by the teacher education institution.

13.9(4) *Program requirements.* The teacher intern shall:

a. Complete the following requirements prior to the internship year:

(1) Learning environment/classroom management. The intern uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

(2) Instructional planning. The intern plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

(3) Instructional strategies. The intern understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

(4) Student learning. The intern understands how students learn and develop and provides learning opportunities that support intellectual, career, social, and personal development.

(5) Diverse learners. The intern understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

(6) Collaboration, ethics and relationships. The intern fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

(7) Assessment. The intern understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

(8) Field experiences that provide opportunities for interaction with students in an environment that supports learning in context. These experiences shall total at least 50 contact hours in the field prior to the beginning of the academic year of the candidate's initial employment as a teacher intern.

b. Complete four semester hours of a teacher intern seminar during the teacher internship year to include support and extension of coursework from the teacher intern program.

c. Complete the coursework and competencies in the following areas:

(1) Foundations, reflection, and professional development. The intern continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community and actively seeks out opportunities to grow professionally.

(2) Communication. The intern uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry and collaboration and to support interaction in the classroom.

(3) Exceptional learner program, which must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

(4) Preparation in the integration of reading strategies into the content area.

(5) Computer technology related to instruction.

(6) An advanced study of the items set forth in 13.9(4)*"a"*(1) to (7) above.

13.9(5) *Local school district requirements.* The local school district shall:

a. Provide an offer of employment to an individual who has been evaluated by a college or university for eligibility or acceptance in the teacher intern program.

b. Participate in a mentoring and induction program.

c. Provide a district mentor for the teacher intern.

d. Provide other support and supervision, as needed, to maximize the opportunity for the teacher intern to succeed.

e. Not overload the teacher intern with extracurricular duties not directly related to the teacher intern's teaching assignment.

f. Provide evidence to the board from a licensed evaluator that the teacher intern is participating in a mentoring and induction program.

g. At the board's request, provide information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

13.9(6) *Requirements to convert the teacher intern license to the initial license.*

a. An initial license shall be issued upon application provided that the teacher intern has met all of the following requirements:

(1) Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education.

(2) Verification from a licensed evaluator that the teacher intern served successfully for a minimum of 160 days.

(3) Verification from a licensed evaluator that the teacher intern is participating in a mentoring and induction program and is being assessed on the Iowa teaching standards.

(4) Recommendation by a college or university offering an approved teacher intern program that the individual is eligible for an initial license.

(5) At the board's request, the teacher intern shall provide to the board information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

b. The teacher intern year will count as one of the years that is needed for the teacher intern to convert the initial license to the standard license if the conditions listed in paragraph 13.9(6)*"a"* have been met.

13.9(7) *Requirements to obtain the initial license if the teacher intern does not complete the internship year.* An initial license shall be issued upon application provided that the teacher intern has met all of the following requirements:

a. Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education.

b. Verification by a college or university that the teacher intern successfully completed the college's or university's state-approved student teaching requirements.

c. Recommendation by a college or university offering an approved teacher intern program that the individual is eligible for an initial license.

d. At the board's request, the teacher intern shall provide to the board information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

282—13.10(272) Specific requirements for a Class A license. A nonrenewable Class A license valid for one year may be issued to an individual who has completed a teacher education program under any one of the following conditions:

13.10(1) *Professional core requirements.* The individual has not completed all of the required courses in the professional core, 13.18(4)*"a"* through *"j."*

13.10(2) *Human relations component.* The individual has not completed an approved human relations component.

13.10(3) *Recency.* The individual meets the requirements for a valid license, but has had fewer than 160 days of teaching experience during the five-year period immediately preceding the date of application or has not completed six semester hours of college credit from a recognized institution within the five-year period. To obtain the desired license, the applicant must complete recent credits and, where

recent credits are required, these credits shall be taken in professional education or in the applicant's endorsement area(s).

13.10(4) *Degree not granted until next regular commencement.* An applicant who meets the requirements for a license with the exception of the degree, but whose degree will not be granted until the next regular commencement, may be issued a Class A license.

13.10(5) *Based on an expired Iowa certificate or license, exclusive of a Class A, Class B, Class C, or Class D license.* The holder of an expired license, exclusive of a Class A, Class B, Class C, or Class D license, shall be eligible to receive a Class A license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.

13.10(6) *Based on a mentoring and induction program.* An applicant may be eligible for a Class A license if the school district, after conducting a comprehensive evaluation, recommends and verifies that the applicant shall participate in the mentoring program for a third year.

13.10(7) *Based on an administrative decision.* The executive director is authorized to issue a Class A license to an applicant whose services are needed to fill positions in unique need circumstances.

282—13.11(272) Specific requirements for a Class B license. A Class B license, which is valid for two years and which is nonrenewable, may be issued to an individual under the following conditions:

13.11(1) *Endorsement in progress.* The individual has a valid license and one or more endorsements, but is seeking to obtain some other endorsement. A Class B license may be issued if requested by an employer and the individual seeking this endorsement has completed at least two-thirds of the requirements, or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for that endorsement.

13.11(2) *Request for exception.* A school district administrator may file a written request with the board for an exception to the minimum content requirements on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

282—13.12(272) Specific requirements for a Class C license. Based on the amount of preparation needed to complete the requirements for the special education endorsement, a Class C license may be issued to an individual for a term of up to three years under the following conditions:

13.12(1) *License.* The individual holds a valid license.

13.12(2) *Credits in progress.* The individual has completed at least one-half of the credits necessary for a special education endorsement.

13.12(3) *Written request.* The employing school official makes written request supported by the respective area education agency special education officials.

13.12(4) *Remaining coursework documented.* The college or university outlines the coursework to be completed for the endorsement.

282—13.13(272) Specific requirements for a Class D occupational license. A two-year Class D occupational license may be issued to an applicant who has not met all of the experience requirements for the provisional occupational license set forth in 282—paragraph 17.2(1)*"a."*

282—13.14(272) Specific requirements for a Class E license. A nonrenewable license valid for one year may be issued to an individual as follows:

13.14(1) *Expired license.* Based on an expired Class A, Class B, Class C, Class D or teacher exchange license, the holder of the expired license shall be eligible to receive a Class E license upon application and submission of all required materials.

13.14(2) *Application.* The application process will require transcripts of coursework completed during the term of the expired license, a program of study indicating the coursework necessary to obtain full licensure, and registration for coursework to be completed during the term of the Class E license. The Class E license will be denied if the applicant has not completed any coursework during the term of the Class A, Class B, Class C, or Class D license unless extenuating circumstances are verified.

282—13.15(272) Specific requirements for a Class G license. A nonrenewable Class G license valid for one year may be issued to an individual who must complete a school guidance counseling practicum or internship in an approved program in preparation for the school guidance counselor endorsement. The Class G license may be issued under the following limited conditions:

1. Verification of a baccalaureate degree from a regionally accredited institution.
2. Verification from the institution that the individual is admitted and enrolled in an approved school guidance counseling program.
3. Verification that the individual has completed the coursework and competencies required prior to the practicum or internship.
4. Written documentation of the requirements listed in "1" to "3" above, provided by the official at the institution where the individual is completing the approved school guidance counseling program and forwarded to the Iowa board of educational examiners with the application form for licensure.

282—13.16(272) Specific requirements for a substitute teacher's license.

13.16(1) *Substitute teacher requirements.* A substitute teacher's license may be issued to an individual who:

a. Has been the holder of, or presently holds, a license in Iowa; or holds or held a regular teacher's license or certificate in another state, exclusive of temporary, emergency, or substitute certificate or license, or a certificate based on an alternative certification program; or

b. Has successfully completed all requirements of an approved teacher education program and is eligible for the initial license, but has not applied for and been issued this license, or who meets all requirements for the initial license with the exception of the degree but whose degree will be granted at the next regular commencement; or

c. Has successfully completed all requirements of an approved Iowa teacher education program, but did not apply for an Iowa teacher's license at the time of completion of the approved program.

13.16(2) *Validity.* A substitute license is valid for five years and for not more than 90 days of teaching in one assignment during any one school year. A school district administrator may file a written request with the board for an extension of the 90-day limit in one assignment on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

13.16(3) *Authorization.* The holder of a substitute license is authorized to teach in any school system in any position in which a regularly licensed teacher was employed to begin the school year. In addition to the authority inherent in the initial, standard, master educator, professional administrator, two-year exchange, and permanent professional licenses and the endorsement(s) held, the holder of one of these regular licenses may substitute on the same basis as the holder of a substitute license while the regular license is in effect.

282—13.17(272) Specific requirements for exchange licenses.

13.17(1) *Two-year teacher exchange license.*

a. A two-year nonrenewable exchange license may be issued to an applicant under the following conditions:

(1) The applicant has completed a state-approved teacher education program; and

(2) The applicant holds a valid regular certificate or license in the state in which the preparation was completed; and

(3) The applicant is not subject to any pending disciplinary proceedings in any state or country; and

(4) The applicant complies with all requirements with regard to application processes and payment of licensure fees; and

(5) If the applicant has fewer than three years of teaching experience, the applicant must verify successful completion of mandated tests in the state in which the applicant is currently licensed.

b. Authorization. Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application, the transcripts and the license or certificate held in the

state in which the basic preparation for licensure was completed or the application and the credential evaluation report.

c. Conversion. After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

13.17(2) *Two-year nonrenewable school counseling exchange license.*

a. A two-year nonrenewable school counseling exchange license may be issued to an individual, provided that the individual:

(1) Has completed a regionally accredited master's degree program in school guidance counseling.

(2) Holds a valid school counseling certificate or license issued by an examining board which issues certificates or licenses based on requirements which are substantially equivalent to those of the board of educational examiners.

(3) Meets the qualifications in Iowa Code section 272.6.

(4) Is not subject to any pending disciplinary proceeding in any state.

b. Each exchange license shall be limited to the area(s) and level(s) of counseling as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the school counseling license was completed.

c. Each applicant for the exchange license shall comply with all requirements with regard to application processes and payment of licensure fees.

d. Each individual receiving the two-year exchange license must complete any identified licensure deficiencies in order to be eligible for a regular educational license in Iowa.

e. Individuals licensed under this provision are subject to the administrative rules of the board.

13.17(3) *International teacher exchange license.*

a. A nonrenewable international exchange license may be issued to an applicant under the following conditions:

(1) The applicant has completed a teacher education program in another country; and

(2) The applicant is not subject to any pending disciplinary proceedings in any state or country; and

(3) The applicant complies with all requirements with regard to application processes and payment of licensure fees; and

(4) The applicant is a participant in a teacher exchange program administered through the Iowa department of education.

b. Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application and the credential evaluation report.

c. This license shall not exceed three years.

d. After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

282—13.18(272) General requirements for an original teaching subject area endorsement. Following are the general requirements for the issuance of a license with an endorsement.

13.18(1) Baccalaureate degree from a regionally accredited institution.

13.18(2) Completion of an approved human relations component.

13.18(3) Completion of the exceptional learner program, which must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

13.18(4) Professional education core. Completed coursework or evidence of competency in:

a. Student learning. The practitioner understands how students learn and develop, and provides learning opportunities that support intellectual, career, social and personal development.

b. Diverse learners. The practitioner understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

c. Instructional planning. The practitioner plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

d. Instructional strategies. The practitioner understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

e. Learning environment/classroom management. The practitioner uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

f. Communication. The practitioner uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry, collaboration, and support interaction in the classroom.

g. Assessment. The practitioner understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

h. Foundations, reflection and professional development. The practitioner continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community, and actively seeks out opportunities to grow professionally.

i. Collaboration, ethics and relationships. The practitioner fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

j. Computer technology related to instruction.

k. Completion of pre-student teaching field-based experiences.

l. Methods of teaching with an emphasis on the subject and grade level endorsement desired.

m. Student teaching in the subject area and grade level endorsement desired.

n. Preparation in reading programs, including reading recovery, and integration of reading strategies into content area methods coursework.

13.18(5) Content/subject matter specialization. The practitioner understands the central concepts, tools of inquiry, and structure of the discipline(s) the practitioner teaches and creates learning experiences that make these aspects of subject matter meaningful for students. This is evidenced by completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas, special education teaching endorsements, or secondary level occupational endorsements.

282—13.19(272) NCATE-accredited programs. Rescinded IAB 6/17/09, effective 7/22/09.

282—13.20 Reserved.

282—13.21(272) Human relations requirements for practitioner licensure. Preparation in human relations shall be included in programs leading to teacher licensure. Human relations study shall include interpersonal and intergroup relations and shall contribute to the development of sensitivity to and understanding of the values, beliefs, lifestyles and attitudes of individuals and the diverse groups found in a pluralistic society.

13.21(1) Beginning on or after August 31, 1980, each applicant for an initial practitioner's license shall have completed the human relations requirement.

13.21(2) On or after August 31, 1980, each applicant for the renewal of a practitioner's license shall have completed an approved human relations requirement.

13.21(3) Credit for the human relations requirement shall be given for licensed persons who can give evidence that they have completed a human relations program which meets board of educational examiners criteria (see rule 282—13.24(272)).

282—13.22(272) Development of human relations components. Human relations components shall be developed by teacher preparation institutions. In-service human relations components may also be developed by educational agencies other than teacher preparation institutions, as approved by the board of educational examiners.

13.22(1) *Advisory committee.* Education agencies developing human relations components shall give evidence that in the development of their programs they were assisted by an advisory committee. The advisory committee shall consist of equal representation of various minority and majority groups.

13.22(2) *Standards for approved components.* Human relations components will be approved by the board of educational examiners upon submission of evidence that the components are designed to develop the ability of participants to:

a. Be aware of and understand the values, lifestyles, history, and contributions of various identifiable subgroups in our society.

b. Recognize and deal with dehumanizing biases such as sexism, racism, prejudice, and discrimination and become aware of the impact that such biases have on interpersonal relations.

c. Translate knowledge of human relations into attitudes, skills, and techniques which will result in favorable learning experiences for students.

d. Recognize the ways in which dehumanizing biases may be reflected in instructional materials.

e. Respect human diversity and the rights of each individual.

f. Relate effectively to other individuals and various subgroups other than one's own.

13.22(3) *Evaluation.* Educational agencies providing the human relations components shall indicate the means to be utilized for evaluation.

282—13.23 to **13.25** Reserved.

282—13.26(272) Requirements for elementary endorsements.

13.26(1) *Teacher—prekindergarten-kindergarten.*

a. *Authorization.* The holder of this endorsement is authorized to teach at the prekindergarten/kindergarten level.

b. *Program requirements.*

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations program, and

(3) Completion of the professional education core. See subrule 13.18(3).

c. *Content.*

(1) Human growth and development: infancy and early childhood, unless completed as part of the professional education core. See subrule 13.18(4).

(2) Curriculum development and methodology for young children.

(3) Child-family-school-community relationships (community agencies).

(4) Guidance of young children three to six years of age.

(5) Organization of prekindergarten-kindergarten programs.

(6) Child and family nutrition.

(7) Language development and learning.

(8) Kindergarten: programs and curriculum development.

13.26(2) *Teacher—prekindergarten through grade three.*

a. *Authorization.* The holder of this endorsement is authorized to teach children from birth through grade three.

b. *Program requirements.*

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. *Content.*

(1) Child growth and development with emphasis on cognitive, language, physical, social, and emotional development, both typical and atypical, for infants and toddlers, preprimary, and primary school children (grades one through three), unless combined as part of the professional education core. See subrule 13.18(4) of the licensure rules for the professional core.

(2) Historical, philosophical, and social foundations of early childhood education.

(3) Developmentally appropriate curriculum with emphasis on integrated multicultural and nonsexist content including language, mathematics, science, social studies, health, safety, nutrition, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology, including adaptations for individual needs, for infants and toddlers, preprimary, and primary school children.

(4) Characteristics of play and creativity, and their contributions to the cognitive, language, physical, social and emotional development and learning of infants and toddlers, preprimary, and primary school children.

(5) Classroom organization and individual interactions to create positive learning environments for infants and toddlers, preprimary, and primary school children based on child development theory emphasizing guidance techniques.

(6) Observation and application of developmentally appropriate assessments for infants and toddlers, preprimary, and primary school children recognizing, referring, and making adaptations for children who are at risk or who have exceptional educational needs and talents.

(7) Home-school-community relationships and interactions designed to promote and support parent, family and community involvement, and interagency collaboration.

(8) Family systems, cultural diversity, and factors which place families at risk.

(9) Child and family health and nutrition.

(10) Advocacy, legislation, and public policy as they affect children and families.

(11) Administration of child care programs to include staff and program development and supervision and evaluation of support staff.

(12) Pre-student teaching field experience with three age levels in infant and toddler, preprimary, and primary programs, with no less than 100 clock hours, and in different settings, such as rural and urban, socioeconomic status, cultural diversity, program types, and program sponsorship.

(13) Student teaching experiences with two different age levels, one before kindergarten and one from kindergarten through grade three.

13.26(3) *Teacher—prekindergarten through grade three, including special education.*

a. Authorization. The holder of this endorsement is authorized to teach children from birth through grade three.

b. Program requirements.

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations program, and

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. Content.

(1) Child growth and development.

1. Understand the nature of child growth and development for infants and toddlers (birth through age 2), preprimary (age 3 through age 5) and primary school children (age 6 through age 8), both typical and atypical, in areas of cognition, language development, physical motor, social-emotional, aesthetics, and adaptive behavior.

2. Understand individual differences in development and learning including risk factors, developmental variations and developmental patterns of specific disabilities and special abilities.

3. Recognize that children are best understood in the contexts of family, culture and society and that cultural and linguistic diversity influences development and learning.

(2) Developmentally appropriate learning environment and curriculum implementation.

1. Establish learning environments with social support, from the teacher and from other students, for all children to meet their optimal potential, with a climate characterized by mutual respect, encouraging and valuing the efforts of all regardless of proficiency.

2. Appropriately use informal and formal assessment to monitor development of children and to plan and evaluate curriculum and teaching practices to meet individual needs of children and families.

3. Plan, implement, and continuously evaluate developmentally and individually appropriate curriculum goals, content, and teaching practices for infants, toddlers, preprimary and primary children based on the needs and interests of individual children, their families and community.

4. Use both child-initiated and teacher-directed instructional methods, including strategies such as small and large group projects, unstructured and structured play, systematic instruction, group discussion and cooperative decision making.

5. Develop and implement integrated learning experiences for home-, center- and school-based environments for infants, toddlers, preprimary and primary children.

6. Develop and implement integrated learning experiences that facilitate cognition, communication, social and physical development of infants and toddlers within the context of parent-child and caregiver-child relationships.

7. Develop and implement learning experiences for preprimary and primary children with focus on multicultural and nonsexist content that includes development of responsibility, aesthetic and artistic development, physical development and well-being, cognitive development, and emotional and social development.

8. Develop and implement learning experiences for infants, toddlers, preprimary, and primary children with a focus on language, mathematics, science, social studies, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology.

9. Develop adaptations and accommodations for infants, toddlers, preprimary, and primary children to meet their individual needs.

10. Adapt materials, equipment, the environment, programs and use of human resources to meet social, cognitive, physical motor, communication, and medical needs of children and diverse learning needs.

(3) Health, safety and nutrition.

1. Design and implement physically and psychologically safe and healthy indoor and outdoor environments to promote development and learning.

2. Promote nutritional practices that support cognitive, social, cultural and physical development of young children.

3. Implement appropriate appraisal and management of health concerns of young children including procedures for children with special health care needs.

4. Recognize signs of emotional distress, physical and mental abuse and neglect in young children and understand mandatory reporting procedures.

5. Demonstrate proficiency in infant-child cardiopulmonary resuscitation, emergency procedures and first aid.

(4) Family and community collaboration.

1. Apply theories and knowledge of dynamic roles and relationships within and between families, schools, and communities.

2. Assist families in identifying resources, priorities, and concerns in relation to the child's development.

3. Link families, based on identified needs, priorities and concerns, with a variety of resources.

4. Use communication, problem-solving and help-giving skills in collaboration with families and other professionals to support the development, learning and well-being of young children.

5. Participate as an effective member of a team with other professionals and families to develop and implement learning plans and environments for young children.

(5) Professionalism.

1. Understand legislation and public policy that affect all young children, with and without disabilities, and their families.

2. Understand legal aspects, historical, philosophical, and social foundations of early childhood education and special education.

3. Understand principles of administration, organization and operation of programs for children from birth to age 8 and their families, including staff and program development, supervision and evaluation of staff, and continuing improvement of programs and services.

4. Identify current trends and issues of the profession to inform and improve practices and advocate for quality programs for young children and their families.

5. Adhere to professional and ethical codes.

6. Engage in reflective inquiry and demonstration of professional self-knowledge.

(6) Pre-student teaching field experiences. Complete 100 clock hours of pre-student teaching field experience with three age levels in infant and toddler, preprimary, and primary programs and in different settings, such as rural and urban, encompassing differing socioeconomic status, ability levels, cultural and linguistic diversity and program types and sponsorship.

(7) Student teaching. Complete a supervised student teaching experience of a total of at least 12 weeks in at least two different classrooms which include children with and without disabilities in two of three age levels: infant and toddler, preprimary, and primary.

13.26(4) *Teacher—elementary classroom.*

a. Authorization. The holder of this endorsement is authorized to teach in kindergarten and grades one through six.

b. Program requirements.

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations component, and

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. Content.

(1) Child growth and development with emphasis on the emotional, physical and mental characteristics of elementary age children, unless completed as part of the professional education core. See subrule 13.18(4).

(2) Methods and materials of teaching elementary language arts.

(3) Methods and materials of teaching elementary reading.

(4) Elementary curriculum (methods and materials).

(5) Methods and materials of teaching elementary mathematics.

(6) Methods and materials of teaching elementary science.

(7) Children's literature.

(8) Methods and materials of teaching elementary social studies.

(9) Methods and materials in two of the following areas:

1. Methods and materials of teaching elementary health.
2. Methods and materials of teaching elementary physical education.
3. Methods and materials of teaching elementary art.
4. Methods and materials of teaching elementary music.

(10) Pre-student teaching field experience in at least two different grades.

(11) A field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours.

282—13.27(272) Requirements for middle school endorsements.

13.27(1) *Authorization.* The holder of this endorsement is authorized to teach in the two concentration areas in which the specific requirements have been completed as well as in other subject areas in grades five through eight which are not the core content areas. The holder is not authorized to teach art, industrial arts, music, reading, physical education and special education.

13.27(2) *Program requirements.*

a. Be the holder of a currently valid Iowa teacher's license with either the general elementary endorsement or one of the subject matter secondary level endorsements set out in rule 282—13.28(272) or 282—subrules 17.1(1) and 17.1(3).

b. A minimum of 9 semester hours of required coursework in the following:

(1) Coursework in the growth and development of the middle school age child, specifically addressing the social, emotional, physical and cognitive characteristics and needs of middle school age children in addition to related studies completed as part of the professional education core in subrule 13.18(4).

(2) Coursework in middle school design, curriculum, instruction, and assessment including, but not limited to, interdisciplinary instruction, teaming, and differentiated instruction in addition to related studies completed as part of the professional education core in subrule 13.18(4).

(3) Coursework to prepare middle school teachers in literacy (reading, writing, listening and speaking) strategies for students in grades five through eight and in methods to include these strategies throughout the curriculum.

c. Thirty hours of middle school field experiences included in the coursework requirements listed in 13.27(2)*"b"*(1) to (3).

13.27(3) *Concentration areas.* To obtain this endorsement, the applicant must complete the coursework requirements in two of the following content areas:

a. Social studies concentration. The social studies concentration requires 12 semester hours of coursework in social studies to include coursework in United States history, world history, government and geography.

b. Mathematics concentration. The mathematics concentration requires 12 semester hours in mathematics to include coursework in algebra.

c. Science concentration. The science concentration requires 12 semester hours in science to include coursework in life science, earth science, and physical science.

d. Language arts concentration. The language arts concentration requires 12 semester hours in language arts to include coursework in composition, language usage, speech, young adult literature, and literature across cultures.

282—13.28(272) Minimum content requirements for teaching endorsements.

13.28(1) *Agriculture.* 5-12. Completion of 24 semester hours in agriculture to include coursework in agronomy, animal science, agricultural mechanics, and agricultural economics.

13.28(2) *Art.* K-8 or 5-12. Completion of 24 semester hours in art to include coursework in art history, studio art, and two- and three-dimensional art.

13.28(3) *Business—all.* 5-12. Completion of 30 semester hours in business to include 6 semester hours in accounting, 3 semester hours in business law to include contract law, 3 semester hours in computer and technical applications in business, 6 semester hours in marketing to include consumer studies, 3 semester hours in management, 6 semester hours in economics, and 3 semester hours in business communications to include formatting, language usage, and oral presentation. Coursework in entrepreneurship and in financial literacy may be a part of, or in addition to, the coursework listed above. Individuals who were licensed in Iowa prior to October 1, 1988, and were allowed to teach marketing without completing the endorsement requirements must complete the endorsement requirements by July 1, 2010, in order to teach or continue to teach marketing. A waiver provision is available through the board of educational examiners for individuals who have been successfully teaching marketing.

13.28(4) *Driver education.* 5-12. Completion of 9 semester hours in driver education to include coursework in accident prevention that includes drug and alcohol abuse; vehicle safety; and behind-the-wheel driving.

13.28(5) *English/language arts.*

a. K-8. Completion of 24 semester hours in English and language arts to include coursework in oral communication, written communication, language development, reading, children's literature, creative drama or oral interpretation of literature, and American literature.

b. 5-12. Completion of 24 semester hours in English to include coursework in oral communication, written communication, language development, reading, American literature, English literature and adolescent literature.

13.28(6) *Language arts.* 5-12. Completion of 40 semester hours in language arts to include coursework in the following areas:

a. Written communication.

(1) Develops a wide range of strategies and appropriately uses writing process elements (e.g., brainstorming, free-writing, first draft, group response, continued drafting, editing, and self-reflection) to communicate with different audiences for a variety of purposes.

(2) Develops knowledge of language structure (e.g., grammar), language conventions (e.g., spelling and punctuation), media techniques, figurative language and genre to create, critique, and discuss print and nonprint texts.

b. Oral communication.

(1) Understands oral language, listening, and nonverbal communication skills; knows how to analyze communication interactions; and applies related knowledge and skills to teach students to become competent communicators in varied contexts.

(2) Understands the communication process and related theories, knows the purpose and function of communication and understands how to apply this knowledge to teach students to make appropriate and effective choices as senders and receivers of messages in varied contexts.

c. Language development.

(1) Understands inclusive and appropriate language, patterns and dialects across cultures, ethnic groups, geographic regions and social roles.

(2) Develops strategies to improve competency in the English language arts and understanding of content across the curriculum for students whose first language is not English.

d. Young adult literature, American literature, and world literature.

(1) Reads, comprehends, and analyzes a wide range of texts to build an understanding of self as well as the cultures of the United States and the world in order to acquire new information, to respond to the needs and demands of society and the workplace, and for personal fulfillment. Among these texts are fiction and nonfiction, graphic novels, classic and contemporary works, young adult literature, and nonprint texts.

(2) Reads a wide range of literature from many periods in many genres to build an understanding of the many dimensions (e.g., philosophical, ethical, aesthetic) of human experience.

(3) Applies a wide range of strategies to comprehend, interpret, evaluate, and appreciate texts. Draws on prior experience, interactions with other readers and writers, knowledge of word meaning and of other texts, word identification strategies, and an understanding of textual features (e.g., sound-letter correspondence, sentence structure, context, graphics).

(4) Participates as a knowledgeable, reflective, creative, and critical member of a variety of literacy communities.

e. Creative voice.

(1) Understands the art of oral interpretation and how to provide opportunities for students to develop and apply oral interpretation skills in individual and group performances for a variety of audiences, purposes and occasions.

(2) Understands the basic skills of theatre production including acting, stage movement, and basic stage design.

f. Argumentation/debate.

(1) Understands concepts and principles of classical and contemporary rhetoric and is able to plan, prepare, organize, deliver and evaluate speeches and presentations.

(2) Understands argumentation and debate and how to provide students with opportunities to apply skills and strategies for argumentation and debate in a variety of formats and contexts.

g. Journalism.

(1) Understands ethical standards and major legal issues including First Amendment rights and responsibilities relevant to varied communication content. Utilizes strategies to teach students about the importance of freedom of speech in a democratic society and the rights and responsibilities of communicators.

(2) Understands the writing process as it relates to journalism (e.g., brainstorming, questioning, reporting, gathering and synthesizing information, writing, editing, and evaluating the final media product).

(3) Understands a variety of forms of journalistic writing (e.g., news, sports, features, opinion, Web-based) and the appropriate styles (e.g., Associated Press, multiple sources with attribution, punctuation) and additional forms unique to journalism (e.g., headlines, cutlines, and/or visual presentations).

h. Mass media production.

(1) Understands the role of the media in a democracy and the importance of preserving that role.

(2) Understands how to interpret and analyze various types of mass media messages in order for students to become critical consumers.

(3) Develops the technological skills needed to package media products effectively using various forms of journalistic design with a range of visual and auditory methods.

i. Reading strategies (if not completed as part of the professional education core requirements).

(1) Uses a variety of skills and strategies to comprehend and interpret complex fiction, nonfiction and informational text.

(2) Reads for a variety of purposes and across content areas.

13.28(7) *Foreign language.* K-8 and 5-12. Completion of 24 semester hours in each foreign language for which endorsement is sought.

13.28(8) *Health.* K-8 and 5-12. Completion of 24 semester hours in health to include coursework in public or community health, consumer health, substance abuse, family life education, mental/emotional health, and human nutrition.

13.28(9) *Family and consumer sciences—general.* 5-12. Completion of 24 semester hours in family and consumer sciences to include coursework in human development, parenthood education, family studies, consumer resource management, textiles and apparel, housing, and foods and nutrition.

13.28(10) *Industrial technology.* 5-12. Completion of 24 semester hours in industrial technology to include coursework in manufacturing, construction, energy and power, graphic communications and transportation. The coursework is to include at least 6 semester hours in three different areas.

13.28(11) *Journalism.* 5-12. Completion of 15 semester hours in journalism to include coursework in writing, editing, production and visual communications.

13.28(12) *Mathematics.*

a. K-8. Completion of 24 semester hours in mathematics to include coursework in algebra, geometry, number theory, measurement, computer programming, and probability and statistics.

b. 5-12. Completion of 24 semester hours in mathematics to include a linear algebra or an abstract (modern) algebra course, a geometry course, a two-course sequence in calculus, a computer programming course, a probability and statistics course, and coursework in discrete mathematics.

13.28(13) *Music.*

a. K-8. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history, and applied music.

b. 5-12. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history (at least two courses), applied music, and conducting.

13.28(14) *Physical education.*

a. K-8. Completion of 24 semester hours in physical education to include coursework in human anatomy, human physiology, movement education, adapted physical education, physical education in the elementary school, human growth and development of children related to physical education, and first aid and emergency care.

b. 5-12. Completion of 24 semester hours in physical education to include coursework in human anatomy, kinesiology, human physiology, human growth and development related to maturational and motor learning, adapted physical education, curriculum and administration of physical education, assessment processes in physical education, and first aid and emergency care.

13.28(15) *Reading.*

a. K-8 requirements. Completion of 24 semester hours in reading to include all of the following requirements:

(1) Foundations of reading. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of the psychological, sociocultural, and linguistic foundations of reading and writing processes and instruction.

2. The practitioner demonstrates knowledge of a range of research pertaining to reading, writing, and learning, including scientifically based reading research, and knowledge of histories of reading. The range of research encompasses research traditions from the fields of the social sciences and other paradigms appropriate for informing practice.

3. The practitioner demonstrates knowledge of the major components of reading, such as phonemic awareness, word identification, phonics, vocabulary, fluency, and comprehension, and effectively integrates curricular standards with student interests, motivation, and background knowledge.

(2) Reading in the content areas. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of text structure and the dimensions of content area vocabulary and comprehension, including literal, interpretive, critical, and evaluative.

2. The practitioner provides content area instruction in reading and writing that effectively uses a variety of research-based strategies and practices.

(3) Practicum. This requirement includes the following competencies:

1. The practitioner works with licensed professionals who observe, evaluate, and provide feedback on the practitioner's knowledge, dispositions, and performance of the teaching of reading and writing.

2. The practitioner effectively uses reading and writing strategies, materials, and assessments based upon appropriate reading and writing research and works with colleagues and families in the support of children's reading and writing development.

(4) Language development. This requirement includes the following competency: The practitioner uses knowledge of language development and acquisition of reading skills (birth through sixth grade), and the variations related to cultural and linguistic diversity to provide effective instruction in reading and writing.

(5) Oral communication. This requirement includes the following competencies:

1. The practitioner has knowledge of the unique needs and backgrounds of students with language differences and delays.

2. The practitioner uses effective strategies for facilitating the learning of Standard English by all learners.

(6) Written communication. This requirement includes the following competency: The practitioner uses knowledge of reading-writing-speaking connections; the writing process; the stages of spelling development; the different types of writing, such as narrative, expressive, persuasive, informational and descriptive; and the connections between oral and written language development to effectively teach writing as communication.

(7) Reading assessment, diagnosis and evaluation. This requirement includes the following competencies:

1. The practitioner uses knowledge of a variety of instruments, procedures, and practices that range from individual to group and from formal to informal to alternative for the identification of students' reading proficiencies and needs, for planning and revising instruction for all students, and for communicating the results of ongoing assessments to all stakeholders.

2. The practitioner demonstrates awareness of policies and procedures related to special programs, including Title I.

(8) Children's nonfiction and fiction. This requirement includes the following competency: The practitioner uses knowledge of children's literature for:

1. Modeling the reading and writing of varied genres, including fiction and nonfiction; technology- and media-based information; and nonprint materials;

2. Motivating through the use of texts at multiple levels, representing broad interests, and reflecting varied cultures, linguistic backgrounds, and perspectives; and

3. Matching text complexities to the proficiencies and needs of readers.

(9) Reading instructional strategies. This requirement includes the following competency: The practitioner uses knowledge of a range of research-based strategies and instructional technology for designing and delivering effective instruction across the curriculum, for grouping students, and for selecting materials appropriate for learners at various stages of reading and writing development and from varied cultural and linguistic backgrounds.

b. 5-12 requirements. Completion of 24 semester hours in reading to include all of the following requirements:

(1) Foundations of reading. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of the psychological, sociocultural, and linguistic foundations of reading and writing processes and instruction.

2. The practitioner demonstrates knowledge of a range of research pertaining to reading, writing, and learning, including scientifically based reading research, and knowledge of histories of reading. The range of research encompasses research traditions from the fields of the social sciences and other paradigms appropriate for informing practice.

3. The practitioner demonstrates knowledge of the major components of reading such as phonemic awareness, word identification, phonics, vocabulary, fluency, and comprehension, and integrates curricular standards with student interests, motivation, and background knowledge.

(2) Reading in the content areas. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of text structure and the dimensions of content area vocabulary and comprehension, including literal, interpretive, critical, and evaluative.

2. The practitioner provides content area instruction in reading and writing that effectively uses a variety of research-based strategies and practices.

(3) Practicum. This requirement includes the following competencies:

1. The practitioner works with licensed professionals who observe, evaluate, and provide feedback on the practitioner's knowledge, dispositions, and performance of the teaching of reading and writing.

2. The practitioner effectively uses reading and writing strategies, materials, and assessments based upon appropriate reading and writing research, and works with colleagues and families in the support of students' reading and writing development.

(4) Language development. This requirement includes the following competency: The practitioner uses knowledge of the relationship of language acquisition and language development with the acquisition and development of reading skills, and the variations related to cultural and linguistic diversity to provide effective instruction in reading and writing.

(5) Oral communication. This requirement includes the following competency: The practitioner demonstrates knowledge of the unique needs and backgrounds of students with language differences and uses effective strategies for facilitating the learning of Standard English by all learners.

(6) Written communication. This requirement includes the following competency: The practitioner uses knowledge of reading-writing-speaking connections to teach the skills and processes necessary for writing narrative, expressive, persuasive, informational, and descriptive texts, including text structures and mechanics such as grammar, usage, and spelling.

(7) Reading assessment, diagnosis and evaluation. This requirement includes the following competencies:

1. The practitioner uses knowledge of a variety of instruments, procedures, and practices that range from individual to group and from formal to informal to alternative for the identification of students' reading proficiencies and needs, for planning and revising instruction for all students, and for communicating the results of ongoing assessments to all stakeholders.

2. The practitioner demonstrates awareness of policies and procedures related to special programs.

(8) Adolescent or young adult nonfiction and fiction. This requirement includes the following competency: The practitioner uses knowledge of adolescent or young adult literature for:

1. Modeling the reading and writing of varied genres, including fiction and nonfiction; technology and media-based information; and nonprint materials;

2. Motivating through the use of texts at multiple levels, representing broad interests, and reflecting varied cultures, linguistic backgrounds and perspectives; and

3. Matching text complexities to the proficiencies and needs of readers.

(9) Reading instructional strategies. This requirement includes the following competency: The practitioner uses knowledge of a range of research-based strategies and instructional technology for designing and delivering instruction across the curriculum, for grouping students, and for selecting materials appropriate for learners at various stages of reading and writing development and from varied cultural and linguistic backgrounds.

13.28(16) *Reading specialist.* K-12. The applicant must have met the requirements for the standard license and a teaching endorsement, and present evidence of at least one year of experience which included the teaching of reading as a significant part of the responsibility.

a. *Authorization.* The holder of this endorsement is authorized to serve as a reading specialist in kindergarten and grades one through twelve.

b. *Program requirements.* Degree—master's.

c. *Content.* Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least 27 semester hours to include the following:

(1) Educational psychology/human growth and development.

(2) Educational measurement and evaluation.

(3) Foundations of reading.

(4) Diagnosis of reading problems.

(5) Remedial reading.

(6) Psychology of reading.

(7) Language learning and reading disabilities.

(8) Practicum in reading.

(9) Administration and supervision of reading programs at the elementary and secondary levels.

13.28(17) *Science.*

a. *Science—basic.* K-8.

(1) Required coursework. Completion of at least 24 semester hours in science to include 12 hours in physical sciences, 6 hours in biology, and 6 hours in earth/space sciences.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

b. *Biological science.* 5-12. Completion of 24 semester hours in biological science or 30 semester hours in the broad area of science to include 15 semester hours in biological science.

c. *Chemistry.* 5-12. Completion of 24 semester hours in chemistry or 30 semester hours in the broad area of science to include 15 semester hours in chemistry.

d. *Earth science.* 5-12. Completion of 24 semester hours in earth science or 30 semester hours in the broad area of science to include 15 semester hours in earth science.

e. *General science.* 5-12. Completion of 24 semester hours in science to include coursework in biological science, chemistry, and physics.

f. *Physical science.* 5-12. Completion of 24 semester hours in physical sciences to include coursework in physics, chemistry, and earth science.

g. *Physics.* 5-12. Completion of 24 semester hours in physics or 30 semester hours in the broad area of science to include 15 semester hours in physics.

h. *All science I.* 5-8. The holder of this endorsement must also hold the middle school endorsement listed under rule 282—13.27(272).

(1) Required coursework. Completion of at least 24 semester hours in science to include 6 hours in chemistry, 6 hours in physics or physical sciences, 6 hours in biology, and 6 hours in the earth/space sciences.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

i. *All science II.* 9-12.

(1) Required coursework.

1. Completion of one of the following endorsement areas listed under subrule 13.28(17): biological science 5-12 or chemistry 5-12 or earth science 5-12 or physics 5-12.

2. Completion of at least 12 hours in each of the other three endorsement areas.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

13.28(18) *Social sciences.*

a. *American government.* 5-12. Completion of 24 semester hours in American government or 30 semester hours in the broad area of social sciences to include 15 semester hours in American government.

b. *American history.* 5-12. Completion of 24 semester hours in American history or 30 semester hours in the broad area of social sciences to include 15 semester hours in American history.

c. *Anthropology.* 5-12. Completion of 24 semester hours in anthropology or 30 semester hours in the broad area of social sciences to include 15 semester hours in anthropology.

d. *Economics.* 5-12. Completion of 24 semester hours in economics or 30 semester hours in the broad area of social sciences to include 15 semester hours in economics, or 30 semester hours in the broad area of business to include 15 semester hours in economics.

e. *Geography.* 5-12. Completion of 24 semester hours in geography or 30 semester hours in the broad area of social sciences to include 15 semester hours in geography.

f. *History.* K-8. Completion of 24 semester hours in history to include at least 9 semester hours in American history and 9 semester hours in world history.

g. *Psychology.* 5-12. Completion of 24 semester hours in psychology or 30 semester hours in the broad area of social sciences to include 15 semester hours in psychology.

h. *Social studies.* K-8. Completion of 24 semester hours in social studies, to include coursework from at least three of these areas: history, sociology, economics, American government, psychology and geography.

i. *Sociology.* 5-12. Completion of 24 semester hours in sociology or 30 semester hours in the broad area of social sciences to include 15 semester hours in sociology.

j. *World history.* 5-12. Completion of 24 semester hours in world history or 30 semester hours in the broad area of social sciences to include 15 semester hours in world history.

k. *All social sciences.* 5-12. Completion of 51 semester hours in the social sciences to include 9 semester hours in each of American and world history, 9 semester hours in government, 6 semester hours in sociology, 6 semester hours in psychology other than educational psychology, 6 semester hours in geography, and 6 semester hours in economics.

13.28(19) *Speech communication/theatre.*

a. *K-8.* Completion of 20 semester hours in speech communication/theatre to include coursework in speech communication, creative drama or theatre, and oral interpretation.

b. *5-12.* Completion of 24 semester hours in speech communication/theatre to include coursework in speech communication, oral interpretation, creative drama or theatre, argumentation and debate, and mass media communication.

13.28(20) *English as a second language (ESL).* K-12.

a. *Authorization.* The holder of this endorsement is authorized to teach English as a second language in kindergarten and grades one through twelve.

b. *Program requirements.*

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations program, and

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. *Content.* Completion of 18 semester hours of coursework in English as a second language to include the following:

(1) Knowledge of pedagogy to include the following:

1. Methods and curriculum to include the following:

- Bilingual and ESL methods.
- Literacy in native and second language.
- Methods for subject matter content.
- Adaptation and modification of curriculum.

2. Assessment to include language proficiency and academic content.

(2) Knowledge of linguistics to include the following:

1. Psycholinguistics and sociolinguistics.
2. Language acquisition and proficiency to include the following:

- Knowledge of first and second language proficiency.
- Knowledge of first and second language acquisition.
- Language to include structure and grammar of English.

(3) Knowledge of cultural and linguistic diversity to include the following:

1. History.
2. Theory, models, and research.
3. Policy and legislation.

(4) Current issues with transient populations.

d. *Other.* Individuals who were licensed in Iowa prior to October 1, 1988, and were allowed to teach English as a second language without completing the endorsement requirements must complete the endorsement requirements by July 1, 2012, in order to teach or continue to teach English as a second language. A waiver provision is available through the board of educational examiners for individuals who have been successfully teaching English as a second language.

13.28(21) *Elementary school teacher librarian.*

a. *Authorization.* The holder of this endorsement is authorized to serve as a teacher librarian in kindergarten and grades one through eight.

b. *Program requirements.*

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. *Content.* Completion of 24 semester hours in school library coursework to include the following:

(1) Knowledge of materials and literature in all formats for elementary children.

(2) Selection, utilization and evaluation of library resources and equipment.

(3) Design and production of instructional materials.

(4) Acquisition, cataloging and classification of library materials.

(5) Information literacy, reference services and networking.

(6) Planning, evaluation and administration of school library programs.

(7) Practicum in an elementary school media center/library.

13.28(22) *Secondary school teacher librarian.*

a. *Authorization.* The holder of this endorsement is authorized to serve as a teacher librarian in grades five through twelve.

b. *Program requirements.*

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. *Content.* Completion of 24 semester hours in school library coursework to include the following:

(1) Knowledge of materials and literature in all formats for adolescents.

(2) Selection, utilization and evaluation of library resources and equipment.
(3) Design and production of instructional materials.
(4) Acquisition, cataloging and classification of library materials.
(5) Information literacy, reference services and networking.
(6) Planning, evaluation and administration of school library programs.
(7) Practicum in a secondary school media center/library.

13.28(23) *School teacher librarian.* K-12.

a. Authorization. The holder of this endorsement is authorized to serve as a teacher librarian in kindergarten and grades one through twelve. The applicant must be the holder of or eligible for the initial license.

b. Program requirements. Degree—master's.

c. Content. Completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements. This sequence is to be at least 30 semester hours in school library coursework, to include the following:

(1) Planning, evaluation and administration of school library programs.
(2) Curriculum development and teaching and learning strategies.
(3) Instructional development and communication theory.
(4) Selection, evaluation and utilization of library resources and equipment.
(5) Acquisition, cataloging and classification of library materials.
(6) Design and production of instructional materials.
(7) Methods for instruction and integration of information literacy skills into the school curriculum.
(8) Information literacy, reference services and networking.
(9) Knowledge of materials and literature in all formats for elementary children and adolescents.
(10) Reading, listening and viewing guidance.
(11) Utilization and application of computer technology.
(12) Practicum at both the elementary and secondary levels.
(13) Research in library and information science.

13.28(24) *Talented and gifted teacher-coordinator.* Teachers in specific subject areas will not be required to hold this endorsement if they teach gifted students in their respective endorsement areas. Practitioners licensed and employed after August 31, 1995, and assigned as teachers or coordinators in programs for the talented and gifted will be required to hold this endorsement.

a. Authorization. The holder of this endorsement is authorized to serve as a teacher or a coordinator of programs for the talented and gifted from the prekindergarten level through grade twelve. This authorization does not permit general classroom teaching at any level except that level or area for which the holder is eligible or holds the specific endorsement.

b. Program requirements—content. Completion of 12 undergraduate or graduate semester hours of coursework in the area of the talented and gifted to include the following:

(1) Psychology of the gifted.
1. Social needs.
2. Emotional needs.
(2) Programming for the gifted.
1. Prekindergarten-12 identification.
2. Differentiation strategies.
3. Collaborative teaching skills.
4. Program goals and performance measures.
5. Program evaluation.
(3) Administration and supervision of gifted programs.
(4) Practicum experience in gifted programs.

c. Other. Individuals who were licensed in Iowa prior to August 31, 1995, and were allowed to teach talented and gifted classes without completing the endorsement requirements must complete the endorsement requirements by July 1, 2012, in order to teach or continue to teach talented and gifted

classes. A waiver provision is provided through the board of educational examiners for individuals who have been successfully teaching students who are talented and gifted.

13.28(25) *American Sign Language endorsement.*

a. Authorization. The holder of this endorsement is authorized to teach American Sign Language in kindergarten and grades one through twelve.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core.

c. Content. Completion of 18 semester hours of coursework in American Sign Language to include the following:

(1) Second language acquisition.

(2) Sociology of the deaf community.

(3) Linguistic structure of American Sign Language.

(4) Language teaching methodology specific to American Sign Language.

(5) Teaching the culture of deaf people.

(6) Assessment of students in an American Sign Language program.

d. Other. Be the holder of or be eligible for one other teaching endorsement listed in rules 282—13.26(272) and 282—13.27(272) and this rule.

13.28(26) *Elementary counselor.*

a. Authorization. The holder of this endorsement is authorized to serve as a school guidance counselor in kindergarten and grades one through eight.

b. Program requirements.

(1) Master's degree from an accredited institution of higher education, and

(2) Completion of an approved human relations component, and

(3) Completion of an approved exceptional learner component.

c. Content. Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements to include the following:

(1) Nature and needs of individuals at all developmental levels.

1. Develop strategies for facilitating development through the transition from childhood to adolescence and from adolescence to young adult.

2. Apply knowledge of learning and personality development to assist students in developing their full potential.

(2) Social and cultural foundations.

1. Demonstrate awareness of and sensitivity to the unique social, cultural, and economic circumstances of students and their racial/ethnic, gender, age, physical, and learning differences.

2. Demonstrate sensitivity to the nature and the functioning of the student within the family, school and community contexts.

3. Demonstrate the counseling and consultation skills needed to facilitate informed and appropriate action in response to the needs of students.

(3) Fostering of relationships.

1. Employ effective counseling and consultation skills with students, parents, colleagues, administrators, and others.

2. Communicate effectively with parents, colleagues, students and administrators.

3. Counsel students in the areas of personal, social, academic, and career development.

4. Assist families in helping their children address the personal, social, and emotional concerns and problems that may impede educational progress.

5. Implement developmentally appropriate counseling interventions with children and adolescents.

6. Demonstrate the ability to negotiate and move individuals and groups toward consensus or conflict resolution or both.

7. Refer students for specialized help when appropriate.

8. Value the well-being of the students as paramount in the counseling relationship.

(4) Group work.

1. Implement developmentally appropriate interventions involving group dynamics, counseling theories, group counseling methods and skills, and other group work approaches.

2. Apply knowledge of group counseling in implementing appropriate group processes for elementary, middle school, and secondary students.

(5) Career development, education, and postsecondary planning.

1. Assist students in the assessment of their individual strengths, weaknesses, and differences, including those that relate to academic achievement and future plans.

2. Apply knowledge of career assessment and career choice programs.

3. Implement occupational and educational placement, follow-up and evaluation.

4. Develop a counseling network and provide resources for use by students in personalizing the exploration of postsecondary educational opportunities.

(6) Assessment and evaluation.

1. Demonstrate individual and group approaches to assessment and evaluation.

2. Demonstrate an understanding of the proper administration and uses of standardized tests.

3. Apply knowledge of test administration, scoring, and measurement concerns.

4. Apply evaluation procedures for monitoring student achievement.

5. Apply assessment information in program design and program modifications to address students' needs.

6. Apply knowledge of legal and ethical issues related to assessment and student records.

(7) Professional orientation.

1. Apply knowledge of history, roles, organizational structures, ethics, standards, and credentialing.

2. Maintain a high level of professional knowledge and skills.

3. Apply knowledge of professional and ethical standards to the practice of school counseling.

4. Articulate the counselor role to school personnel, parents, community, and students.

(8) School counseling skills.

1. Design, implement, and evaluate a comprehensive, developmental school guidance program.

2. Implement and evaluate specific strategies designed to meet program goals and objectives.

3. Consult and coordinate efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives.

4. Provide information appropriate to the particular educational transition and assist students in understanding the relationship that their curricular experiences and academic achievements will have on subsequent educational opportunities.

5. Assist parents and families in order to provide a supportive environment in which students can become effective learners and achieve success in pursuit of appropriate educational goals.

6. Provide training, orientation, and consultation assistance to faculty, administrators, staff, and school officials to assist them in responding to the social, emotional, and educational development of all students.

7. Collaborate with teachers, administrators, and other educators in ensuring that appropriate educational experiences are provided that allow all students to achieve success.

8. Assist in the process of identifying and addressing the needs of the exceptional student.

9. Apply knowledge of legal and ethical issues related to child abuse and mandatory reporting.

10. Advocate for the educational needs of students and work to ensure that these needs are addressed at every level of the school experience.

11. Promote use of counseling and guidance activities and programs involving the total school community to provide a positive school climate.

(9) Classroom management.

1. Apply effective classroom management strategies as demonstrated in classroom guidance and large group guidance lessons.

2. Consult with teachers and parents about effective classroom management and behavior management strategies.

(10) Curriculum.

1. Write classroom lessons including objectives, learning activities, and discussion questions.

2. Utilize various methods of evaluating what students have learned in classroom lessons.

3. Demonstrate competency in conducting classroom and other large group activities, utilizing an effective lesson plan design, engaging students in the learning process, and employing age appropriate classroom management strategies.

4. Design a classroom unit of developmentally appropriate learning experiences.

5. Demonstrate knowledge in writing standards and benchmarks for curriculum.

(11) Learning theory.

1. Identify and consult with teachers about how to create a positive learning environment utilizing such factors as effective classroom management strategies, building a sense of community in the classroom, and cooperative learning experiences.

2. Identify and consult with teachers regarding teaching strategies designed to motivate students using small group learning activities, experiential learning activities, student mentoring programs, and shared decision-making opportunities.

3. Demonstrate knowledge of child and adolescent development and identify developmentally appropriate teaching and learning strategies.

(12) Teaching and counseling practicum.

1. The school counselor demonstrates competency in conducting classroom sessions with elementary and middle school students.

2. The practicum consisting of a minimum of 500 contact hours provides opportunities for the prospective counselor, under the supervision of a licensed professional school counselor, to engage in a variety of activities in which a regularly employed school counselor would be expected to participate including, but not limited to, individual counseling, group counseling, developmental classroom guidance, and consultation.

13.28(27) *Secondary counselor.*

a. Authorization. The holder of this endorsement is authorized to serve as a school guidance counselor in grades five through twelve.

b. Program requirements.

(1) Master's degree from an accredited institution of higher education.

(2) Completion of an approved human relations component.

(3) Completion of an approved exceptional learner component.

c. Content. Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements to include the following:

(1) Nature and needs of individuals at all developmental levels.

1. Develop strategies for facilitating development through the transition from childhood to adolescence and from adolescence to young adult.

2. Apply knowledge of learning and personality development to assist students in developing their full potential.

(2) Social and cultural foundations.

1. Demonstrate awareness of and sensitivity to the unique social, cultural, and economic circumstances of students and their racial/ethnic, gender, age, physical, and learning differences.

2. Demonstrate sensitivity to the nature and the functioning of the student within the family, school and community contexts.

3. Demonstrate the counseling and consultation skills needed to facilitate informed and appropriate action in response to the needs of students.

(3) Fostering of relationships.

1. Employ effective counseling and consultation skills with students, parents, colleagues, administrators, and others.

2. Communicate effectively with parents, colleagues, students and administrators.

3. Counsel students in the areas of personal, social, academic, and career development.

4. Assist families in helping their children address the personal, social, and emotional concerns and problems that may impede educational progress.

5. Implement developmentally appropriate counseling interventions with children and adolescents.

6. Demonstrate the ability to negotiate and move individuals and groups toward consensus or conflict resolution or both.

7. Refer students for specialized help when appropriate.

8. Value the well-being of the students as paramount in the counseling relationship.

(4) Group work.

1. Implement developmentally appropriate interventions involving group dynamics, counseling theories, group counseling methods and skills, and other group work approaches.

2. Apply knowledge of group counseling in implementing appropriate group processes for elementary, middle school, and secondary students.

(5) Career development, education, and postsecondary planning.

1. Assist students in the assessment of their individual strengths, weaknesses, and differences, including those that relate to academic achievement and future plans.

2. Apply knowledge of career assessment and career choice programs.

3. Implement occupational and educational placement, follow-up and evaluation.

4. Develop a counseling network and provide resources for use by students in personalizing the exploration of postsecondary educational opportunities.

(6) Assessment and evaluation.

1. Demonstrate individual and group approaches to assessment and evaluation.

2. Demonstrate an understanding of the proper administration and uses of standardized tests.

3. Apply knowledge of test administration, scoring, and measurement concerns.

4. Apply evaluation procedures for monitoring student achievement.

5. Apply assessment information in program design and program modifications to address students' needs.

6. Apply knowledge of legal and ethical issues related to assessment and student records.

(7) Professional orientation.

1. Apply knowledge of history, roles, organizational structures, ethics, standards, and credentialing.

2. Maintain a high level of professional knowledge and skills.

3. Apply knowledge of professional and ethical standards to the practice of school counseling.

4. Articulate the counselor role to school personnel, parents, community, and students.

(8) School counseling skills.

1. Design, implement, and evaluate a comprehensive, developmental school guidance program.

2. Implement and evaluate specific strategies designed to meet program goals and objectives.

3. Consult and coordinate efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives.

4. Provide information appropriate to the particular educational transition and assist students in understanding the relationship that their curricular experiences and academic achievements will have on subsequent educational opportunities.

5. Assist parents and families in order to provide a supportive environment in which students can become effective learners and achieve success in pursuit of appropriate educational goals.

6. Provide training, orientation, and consultation assistance to faculty, administrators, staff, and school officials to assist them in responding to the social, emotional, and educational development of all students.

7. Collaborate with teachers, administrators, and other educators in ensuring that appropriate educational experiences are provided that allow all students to achieve success.

8. Assist in the process of identifying and addressing the needs of the exceptional student.

9. Apply knowledge of legal and ethical issues related to child abuse and mandatory reporting.

10. Advocate for the educational needs of students and work to ensure that these needs are addressed at every level of the school experience.

11. Promote use of counseling and guidance activities and programs involving the total school community to provide a positive school climate.

(9) Classroom management.

1. Apply effective classroom management strategies as demonstrated in classroom guidance and large group guidance lessons.

2. Consult with teachers and parents about effective classroom management and behavior management strategies.

(10) Curriculum.

1. Write classroom lessons including objectives, learning activities, and discussion questions.

2. Utilize various methods of evaluating what students have learned in classroom lessons.

3. Demonstrate competency in conducting classroom and other large group activities, utilizing an effective lesson plan design, engaging students in the learning process, and employing age appropriate classroom management strategies.

4. Design a classroom unit of developmentally appropriate learning experiences.

5. Demonstrate knowledge in writing standards and benchmarks for curriculum.

(11) Learning theory.

1. Identify and consult with teachers about how to create a positive learning environment utilizing such factors as effective classroom management strategies, building a sense of community in the classroom, and cooperative learning experiences.

2. Identify and consult with teachers regarding teaching strategies designed to motivate students using small group learning activities, experiential learning activities, student mentoring programs, and shared decision-making opportunities.

3. Demonstrate knowledge of child and adolescent development and identify developmentally appropriate teaching and learning strategies.

(12) Teaching and counseling practicum.

1. The school counselor demonstrates competency in conducting classroom sessions with middle and secondary school students.

2. The practicum consisting of a minimum of 500 contact hours provides opportunities for the prospective counselor, under the supervision of a licensed professional school counselor, to engage in a variety of activities in which a regularly employed school counselor would be expected to participate including, but not limited to, individual counseling, group work, developmental classroom guidance and consultation.

13.28(28) *School nurse endorsement.* The school nurse endorsement does not authorize general classroom teaching, although it does authorize the holder to teach health at all grade levels. Alternatively, a nurse may obtain a statement of professional recognition (SPR) from the board of educational examiners, in accordance with the provisions set out in 282—Chapter 16, Statements of Professional Recognition (SPR).

a. Authorization. The holder of this endorsement is authorized to provide service as a school nurse at the prekindergarten and kindergarten levels and in grades one through twelve.

b. Program requirements.

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations program, and

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. Content.

(1) Organization and administration of school nurse services including the appraisal of the health needs of children and youth.

(2) School-community relationships and resources/coordination of school and community resources to serve the health needs of children and youth.

(3) Knowledge and understanding of the health needs of exceptional children.

(4) Health education.

d. Other. Hold a license as a registered nurse issued by the Iowa board of nursing.

13.28(29) *Athletic coach.* K-12. An applicant for the coaching endorsement must hold a teacher's license with one of the teaching endorsements.

a. Authorization. The holder of this endorsement may serve as a head coach or an assistant coach in kindergarten and grades one through twelve.

b. Program requirements.

(1) One semester hour college or university course in the structure and function of the human body in relation to physical activity, and

(2) One semester hour college or university course in human growth and development of children and youth as related to physical activity, and

(3) Two semester hour college or university course in athletic conditioning, care and prevention of injuries and first aid as related to physical activity, and

(4) One semester hour college or university course in the theory of coaching interscholastic athletics.

282—13.29(272) Adding, removing or reinstating a teaching endorsement.

13.29(1) *Adding an endorsement.* After the issuance of a teaching license, an individual may add other endorsements to that license upon proper application, provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

a. Options. To add an endorsement, the applicant must follow one of these options:

(1) Option 1. Receive the Iowa teacher education institution's recommendation that the current approved program requirements for the endorsement have been met.

(2) Option 2. Receive verification from the Iowa teacher education institution that the minimum state requirements for the endorsement have been met in lieu of the institution's approved program.

(3) Option 3. Receive verification from a state-approved and regionally accredited institution that the Iowa minimum requirements for the endorsement have been met.

(4) Option 4. Apply for a review of the transcripts by the board of educational examiners' staff to determine if all Iowa requirements have been met. The applicant must submit documentation that all of the Iowa requirements have been met by filing transcripts and supporting documentation for review. The fee for the transcript evaluation is in 282—Chapter 12. This fee shall be in addition to the fee for adding the endorsement.

b. Additional requirements for adding an endorsement.

(1) In addition to meeting the requirements listed in rules 282—13.18(272) and 282—13.28(272), applicants for endorsements shall have completed a methods class appropriate for teaching the general subject area of the endorsement added.

(2) Practitioners who are adding a secondary teaching endorsement and have not student taught on the secondary level shall complete a teaching practicum appropriate for teaching at the level of the new endorsement.

(3) Practitioners holding the K-8 endorsement in the content area of the 5-12 endorsement being added may satisfy the requirement for a teaching practicum by completing all required coursework and presenting verification of competence. This verification of competence shall be signed by a licensed evaluator who has observed and formally evaluated the performance of the applicant at the secondary level. This verification of competence may be submitted at any time during the term of the Class B license. The practitioner must obtain a two-year Class B license while practicing with the 5-12 endorsement.

13.29(2) *Removal of an endorsement; reinstatement of removed endorsement.*

a. Removal of an endorsement. A practitioner may remove an endorsement from the practitioner's license as follows:

(1) To remove an endorsement, the practitioner shall meet the following conditions:

1. A practitioner who holds a standard or master educator license is eligible to request removal of an endorsement from the license if the practitioner has not taught in the subject or assignment area of the endorsement in the five years prior to the request for removal of the endorsement, and

2. The practitioner must submit a notarized written application form furnished by the board of educational examiners to remove an endorsement at the time of licensure renewal (licensure renewal is limited to one calendar year prior to the expiration date of the current license), and

3. The application must be signed by the superintendent or designee in the district in which the practitioner is under contract. The superintendent's signature shall serve as notification and acknowledgment of the practitioner's intent to remove an endorsement from the practitioner's license. The absence of the superintendent's or designee's signature does not impede the removal process.

(2) The endorsement shall be removed from the license at the time of application.

(3) If a practitioner is not employed and submits an application, the provisions of 13.29(2)*"a"*(1)"3" shall not be required.

(4) If a practitioner submits an application that does not meet the criteria listed in 13.29(2)*"a"*(1)"1" to "3," the application will be rendered void and the practitioner will forfeit the processing fee.

(5) The executive director has the authority to approve or deny the request for removal. Any denial is subject to the appeal process set forth in rule 282—11.35(272).

b. Reinstatement of a removed endorsement.

(1) If the practitioner wants to add the removed endorsement at a future date, all coursework for the endorsement must be completed within the five years preceding the application to add the endorsement.

(2) The practitioner must meet the current endorsement requirements when making application.

282—13.30(272) Licenses—issue dates, corrections, duplicates, and fraud.

13.30(1) *Issue date on original license.* A license is valid only from and after the date of issuance.

13.30(2) *Correcting licenses.* If a licensee notifies board staff of a typographical or clerical error on the license within 30 days of the date of the board's mailing of a license, a corrected license shall be issued without charge to the licensee. If notification of a typographical or clerical error is made more than 30 days after the date of the board's mailing of a license, a corrected license shall be issued upon receipt of the fee for issuance of a duplicate license. For purposes of this rule, typographical or clerical errors include misspellings, errors in the expiration date of a license, errors in the type of license issued, and the omission or misidentification of the endorsements for which application was made. A licensee requesting the addition of an endorsement not included on the initial application must submit a new application and the appropriate application fee.

13.30(3) *Duplicate licenses.* Upon application and payment of the fee set out in 282—Chapter 12, a duplicate license shall be issued.

13.30(4) *Fraud in procurement or renewal of licenses.* Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

These rules are intended to implement Iowa Code chapter 272.

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ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Rules transferred from agency number [190] to [121] to conform with the reorganization numbering scheme in general, IAC Supp. 9/9/87.
Prior to 3/30/94, Campaign Finance Disclosure Commission [121]

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CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 4]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 4]

DIVISION I
ORGANIZATIONAL REQUIREMENTS

351—4.1(68A,68B) Requirement to file statement of organization (DR-1)—persons subject to requirements; financial thresholds; where to file; when due.

4.1(1) *Persons subject to requirement.* Every committee shall file a statement of organization (Form DR-1) within ten days from the date of its organization. The forms shall be either typewritten or printed legibly in black ink.

a. "Committee" defined. "Committee" includes the following:

(1) A "candidate's committee" that is the committee, even if the committee consists only of the candidate, designated by a candidate for a state or local office to receive contributions, make expenditures, or incur debts in excess of $750.

(2) A "political committee" (PAC) that is a committee exceeding the $750 organizational threshold to expressly advocate the nomination, election, or defeat of candidates or to expressly advocate the passage or defeat of a ballot issue. The board shall automatically classify as a political committee any political organization that loses its status as a political party because it fails to meet the requirements of Iowa Code section 43.2. The board shall automatically classify as a political committee any county central committee that operated under the former political party.

(3) A "state statutory political committee" (state party), "county statutory political party" (county central committee), or "city statutory political committee" (city central committee).

(4) A person that wishes to register a committee for purposes of using the short form "paid for by" attribution statement shall file Form DR-SFA pursuant to rule 351—4.11(68A).

b. When organization occurs; financial thresholds. At the latest, organization is construed to have occurred as of the date that the committee first exceeded $750 of financial activity in a calendar year in any of the following categories: contributions received (aggregate of monetary and in-kind contributions); expenditures made; or indebtedness incurred.

c. Permanent organizations temporarily engaging in political activity. The requirement to file the statement of organization applies to an entity that comes under the definition of a "political committee" (PAC) in Iowa Code Supplement section 68A.102(18) by receiving contributions, making expenditures, or incurring debts in excess of $750 in any one calendar year for the purpose of expressly advocating the election or defeat of a candidate for public office, or for the purpose of expressly advocating the passage or defeat of a ballot issue. A permanent organization that makes a one-time contribution in excess of $750 may in lieu of filing a statement of organization follow the procedure in rule 351—4.35(68A). A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

4.1(2) *Place of filing.* Statements of organization shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.1(3) *Time of filing.* A statement of organization shall be filed with the board within ten days after the financial filing threshold in subrule 4.1(1) has been exceeded. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed statements must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.1(4) *Candidate defined.* For purposes of Iowa Code chapters 68A and 68B and the rules of the board, "candidate" means an individual who takes affirmative action to seek nomination or election to a state or local public office. For purposes of Iowa Code chapter 68A and any rules of the board on

campaigning for public office, "candidate" includes any judge or judicial employee who is required by law to stand for retention. "Takes affirmative action" includes making a public announcement of intention to seek nomination or election, making any expenditure or accepting any contribution for nomination or election, distributing petitions for signatures for nomination, filing nomination papers or an affidavit of candidacy, or being nominated by any convention process set out by law.

4.1(5) *Ballot issue defined.* "Ballot issue" means a question that has been approved by a political subdivision or the general assembly to be placed before the voters or is otherwise required by law to be placed before the voters. "Ballot issue" does not include the nomination, election, or defeat of a candidate.

This rule is intended to implement Iowa Code Supplement sections 68A.201 and 68A.401.

351—4.2(68A,68B) Information required: committee name.

4.2(1) *Full name required.* The statement of organization shall include the full name of the committee. A committee using an abbreviation or acronym as part of the committee name shall provide with the statement of organization a written explanation of the full word or words that are abbreviated or that form the acronym.

4.2(2) *Duplication of name prohibited.* The committee name shall not duplicate the name of another committee organized under Iowa Code chapter 68A. The board shall determine whether two committee names are in duplication in violation of Iowa Code section 68A.201(2)*"a."* A committee duplicating the name of another organized committee shall choose a new committee name upon notification from the board. A candidate who files an amended statement of organization to reflect a change in office sought shall not be required to change the name of the candidate's committee unless the committee's name duplicates the name of another organized committee. A committee shall not duplicate the name of a dissolved committee for a period of ten years after the dissolved committee is certified as being dissolved except when the candidate for both committees is the same individual.

4.2(3) *Candidate's surname required in committee name.* A candidate filing a statement of organization on or after July 1, 1995, shall include the candidate's surname within the committee name. This requirement also applies to a new candidate's committee organized by a candidate who has a preexisting candidate's committee but who organizes a new candidate's committee or files an amended statement of organization.

This rule is intended to implement Iowa Code Supplement section 68A.201.

[**ARC 7646B**, IAB 3/25/09, effective 4/29/09]

351—4.3(68A,68B) Information required: committee purpose; party affiliation.

4.3(1) *Committee purpose.* An organized campaign committee shall identify the purpose of the committee on the statement of organization. The purpose shall be indicated in part by designating the committee as one of the following types of committees:

Type 1 - A candidate's committee for a statewide or legislative candidate or a judge standing for retention. This type of committee is referred to as a state candidate's committee.

Type 2 - A political committee that expressly advocates for or against candidates at the state level or expressly advocates for or against a statewide ballot issue. This type of committee is referred to as a statewide PAC.

Type 3 - A state statutory political committee. This type of committee is referred to as a state party.

Type 4 - A county statutory political committee. This type of committee is referred to as a county central committee.

Type 5 - A candidate's committee for a candidate seeking county office. This type of committee is referred to as a county candidate's committee.

Type 6 - A candidate's committee for a candidate seeking city office. This type of committee is referred to as a city candidate's committee.

Type 7 - A candidate's committee for a candidate seeking school board or other political subdivision office except for a county or city office. This type of committee is referred to as a school board or other political subdivision candidate's committee.

Type 8 - A political committee that expressly advocates for or against candidates for county office. This type of committee is referred to as a county PAC.

Type 9 - A political committee that expressly advocates for or against candidates for city office. This type of committee is referred to as a city PAC.

Type 10 - A political committee that expressly advocates for or against candidates for school board or other political subdivision except for county or city candidates. This type of committee is referred to as a school board or other political subdivision PAC.

Type 11 - A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a local ballot issue committee.

4.3(2) *Party affiliation.* A candidate's committee is deemed to be established to expressly advocate the election of a candidate for public office. Each candidate's committee shall designate the political affiliation of the candidate. Any other committee shall designate that it is either established to expressly advocate the election or defeat of candidates or the passage or defeat of a ballot issue.

This rule is intended to implement Iowa Code Supplement section 68A.201.

351—4.4(68A,68B) Information required: officers; committee information; signatures.

4.4(1) *Committee officers.* The committee shall disclose on the statement of organization the name, mailing address, telephone number, and office of each committee officer whom the committee is required by statute to appoint. Each candidate's committee shall appoint a treasurer who shall be an Iowa resident and at least 18 years of age. Every other committee shall appoint a separate treasurer and chairperson, each of whom shall be at least 18 years of age. The committee may appoint other officers not required by statute without restriction on residency or age, and the committee is not required to disclose these officers. Except for a candidate's committee, every committee shall either have an Iowa resident as treasurer or shall maintain all of the committee's funds in bank accounts in a financial institution in Iowa.

4.4(2) *Committee address and telephone number.* The address and telephone number of the candidate as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to the candidate's committee. The address and telephone number of the committee chairperson as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to every other committee except for a candidate's committee. If an electronic mail address has been provided on the statement of organization, communication from the board to a committee shall be sent by electronic mail.

4.4(3) *Signatures.* The candidate and treasurer shall sign the statement of organization filed by a candidate's committee. The chairperson and treasurer shall sign a statement of organization filed by any other type of committee. A statement of organization filed electronically using the board's Web site is deemed signed when filed.

This rule is intended to implement Iowa Code Supplement section 68A.201.

351—4.5(68A,68B) Segregation and timely deposit of funds; information required: identification of financial institution, account name; notice to treasurer.

4.5(1) *Segregation and deposit of funds.* All committee funds shall be maintained in a financial institution and shall be segregated from any other funds held by a candidate, officer, member, or associate of the committee. The committee treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee.

4.5(2) *Exception from segregation of committee funds.* A candidate's committee that receives contributions only from the candidate is not required to maintain a separate account. A permanent organization temporarily engaging in activity that qualifies it as a political committee that uses existing general operating funds and does not solicit or receive funds from other sources for campaign purposes is not required to maintain a separate account.

4.5(3) *Identification of financial institution and account.* The committee shall disclose on the committee's statement of organization the name and mailing address of all financial institutions in

which committee funds are maintained. The committee shall also disclose the name and type of all accounts in which committee funds are maintained, and the name of any such account shall be the same as the committee name on the statement of organization.

4.5(4) *Notice to treasurer.* Any person who receives contributions for a committee shall render the contributions to the treasurer within 15 days of receipt and provide the committee treasurer with the reporting information required by Iowa Code Supplement section 68A.203(2).

This rule is intended to implement Iowa Code Supplement sections 68A.201 and 68A.203.

351—4.6(68A,68B) Amendments to statement of organization; requirement for new statement of organization for new office sought.

4.6(1) *Amendment within 30 days.* If there is a change in any of the information disclosed on a statement of organization, the committee shall file an amended statement within 30 days of the change. An amended statement of organization shall be filed with the board and the board shall make available to the appropriate county commissioner of elections an amended statement filed by a county, city, school, or other political subdivision committee.

4.6(2) *New office sought.* A candidate who filed a statement of organization for one office but eventually seeks another office may file an amended statement of organization to reflect the change in office sought in lieu of dissolving the old committee and organizing a new committee. A candidate filing an amended statement of organization for a new office shall continue to file the required campaign reports regardless of whether the $750 financial filing threshold for the new office has been exceeded. A candidate who has filed a statement of organization for one office and who then exceeds the financial activity threshold as set forth in Iowa Code section 68A.102(5) for a new office shall, within ten days of exceeding the threshold, file either an amended statement of organization disclosing information for the new office sought or organize and register a new committee.

This rule is intended to implement Iowa Code Supplement section 68A.201.

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

351—4.7(68A,68B) Disclosure reporting required; information on initial report; minimum filing if no activity.

4.7(1) *Disclosure reporting required.* Every committee that has filed a statement of organization under Iowa Code section 68A.201 and rule 351—4.1(68A,68B) or has exceeded the financial activity threshold set out in Iowa Code section 68A.102(5) or (18) prior to the cutoff date for reporting campaign transactions shall file a campaign disclosure report pursuant to Iowa Code section 68A.402.

4.7(2) *Information on initial report.* The first disclosure report filed by a committee shall include the relevant financial information covering the period from the beginning of the committee's financial activity through the end of the current reporting period.

4.7(3) *Funds available from prior committee.* If funds are available to a candidate's committee from a prior candidacy of that candidate, or to a ballot issue committee from a prior effort on a ballot issue, and the prior candidacy or effort had not exceeded the financial reporting threshold, the carryover balance shall be disclosed by the new committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover, the date of the prior election, and the name and address of any source that made contributions to the candidacy or ballot effort that totaled more than $750 during the preceding three calendar years.

4.7(4) *Funds available from preballot issue activity.* Funds that are raised for an activity that is not included in the definition of a ballot issue in Iowa Code Supplement section 68A.102(1) and that are made available to a subsequent ballot issue committee shall be disclosed by the committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover balance, the date of the preballot issue activity, and the name and address of any source that made contributions to the activity that totaled more than $750 during the previous three calendar years.

4.7(5) *No financial activity during reporting period.* A committee that did not have any financial activity during the relevant reporting period for which a disclosure report is due shall be required to file only Form DR-2. However, if the committee had previously disclosed debts or loans, those obligations shall again be disclosed on either Schedule D - Incurred Indebtedness or Schedule F - Loans Received and Repaid, as appropriate, and the schedule or schedules shall be included with Form DR-2. A candidate's committee that has reportable campaign property under Iowa Code Supplement section 68A.304 shall disclose the property on Schedule H - Campaign Property and the schedule shall be included with Form DR-2.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.8(68A,68B) Disclosure reporting required—where reports filed.

4.8(1) *Place of filing.* Disclosure reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-4073, as an E-mail attachment, or electronically through the board's Web site at www.iowa.gov/ethics.

4.8(2) *Reports made available.* The board shall post on its Web site at www.iowa.gov/ethics all statements and reports filed under Iowa Code chapter 68A.

4.8(3) *Records retention.* The board shall maintain and retain all statements and reports filed under Iowa Code chapter 68Aunder the applicable provisions of Iowa Code chapter 305.

This rule is intended to implement Iowa Code section 68A.401 as amended by 2007 Iowa Acts, Senate File 39, section 5, and 2007 Iowa Acts, House File 413, section 1.

351—4.9(68A) Campaign disclosure report due dates.

4.9(1) *Statewide office, general assembly, judge standing for retention.* A candidate's committee of a candidate for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 or Wednesday preceding primary election* through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 or Wednesday preceding general election* through December 31 of election year

b. Supplementary report.

Report due	Covering period
Friday preceding primary election*	May 15 through Tuesday preceding primary election*
Friday preceding general election*	October 15 through Tuesday preceding general election*

*If supplementary report required. See subrule 4.9(2).

c. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

d. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(1)"a."*

4.9(2) *Statewide office or general assembly—supplementary reports.* In addition to reports required under subrule 4.9(1), a supplementary report is required if contributions received during the period beginning on the date of initial financial activity, or the day after the period covered by the last report, as applicable, through the Tuesday preceding the primary or general election equal or exceed the following thresholds:

Office sought	Contribution threshold
Governor	$10,000 or more
Other statewide office	$5,000 or more
General assembly	$1,000 or more

4.9(3) *County candidate.* A candidate's committee of a candidate for county office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(3)"a."*

4.9(4) *City candidate.* A candidate's committee of a candidate for city office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before the runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(4)"a."*

4.9(5) *School board or other political subdivision.* A candidate's committee of a candidate for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(5)"a."*

4.9(6) *State statutory political committee (state political party).* A committee defined in Iowa Code Supplement section 68A.102(22)as a state statutory political committee shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(7) *County statutory political committee (county central committee).* A committee defined as a county statutory political committee in Iowa Code Supplement section 68A.102(12) shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(8) *State political committee (state PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
July 19	January 1 through June 30
January 19 (next calendar year)	July 1 through December 31

4.9(9) *County political committee (county PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for county office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(10) *City political committee (city PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for city office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(11) *School board or other political subdivision political committee (school board or other local PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(12) *Statewide or local ballot issue committee (ballot issue PAC).* A committee expressly advocating the passage or defeat of a statewide or local ballot issue shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity or previous report through ten days before election
May 19	Date of initial activity or previous report through May 14
July 19	Date of initial activity or previous report through July 14
October 19	Date of initial activity or previous report through October 14
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(13) *Permanent organizations.* A permanent organization temporarily engaging in political activity as described in Iowa Code Supplement section 68A.102(18) shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The committee shall file reports on the applicable due dates as required by this rule. The reports shall identify the source of the original funds used for a contribution made to a candidate or a candidate's committee. When the permanent organization ceases to be involved in the political activity, the permanent organization shall dissolve the political committee. "Permanent organization" means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities.

4.9(14) *Election year defined.* "Election year" means a year in which the name of the candidate or ballot issue appears on a ballot to be voted on by the electors of the state of Iowa. For state and county statutory political committees, "election year" means a year in which primary and general elections are held.

This rule is intended to implement Iowa Code section 68A.402.

351—4.10(68A,68B) Time of filing. A report must be physically received by the board or, if mailed, shall bear a United States Postal Service postmark dated on or before the report due date. Faxed,

E-mailed, or electronically filed reports must be submitted on or before 11:59 p.m. of the report due date. However, as provided in Iowa Code Supplement section 68A.402 as amended by 2008 Iowa Acts, Senate File 2400, sections 24 and 28, any report that is required to be filed five days or less prior to an election must be physically received by the board prior to 4:30 p.m. on the report due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the first working day when the board office is open.

This rule is intended to implement Iowa Code Supplement section 68A.402 as amended by 2008 Iowa Acts, Senate File 2400, sections 24 and 28.

351—4.11(68A) Voluntary registration—Form DR-SFA.

4.11(1) *Persons voluntarily registering a committee.* A person that has not exceeded the $750 financial filing threshold may file Form DR-SFA for purposes of using the short form "paid for by" attribution statement under Iowa Code section 68A.405 and rule 351—4.38(68A). A person using the short form "paid for by" attribution statement shall file Form DR-SFA with the board prior to distributing the political material containing the short form "paid for by" attribution statement.

4.11(2) *$750 threshold later exceeded.* A person filing Form DR-SFA shall not be required to file a statement of organization or be required to file disclosure reports unless the $750 threshold is later exceeded. A person that later exceeds the $750 threshold and that fails to timely file a statement of organization or to timely file disclosure reports may be subject to the appropriate board sanctions as set out by statute and board rule.

This rule is intended to implement Iowa Code sections 68A.201 and 68A.405.

351—4.12(68A,68B) Exception from reporting requirement—reports due within five days of one another. When two disclosure reports are due from the same committee within five days of each other, the activity may be combined into one report. A committee choosing this option shall file a report on or before the second due date that covers the extended reporting period.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.13(68A,68B) Report forms—summary page (DR-2) and supporting schedules. The board may require committees to submit relevant information not specifically delineated in Iowa Code Supplement chapter 68A on their disclosure report where the report form asks for and leaves space for information. All information shall be pertinent to the duties of the board.

4.13(1) *Official reporting forms.* The disclosure reporting forms provided by the board shall be the official forms on which the disclosure reports shall be submitted. Machine copies of original report forms are acceptable. The standard forms for campaign disclosure reports are:

DR-2 — Disclosure Summary Page
Schedule A — Monetary Receipts
Schedule B — Monetary Expenditures
Schedule C — (Reserved)
Schedule D — Incurred Indebtedness
Schedule E — In-kind Contributions
Schedule F — Loans Received and Repaid
Schedule G — Consultant Activity
Schedule H — Campaign Property

4.13(2) *Computer-generated reports.* Committees may generate a disclosure report in lieu of using a board-approved paper report or the board's electronic filing system so long as the generated report contains the same information and is in the same basic format as a board-approved paper report. Committees generating their own reports must submit the reports for prior board approval before use.

4.13(3) *Typewritten or legible ink reports required.* Information which is provided on all forms shall be either typewritten or printed legibly in black ink. Approved computer-generated reports satisfy this requirement.

4.13(4) *Special information required for city, school, or local ballot issue elections.* Committees expressly advocating the election or defeat of a candidate for city or school public office, or expressly advocating the passage or defeat of a local ballot issue, shall indicate in the designated spaces on the report summary page the date that the election is to be held, the period covered by the disclosure report, and the control county responsible for conducting the election.

4.13(5) *Signature on DR-2 Report Summary Page.* A disclosure report shall be signed by the individual filing the report. A disclosure report filed electronically using the board's Web site is deemed signed when filed.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.403.

351—4.14(68A,68B) Schedule A - Monetary Receipts.

4.14(1) *Reporting of all monetary receipts; chronological listing.* The committee shall report the amounts of all monetary receipts which are accepted by the committee during the reporting period. If a contribution is returned to a contributor prior to the end of the reporting period and is not deposited into the committee's bank account, the contribution is deemed to have been rejected and shall not be reported. A contribution which is physically received and either deposited into the committee's account or not returned by the end of the reporting period is deemed to have been accepted. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.14(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) that the contribution was physically received by a person on behalf of the committee. If the contribution is by check, the date of the contribution to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check. For contributions received by mail, the date of the contribution to be reported shall be the date that the recipient physically opens the envelope.

4.14(3) *Name and address of contributor; joint accounts.* The schedule shall include the name and address of each person who has made one or more contributions of money to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds $25, except that the itemization threshold is $200 for a state statutory political committee and $50 for a county statutory political committee. In the case of a contribution by check, the contributor name on the disclosure report shall be the name shown as the account name on the account, except that if the check is on a joint account, the contribution shall be presumed to be from the person who signs the check. If the committee chooses to itemize contributions that are less than the required itemization threshold, it may do so, but shall either do so for all contributions or none of the contributions under the threshold.

4.14(4) *Unitemized contributions and freewill donations.* If the committee does not choose to itemize all contributions under the itemization threshold ($25 for most committees, see Iowa Code Supplement section 68A.402(3)*"b"*), it shall aggregate these contributions and report the aggregate amount as "unitemized contributions." No date received is required to be provided for miscellaneous unitemized contributions. Unitemized contributions may be solicited and received through a freewill donation such as a "fish bowl" or "pass the hat" collection if the collection is in compliance with rule 351—4.30(68A,68B). Unitemized contributions collected through freewill donations (the net amount of the collection after the itemization of those persons whose contributions of more than $10 in the freewill collection resulted in exceeding the annual itemization threshold) shall be reported by showing the net amount as "unitemized contributions—pass the hat (or can collection or fish bowl, for example) collection." The "date received" to be reported for a freewill donation is the date a representative of the committee takes possession of the proceeds of the collection.

4.14(5) *Relationship to candidate.* In the case of contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity. "Consanguinity" means a relative through descent from common ancestors (by blood). "Affinity" means a relative through a current marriage. A husband has the same relation, by affinity, to his wife's blood relatives as she has to them by consanguinity and vice versa. "Degree of kinship" is determined by counting upward from one of the persons in question to the

nearest common ancestor, and then down to the other person, calling it one degree for each generation in the ascending as well as the descending line. Under this rule, a woman's sister is related to her by consanguinity in the second degree. The sister is thus related to the woman's husband by affinity in the second degree. Other examples of relationships within the third degree between a contributor and a candidate would be the following: children and stepchildren (first degree); siblings and half-siblings (second degree); grandparents (second degree); grandchildren (second degree); aunts and uncles (third degree); nieces and nephews (third degree); great-grandparents (third degree) and great-grandchildren (third degree), all irrespective of whether the blood relationship is to the candidate or to the candidate's spouse.

4.14(6) *ID number and check number.* If a contribution to a statewide or general assembly candidate or a judge standing for retention is from a statewide political committee (PAC) or a state party committee, the candidate receiving the contribution shall include on the candidate's disclosure report the board-assigned identification number of the contributing committee and the check number by which the contribution was made. A list of ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.14(7) *Fund-raiser income.* Contributions arising from the sale of goods or services at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.14(8) *Interest and other monetary receipts other than contributions.* If the monetary receipt is not a "contribution," the name and address of the source of the funds shall be identified in the space provided for the name and address of "contributor," with a notation as to the purpose of the payment, such as "bank interest."

4.14(9) *Reverse entries—refunds.* If a committee determines to decline or otherwise return a contribution after it has been received, accepted, and deposited, the committee may issue a refund to the contributor, which shall be reported on Schedule A as a reverse entry, reducing the monetary receipts.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.15(68A,68B) Schedule B - Monetary Expenditures.

4.15(1) *Date expended.* The committee shall report the amounts of all itemized expenditures (expenditures of $5 or more) made by the committee for the reporting period chronologically by the date expended. The date of the expenditure is the date the check is issued. The complete date (month/day/year) shall be provided.

4.15(2) *Name and address of recipient.* The schedule shall include the name and address of each person to whom disbursements, other than loan repayments, were made during the reporting period. (Loan repayments shall be reported on Schedule F.)

4.15(3) *Purpose of expenditure.* The schedule shall include a description of the purpose of each disbursement. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "reimbursement for candidate lodging to attend campaign event," or "mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

4.15(4) *Miscellaneous (unitemized) expenses.* Notwithstanding the other provisions of this rule, disbursements of less than $5 may be shown as miscellaneous disbursements or expenses for the period so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed $100.

4.15(5) *Candidate ID number and committee check number.* If a contribution is made by a statewide political committee (PAC) or a state party committee to a statewide or general assembly candidate or a judge standing for retention, the committee making the contribution shall include on the committee's disclosure report the board-assigned identification number of the recipient candidate's committee and

the check number by which the contribution was made. A list of candidate ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.15(6) *Check transactions required.* All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check. Cash withdrawals and "petty cash" accounts are not permitted. Committees' activities which necessitate cash drawers or other cash transactions shall be conducted and reported as provided by rule 351—4.36(68A,68B).

4.15(7) *Reverse entries—refunds.* If a committee receives a refund of all or part of a disbursement previously made, the committee shall report the refund on Schedule B as a reverse entry, reducing the monetary expenditures. The purpose should include an explanation as to why the refund was made.

4.15(8) *Interest paid; bank charges.* Although repayments of loan principal are reported on Schedule F (see rule 351—4.18(68A,68B)), interest payments on loans shall be reported on Schedule B. Bank service charges and fees (e.g., monthly service fees, costs for check printing, returned check charges) shall also be reported and identified on Schedule B.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.16(68A,68B) Schedule D - Incurred Indebtedness.

4.16(1) *Reporting of debts and obligations other than monetary loans.* The committee shall report all debts and obligations owed by the committee which are in excess of the thresholds in subrule 4.14(3). This applies to any unpaid debt or obligations incurred by the committee for the purchase of a good or service, either as a debt or obligation owed to the immediate provider of the good or service, or as a debt or obligation owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee. However, monetary loans to the committee (which are deposited directly into the committee's account) shall be reported on Schedule F, not on Schedule D.

4.16(2) *Date incurred; balance owed.* The committee shall report the amounts of all indebtedness owed by the committee at the end of the reporting period, reported chronologically by the date incurred. The date the debt or obligation is incurred is the date on which the committee committed to obtaining the good or service underlying the obligation. This date may be earlier than the date the provider of the good or service issues a bill to the committee. For example, if the committee places a printing order, but the printer does not issue a bill until some time after the order is placed, the date which shall be reported as the date the debt was incurred is the date the order is placed, not the date the bill was issued. If the precise amount of the final bill is not known by the time the report is due, the committee shall provide its best estimate as to what the obligation will be, with an indication "(e)" that the amount reported is an estimate. The complete date (month/day/year) shall be provided. Debts and obligations incurred and reported in a prior reporting period but which remain unpaid as of the end of the current reporting period shall be included, showing the remaining balance on the obligation, as well as any new obligations incurred in the current reporting period. Payments of all or part of a previously reported obligation shall be reported as expenditures on Schedule B.

4.16(3) *Name and address of person to whom the debt or obligation is owed.* The schedule shall contain the name and address of each person to whom an obligation is owed, including both those obligations which were incurred during the reporting period and those outstanding obligations which are being carried forward from prior reports. If the obligation is owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee, the original nature of the obligation shall be provided; the name and address of the original provider of the good or service shall also be provided, unless the nature of the obligation indicates that the obligation is for the anticipated reimbursement for mileage or postage stamps.

4.16(4) *Nature of obligation.* The schedule shall include a description of the nature of each obligation. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate

yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "anticipated reimbursement for candidate lodging to attend campaign event," or "anticipated mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.17(68A,68B) Schedule E - In-kind Contributions.

4.17(1) *Reporting of all in-kind contributions; chronological listing.* The committee shall report the amounts of all in-kind contributions which are accepted by the committee during the reporting period. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.17(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) on which the in-kind contribution was physically received by a person on behalf of the committee.

4.17(3) *Name and address of contributor.* The schedule shall include the name and address of each person who has made one or more in-kind contributions to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds $25, except that the itemization threshold is $200 for a state statutory political committee and $50 for a county statutory political committee.

4.17(4) *Relationship to candidate.* In the case of in-kind contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

4.17(5) *Description of in-kind contribution; loaned equipment as in-kind contribution.*

a. The schedule shall include a description of the good or service contributed to the committee in kind. The description shall be a clear and concise statement that specifically describes the transaction which has occurred.

b. A committee's use of equipment owned by another organization, committee, or individual is reportable as an in-kind contribution. Equipment includes, but is not limited to, typewriters, calculators, copy machines, office furniture, computers and printers.

4.17(6) *Fair market value.* The committee shall provide either the actual (if known) or estimated fair market value of the good or service received.

4.17(7) *Fund-raiser item.* Goods or services contributed in kind for sale at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.17(8) *Unitemized contributions.* Notwithstanding the other provisions of this rule, in-kind contributions with a fair market value less than the itemization threshold noted in subrule 4.17(3) may be reported as "unitemized in-kind contributions."

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.18(68A,68B) Schedule F - Loans Received and Repaid.

4.18(1) *Reporting of monetary loans (not debts and obligations for goods and services).* The committee shall report all loan activity made to or repaid by the committee during the reporting period. This applies to any loan of money which is deposited into the committee's accounts. However, other debts and obligations owed for the provision of goods or services to the committee (which are not monetary advances deposited into the committee's account) shall be reported on Schedule D, not on Schedule F.

4.18(2) *Report of lump sum of unpaid loans carried over from last report.* The schedule shall contain a beginning entry of the total unpaid loans as of the last report. Loans received and itemized on prior reports should not be re-itemized on the current report, except as necessary to indicate repayment activity.

4.18(3) *Date received.* The schedule shall include the complete date (month/day/year) the loan was physically received by a person on behalf of the committee. If the loan was by check, the date of the

loan to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check.

4.18(4) *Date paid.* The schedule shall include the complete date (month/day/year) a full or partial loan repayment is made by the committee. The date of the repayment is the date the check is issued. Full or partial loan repayments shall be shown on this schedule and should not be reported on Schedule B. However, loan interest payments shall be reported on Schedule B (see rule 351—4.15(68A,68B)) and not on Schedule F. Loans which may be and are forgiven in full or in part are considered in-kind contributions and shall be itemized on Schedule E, with a cross-reference entry in the space provided on Schedule F.

4.18(5) *Name and address of lender.* The schedule shall include the name and address of each person who has made one or more loans of money to the committee during the reporting period, or to whom the committee makes a full or partial loan repayment during the reporting period. If the person who made the loan to the committee is not the original source of the money, when the original source of the money is a third party (such as a bank which loans money to an individual who loans it to the committee) or if a third party has personally paid and assumed a loan from the original lender (such as an individual who pays off the loan to the bank with the expectation of receiving the loan repayment from the committee), the report shall also identify the name and address of the third party.

4.18(6) *Relationship to candidate.* In the case of monetary loans to candidates' committees, the schedule shall include information indicating whether the lender is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.19(68A) Schedule G - Breakdown of Monetary Expenditures by Consultants. A committee that enters into a contract with a consultant for future or continuing performance shall be required to report expenditures made to the consultant and the nature of the performance of the consultant that is expected to be received by the committee. A committee is required to report in Part 1 of Schedule G any contracts with consultants that it has negotiated, the complete name and address of the consultant, the period of time during which the contract is in effect, and estimates of performance to be derived from the contract. Expenditures made to the consultant during a reporting period shall be reported with all other expenditures on Schedule B, and debts incurred with the consultant during the reporting period shall be reported with all other debts on Schedule D. Additionally, a detailed breakdown of the expenditures made by the consultant shall be reported by the committee in Part 2 of Schedule G and shall include the date of the expenditure, the purpose of the expenditure and the amount of the expenditure. The description of the purpose of the expenditure shall be consistent with the provisions of subrule 4.15(3).

For purposes of this rule, "contract" means an oral or written agreement between two parties for the supply or delivery of specific services in the course of the campaign. "Performance" means the execution or fulfillment of the contractual agreement. "Nature of performance" means a clear description of the specific services received or benefit derived as the result of a contract with a consultant. "Estimate of performance" means a clear description of the services the committee reasonably expects to receive or the benefit the committee reasonably expects to derive during the period of the contract.

This rule is intended to implement Iowa Code sections 68A.102(9) as amended by 2005 Iowa Acts, House File 312, section 3, and 68A.402A.

351—4.20(68A,68B) Schedule H - Campaign Property.

4.20(1) *Ongoing inventory.* Equipment, supplies, or other materials purchased with campaign funds or received in kind are campaign property. Campaign property, other than consumable campaign property, with a value of $500 or more when acquired by the committee shall be listed on the inventory section of the schedule. The property shall be listed on each report until it is disposed of by the committee or its residual value falls below $100 and the property is listed once as having a residual value of less than $100. "Consumable campaign property" means stationery, yard signs, and other campaign materials that have been permanently imprinted to be specific to a candidate or election. For property purchased by the committee, the date purchased shall be the earlier of the date the committee

attained physical possession of the property or the date the committee issued payment for the property. For in-kind contributions, the date received shall be the date on which the committee attained physical possession of the property. The committee shall provide the complete date (month/day/year). The schedules shall include the purchase price of property purchased by the committee and the actual or estimated fair market value of property received as an in-kind contribution, as well as the actual or estimated current fair market value of the property at the end of the current reporting period.

4.20(2) *Sales or transfers of campaign property.* The schedule shall include information regarding the sale or transfer of campaign property, other than consumable campaign property, which occurred during the current reporting period. The information shall include the complete date of the transaction (month/day/year), the name and address of the purchaser or donee, and a description of the property. If the property is sold, the information shall include the sales price received; if the property is donated, the information shall include the fair market value of the property at the time of the transfer.

This rule is intended to implement Iowa Code Supplement sections 68A.304 and 68A.402.

351—4.21(68A) Reconciled bank statement required with January report and final report.

4.21(1) A committee that participates in an election at the state level and that is required by Iowa Code Supplement section 68A.402 to file a disclosure report on or before January 19 of each year shall attach to or submit with that disclosure report a copy of the committee's bank statement that includes activity through December 31 of the year reported.

4.21(2) A committee that participates in an election at the county, city, school, or other political subdivision level and that is required by Iowa Code Supplement section 68A.402 to file a disclosure report on or before January 19 of each year is not required to attach or submit a copy of the committee's bank statement unless requested to do so by the board. If such a committee is requested to file the bank statement, the committee shall comply with the requirements of rule 351—4.21(68A).

4.21(3) If the bank statement cycle is such that the committee has not received the statement including activity through December 31 by the date for filing the January report, the committee shall separately file or submit the bank statement within ten days after receipt of the statement by the committee.

4.21(4) The committee shall include a reconciliation to justify outstanding checks and other discrepancies between the ending balance on the bank statement and the ending balance on the disclosure report.

4.21(5) A committee that files a final disclosure report shall comply with the requirements of subrule 4.55(5) concerning the filing of a final bank statement.

4.21(6) A committee seeking a waiver from the requirements of this rule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.22(68A,68B) Verification of reports; incomplete reports.

4.22(1) The board staff will review and desk audit each disclosure report. The board may contact other parties to verify the accuracy and completeness of the reports. The board may contact a representative of the committee and may contact other parties to determine the authenticity of information provided about filed reports.

4.22(2) If, upon review, board staff determine that a committee's report is incomplete because required information has been omitted or has been incorrectly reported, the staff shall communicate the deficiencies to the committee. A failure to satisfactorily respond to or to remedy the error or omission may be grounds for a violation of Iowa Code Supplement section 68A.402 as a failure to file a report which conforms to the requirements of that provision.

This rule is intended to implement Iowa Code Supplement section 68A.402 and Iowa Code section 68B.32A.

351—4.23(68A,68B) Amendment—statements, disclosure reports and notices. A committee may amend a previously filed statement of organization, disclosure report or notice of dissolution. To amend

a previously filed statement, report or notice, the committee shall file an amended document on the approved form and shall designate on the form in the space provided, if applicable, that the document being filed is an amendment to a previously filed statement, report or notice. The term "amended document" as used in this rule shall mean a document on forms issued by the board which includes only the information which is being added, deleted or changed from a previously filed statement of organization or notice of dissolution.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.24(68A) Reporting of state party building fund transactions. Pursuant to Federal Election Commission Advisory Opinion 2004-28, the board will permit a state statutory political committee (state party committee) to receive contributions from corporations, insurance companies, and financial institutions when those contributions are placed in the state party building fund account, the contributions are used to pay for costs associated with the building, and all transactions involving the fund are disclosed pursuant to this rule.

A state party committee filing a state party building fund report under this rule shall use either the report form prescribed by the board or a computer-generated report so long as the report includes the information required under subrule 4.24(2).

4.24(1) *Period covered.* A state party building fund report shall cover the time period from January 1 through December 31 of the previous year.

4.24(2) *Information to be disclosed.* The following information shall be disclosed on a state party building fund report:

a. The name and address of the state party committee.

b. The name and address of each person who makes a contribution in excess of $200, or contributions in the aggregate that exceed $200 during the period covered, to the state party building fund. If no contributions were received for the fund, the report shall disclose $0.00 as contributions received.

c. The date and the amount of the contribution. If aggregate contributions from one person are received that exceed $200, the amount to be disclosed shall be the total amount received from that person for the period covered and the date to be disclosed shall be the date of the last contribution.

d. The total amount of all contributions of $200 or less received during the period covered. This total amount shall be disclosed as being received from "unitemized" with the date of the contribution being the last day of the reporting period.

e. The name and mailing address of each person to whom an expenditure that exceeds $200 is made, or expenditures in the aggregate that exceed $200 during the period covered, from the state party building fund. If no expenditures were made from the fund, the report shall disclose $0.00 as expenditures made.

f. The date and the amount of the expenditure. If aggregate expenditures that exceed $200 are made to one person, the amount to be disclosed shall be the total amount made to that person for the period covered and the date to be disclosed shall be the date of the last expenditure.

g. The total amount of all expenditures of $200 or less made during the period covered. This total amount shall be disclosed as being expended to "unitemized" with the date of the expenditure being the last day of the reporting period.

h. The signature and date of the individual filing the state party building fund report.

4.24(3) *Place of filing.* A state party building fund report shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-3701.

4.24(4) *Time of filing.* A state party building fund report shall be filed on or before January 31 of each year. If mailed, the report must bear a United States Postal Service postmark dated on or before the due date. A faxed report must be submitted on or before 11:59 p.m. on the due date. If January 31 falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date shall be extended to the next working day when the board office is open.

4.24(5) *Failure to file.* If the board determines that a state party committee has failed to timely file a state party building fund report, the state party committee is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code sections 68A.402A(1)*"k"* and 68A.503.

351—4.25(68A,68B) Legitimate expenditures of campaign funds.

4.25(1) Expenses which may be paid from campaign funds for campaign purposes include, but are not limited to, the following items so long as the items promote or enhance the candidacy of the candidate:

a. Electronic media advertising, such as radio, cable television and commercial television.

b. Published advertising, such as newspaper, magazine, newsletter and shopper advertising.

c. Printed promotional materials, such as brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, campaign business cards, direct mailings, postcards and "cowboy" political cards.

d. Political signs, such as yard signs, car signs, portable outdoor advertising, stationary outdoor advertising and billboards.

e. Political advertising specialty items, such as campaign buttons, campaign stickers, bumper stickers, campaign pins, pencils, pens, matchbooks, balloons, scratch pads, calendars, magnets, key chains, and articles of clothing that are political advertising.

f. Travel and lodging expenses of the campaign workers for campaign purposes and political party activities. Travel and lodging expenses for a candidate to attend a national political party convention are also permitted.

g. Contributions to political party committees.

h. The purchase of tickets to a meal for the candidate and one guest so long as the attendance at the meal by the candidate and guest is for the sole purpose of enhancing the candidacy of any person.

i. General campaign expenditures, such as printing, copy machine charges, office supplies, campaign photographs, gambling permits, fund-raiser prizes, postage stamps, postage meter costs, bulk mail permits, telephone installation and service, facsimile charges, and computer services. However, the purchase or rental of formal wear to attend a political event is not a permissible general campaign expenditure.

j. Purchase or lease of campaign equipment, such as copy machines, telephones, facsimile machines, computer hardware, software and printers.

k. Purchase or lease of campaign office space, parking lots or storage space and the payment for campaign office utilities and maintenance.

l. Payment of salaries, fringe benefits, bonuses, and payroll taxes of paid campaign staff. As provided in Iowa Code section 68A.302(2) as amended by 2009 Iowa Acts, Senate File 50, section 1, family members who perform actual work or services for a campaign and are not the candidate, candidate's spouse, or candidate's dependent children may be compensated for such work or services.

m. Payment for check printing and financial institution banking service charges.

n. Lease or rental of a campaign vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that noncampaign miles are reimbursed to the committee at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, the purchase of a campaign vehicle is prohibited.

o. Reimbursement to candidates and campaign workers for mileage driven for campaign purposes in a personal vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code.

p. Payment for food expenses and supplies for campaign-related activities, such as the purchase of food, beverages and table service for fund-raising events or campaign volunteers. However, except as provided in paragraph *"h,"* the purchase of tickets for meals or fund-raising events for other candidates is prohibited, and the purchase of groceries for the candidate or candidate's family is also prohibited.

Payment for meals for the candidate (other than those involving tickets for fund-raiser events as addressed in paragraph *"h"*) is permitted as an allowable expenditure for campaign purposes if the meal was associated with campaign-related activities.

q. Payment of civil penalties and hearing costs assessed by the board.

r. Payment for the services of attorneys, accountants, consultants or other professional persons when those services relate to campaign activities.

s. Subscriptions to newspapers and periodicals that circulate within the area represented by the office that a candidate is seeking or holds, that contain information of a general nature about the state of Iowa, or that contain information useful to all candidates such as The Wall Street Journal and Roll Call. Candidates who are unsure whether a subscription is permissible shall seek guidance from the board prior to paying for the subscription with campaign funds.

t. Membership in service organizations including a local chamber of commerce that the candidate joins solely for the purpose of enhancing the candidate's candidacy.

u. Repayment of campaign loans made to the committee. As provided in Iowa Code section 68A.302(2) as amended by 2009 Iowa Acts, Senate File 50, section 1, candidates who make loans to their own committees shall not charge interest on the loans.

v. Purchase of reports of other candidates and political committees so long as the reports' contents are not used for solicitation or commercial purposes.

w. Donations to charitable organizations unless the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent is employed by the charitable organization and will receive a direct financial benefit from a donation.

x. Contributions to federal, state, county and city political party committees.

y. Refunds to contributors when a contribution has been accepted in error, or when a committee chooses to dispose of leftover funds by refunding them in prorated shares to the original contributors.

z. Payment for items with a purchase price not to exceed $250 per person that are presented to committee workers in recognition of services to the committee.

aa. Expenses incurred with respect to an election recount as provided in Iowa Code section 50.48.

bb. The sharing of information in any format such as computer databases containing yard sign locations or lists of registered voters with another candidate's committee.

4.25(2) Expenses which may be paid from campaign funds for educational and other expenses associated with the duties of office include, but are not limited to, the following items:

a. Purchase or lease of office supplies and equipment, such as paper, copy machines, telephones, facsimile machines, computer hardware, software and printers.

b. Travel, lodging and registration expenses associated with attendance at an educational conference of a state, national, or regional organization whose memberships and officers are primarily composed of state or local government officials or employees. However, meal expenses are not allowable as expenses associated with the duties of office under any circumstances.

c. Meals and other expenses incurred in connection with attending a local meeting to which the officeholder is invited and attends due to the officeholder's official position as an elected official.

d. Purchases of small, incidental items such as pencils, pens, rulers and bookmarks provided to members of the public touring the offices of the state or a political subdivision. However, such items distributed on public property shall not expressly advocate the election or defeat of a candidate or the adoption or defeat of a ballot issue as prohibited in Iowa Code Supplement section 68A.505. For example, a bookmark bearing the state seal could be distributed on public property, while a bookmark that identified the donor as a candidate for office could not be distributed on public property.

e. Gifts purchased for foreign dignitaries when the officeholder is part of an official trip out of the country such as a trade mission or exchange program.

f. Printing of additional stationery and supplies above the standard allotment of the state or political subdivision.

4.25(3) Expenses which may be paid from campaign funds for constituency services include, but are not limited to, the following items:

a. Mailings and newsletters sent to constituents.

b. Polls and surveys conducted to determine constituent opinions.

c. Travel expenses incurred in communicating with members of an elected official's constituency, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, meal expenses are not allowable as expenses associated with constituency services under any circumstances.

d. Holiday and other greeting cards sent to constituents.

This rule is intended to implement Iowa Code Supplement sections 68A.301, 68A.302, and 68A.303.
[**ARC 7647B**, IAB 3/25/09, effective 4/29/09; **ARC 7801B**, IAB 6/3/09, effective 7/8/09]

351—4.26(68A) Transfers between candidates.

4.26(1) *Transfer of assets between different candidates.* A candidate's committee may transfer an asset to a candidate's committee established by a different candidate so long as the recipient committee pays the transferring committee the fair market value of the asset and the transaction is properly disclosed on each committee's disclosure report.

4.26(2) *Transfer of assets for same candidate.* A candidate's committee may transfer funds, assets, loans, and debts to a committee established for a different office when the same candidate established both committees.

This rule is intended to implement Iowa Code Supplement section 68A.303.

351—4.27(68A) Filing of independent expenditure statement. Pursuant to Iowa Code section 68A.404 as amended by 2009 Iowa Acts, Senate File 49, section 5, any person except a candidate, a registered committee, a federal committee, or an out-of-state committee that makes one or more independent expenditures in excess of $100 in the aggregate shall file an independent expenditure statement.

4.27(1) *Independent expenditure defined.* "Independent expenditure" means an expenditure for a communication that expressly advocates the nomination, election, or defeat of a candidate or that expressly advocates the passage or defeat of a ballot issue when the expenditure is made without the prior approval of or coordination with a candidate, candidate's committee, or a ballot issue committee. "Independent expenditure" also means "independent expenditure" as defined in subrule 4.53(3).

4.27(2) *Independent expenditure statement.* The following information shall be disclosed on the independent expenditure statement:

a. The name, mailing address, and telephone number of the person that files the statement, including the name, mailing address, and telephone number of a contact person, if applicable.

b. A description of the position that is advocated by the person that files the statement such as whether the communication was for a particular candidate or was against a particular candidate.

c. The name and address of the committee that benefits from the expenditure.

d. The dates on which the expenditure or expenditures took place.

e. A description of the nature of the action taken that resulted in the expenditure or expenditures such as a newspaper advertisement, direct mailing, or brochure.

f. The actual cost or fair market value of the expenditure or expenditures.

4.27(3) *Place of filing.* An independent expenditure statement shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-4073. The board shall immediately make the independent expenditure statement available for public viewing via the board's Web site at www.iowa.gov/ethics.

4.27(4) *Time of filing.* An independent expenditure statement shall be filed within 48 hours of the making of an independent expenditure exceeding $100 or independent expenditures exceeding $100 in the aggregate. An independent expenditure is deemed made at the time that the cost is incurred.

4.27(5) *Failure to file.* A person that fails to timely file an independent expenditure statement shall be subject to the imposition of civil penalties pursuant to 351—subrule 4.59(7).

4.27(6) *Attribution statement applicable.* Any person that makes an independent expenditure in any amount shall comply with the appropriate "paid for by" attribution statement pursuant to rule 351—4.38(68A,68B).

4.27(7) *Other filings not required.* A person that properly files an independent expenditure statement shall not be required to file a statement of organization registering a committee or file public disclosure reports.

4.27(8) *Campaign committees.* A committee that makes an independent expenditure shall disclose the transaction on the committee's appropriate disclosure report and shall not file an independent expenditure statement.

This rule is intended to implement Iowa Code section 68A.404 as amended by 2008 Iowa Acts, House File 2700, sections 116 and 117.

[**ARC 7800B**, IAB 6/3/09, effective 7/8/09]

351—4.28(68A) Prohibition on contributions and independent expenditures by foreign nationals. As provided in Federal Election Commission regulation 11 CFR 110.20, a foreign national shall not, directly or indirectly, make a contribution or expenditure of money or other thing of value, or specifically promise to make a contribution, in connection with a state or local campaign or election in Iowa. A foreign national shall not, directly or indirectly, make a contribution to a campaign committee organized under Iowa Code Supplement chapter 68A. Foreign nationals are also prohibited from making independent expenditures in relation to any state or local campaign or election in Iowa.

4.28(1) *Foreign national defined.* "Foreign national" means a person who is not a citizen of the United States and who is not lawfully admitted for permanent residence. "Foreign national" also includes a "foreign principal," such as a government of a foreign country or a foreign political party, partnership, association, corporation, organization, or other combination of persons that has its primary place of business in or is organized under the laws of a foreign country. "Foreign national" shall not include any person who is a citizen of the United States or who is a national of the United States.

4.28(2) *Acceptance of contributions and independent expenditures from foreign nationals.* No person shall knowingly accept or receive any contribution from a foreign national with regard to such person's election-related activities.

4.28(3) *Participation by foreign nationals in decisions involving election-related activity.* A foreign national shall not, directly or indirectly, participate in the decision-making process of any person, including a corporation, labor organization, political committee, or political organization, with regard to such person's election-related activities. Decisions including election-related activities include decisions involving the making of contributions, donations, or expenditures in connection with elections for state or local office or decisions involving the administration of a political committee.

This rule is intended to implement Iowa Code Supplement chapter 68A.

351—4.29(68A,68B) Contributions by minors. Persons under 18 years of age may make contributions to a candidate or political committee if all of the following conditions exist:

1. The decision to contribute is made knowingly and voluntarily by the minor;
2. The funds, goods, or services contributed are owned or controlled exclusively by the minor, such as income earned by the minor, the proceeds of a trust for which the minor is the beneficiary, or a savings account opened and maintained exclusively in the minor's name; and
3. The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

This rule is intended to implement Iowa Code Supplement section 68A.404.

351—4.30(68A,68B) Funds from unknown source prohibited; subsequent identification of source; notice to contributors.

4.30(1) *Anonymous contributions in excess of $10 prohibited.* No person shall make a contribution in excess of $10 to a committee without providing the person's name and address to the committee. The

committee shall not maintain in any campaign account funds in excess of $10 that cannot be accounted for and reconciled with the committee's disclosure reports.

4.30(2) *Escheat to the state.* Any contribution in excess of $10 from an unknown source or campaign funds in excess of $10 that cannot be accounted for and reconciled shall escheat to the state of Iowa as required by Iowa Code section 68A.501 as amended by 2007 Iowa Acts, Senate File 39, section 8. A committee required to escheat shall escheat such funds by depositing the funds into the committee's campaign account and issuing a committee check to the general fund in the same amount. The committee check shall be sent to the board office at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, for transmittal to the office of treasurer of state.

4.30(3) *Subsequent identification of source.* A committee discovering the source of any funds that have been escheated to the state may make an application to the board for a return of the funds if the following requirements are met:

a. The committee has not dissolved;

b. Documentation of the name and address of the source is provided;

c. The amount requested to be returned is in excess of $100; and

d. The application is made within 90 days of the date of the deposit in the general fund of the state of Iowa.

4.30(4) *Notice at fund-raising event.* Pursuant to Iowa Code Supplement section 68A.501, a person requested to make a contribution at a fund-raising event shall be advised that it is illegal to make a contribution in excess of $10 unless the person making the contribution also provides the person's name and address. Notice of the requirement to provide a person's name and address for a contribution in excess of $10 may be made orally or in a written statement that is displayed at the fund-raising event.

This rule is intended to implement Iowa Code section 68A.501.

351—4.31(68A) Information required for a trust to avoid a contribution in the name of another person. A contribution to a committee by a trustee solely in the name of the trust constitutes a contribution in the name of another person as prohibited in Iowa Code Supplement section 68A.502 unless the recipient committee publicly discloses the contribution as provided in this rule.

4.31(1) *Living or revocable trust.* If the contribution involves a trust identified as a revocable trust or a living trust that does not file a separate trust tax return and whose federal tax ID number is the same as the social security number of the grantor who creates the trust and who is also a trustee, the contribution shall be reported by the recipient committee as being made by the "(name) revocable (or living) trust."

4.31(2) *Other trusts.* For a contribution involving a trust that does not qualify under subrule 4.31(1), the recipient committee shall identify the trust, the trustee, and the trustor.

4.31(3) *Registering a committee.* A trust, except for a living or revocable trust, that raises or spends more than $750 for campaign activities shall register a political committee (PAC) and shall file disclosure reports. A trust, except for a living or revocable trust, that makes a one-time contribution in excess of $750 may file Form DR-OTC in lieu of filing a statement of organization and filing disclosure reports.

This rule is intended to implement Iowa Code Supplement sections 68A.402(6) and 68A.502.

351—4.32(68A) Contributions from political committees not organized in Iowa. Iowa committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa committees provided the out-of-state committee complies with either subrule 4.32(1) or subrule 4.32(2). For purposes of this rule, "out-of-state committee" means a committee that is registered with the campaign enforcement agency of another state or is registered with the Federal Election Commission.

4.32(1) *Regular filings.* Out-of-state committees may choose to comply with the regular disclosure filing requirements in Iowa Code Supplement sections 68A.201 and 68A.402 by filing a statement of organization and periodic disclosure reports.

4.32(2) *Verified statement of registration.* In lieu of filing a statement of organization and regular disclosure reports as required by Iowa Code chapter 68A, the out-of-state committee shall file with the board a verified statement registration form (VSR) for each contribution in excess of $50. The VSR shall contain the following information:

a. The complete name, address and telephone number of the out-of-state committee;

b. The state or federal agency with which the out-of-state committee is registered;

c. All parent entities or other affiliates or sponsors of the out-of-state committee;

d. The purpose of the out-of-state committee;

e. The name, address and telephone number of an Iowa resident authorized to receive service on behalf of the out-of-state committee;

f. The name and address of the Iowa recipient committee;

g. The date and amount of the contribution, including description if the contribution is in-kind; and

h. An attested statement that the jurisdiction with which the out-of-state committee is registered has reporting requirements substantially similar to those of Iowa Code chapter 68A. The statement shall include confirmation that the contribution is made from an account that does not accept contributions prohibited by Iowa Code section 68A.503 unless the contribution from the out-of-state committee is made to an Iowa ballot issue committee.

4.32(3) *Signature.* The VSR shall be signed by the individual filing the VSR on behalf of the out-of-state committee. A VSR that is filed electronically using the board's Web site is deemed signed when filed.

4.32(4) *Where filed.* Every VSR filed for a contribution in excess of $50 shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, electronically using the board's Web site at www.iowa.gov/ethics, as an E-mail attachment, or by fax at (515)281-4073.

4.32(5) *When filed.* The VSR shall be filed with the board on or before the fifteenth day after the date of the contribution, or mailed bearing a United States Postal Service postmark dated on or before the fifteenth day after the date of the contribution. For purposes of this subrule, "date of the contribution" means the day, month, and year the contribution check is dated. If the board deems it necessary, a copy of any contribution check may be required to be filed with the board. When a copy of a check is required to be filed with the board, the copy shall be filed within ten days after notice by the board.

4.32(6) *Enhanced filing.* An out-of-state committee determining that the jurisdiction under which the committee is registered does not have reporting requirements substantially similar to those of Iowa Code Supplement chapter 68A may choose to comply by enhancing the committee's filing in the other jurisdiction. The enhanced filing shall meet the reporting requirements of Iowa Code Supplement chapter 68A for the reporting period during which contributions to Iowa committees are made. The report shall cover a period of at least one month. An out-of-state committee choosing this option shall comply with the VSR procedures in subrule 4.32(2) and attach a signed statement that the report has been enhanced to satisfy the Iowa reporting requirements.

This rule is intended to implement Iowa Code section 68A.201(5).

351—4.33(68A,68B) Reporting of earmarked contributions. A political committee is permitted to receive contributions from its contributors which are earmarked to be donated to a specific candidate's committee or another political committee. A political committee receiving and transmitting earmarked contributions is required to list on its disclosure report the name of the contributor and the name of the candidate or committee for which the contribution was earmarked. The political committee is further required to inform the treasurer of the recipient committee in writing of the name of the individual contributor, as well as the name of the committee which has collected the contribution. The committee receiving the earmarked contribution is required to disclose on its report both the name of the individual contributor and the sponsoring committee.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.34(68A) Copies of reports filed by 527 Committees. Iowa Code section 68A.401A requires the board to adopt a procedure for 527 Committees that file reports with the Internal Revenue Service and engage in issue advocacy in Iowa to file copies of those reports with the board. If a 527 Committee notifies the board that it is filing reports with the Internal Revenue Service, the 527 Committee will be deemed in compliance with Iowa Code section 68A.401A. The board will then establish on its Web site

a link to the reports filed with the Internal Revenue Service, or the board will otherwise post on its Web site the reports filed with the Internal Revenue Service.

This rule is intended to implement Iowa Code section 68A.401A.

351—4.35(68A) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC. Pursuant to Iowa Code section 68A.402(9), a permanent organization temporarily engaging in activity that exceeds the $750 financial filing threshold described in rule 351—4.1(68A,68B) is required to organize and register a political committee (PAC), file disclosure reports, and, upon completion of activity, file a notice of dissolution. A permanent organization that is temporarily a political committee shall comply with all of the campaign laws in Iowa Code chapter 68A and this chapter. A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

4.35(1) *Form DR-OTC.* A permanent organization that makes a one-time contribution in excess of $750 to a committee may, in lieu of filing a statement of organization, disclosure reports, and a notice of dissolution, file Form DR-OTC. The following information shall be disclosed on Form DR-OTC:

a. The name and address of the organization making the contribution.

b. The name and address of a contact person for the organization making the contribution.

c. The name and address of the campaign committee receiving the contribution. If the contribution is to a candidate or a candidate's committee, the source of the original funds used to make the contribution shall be disclosed.

d. The date and amount of the contribution. If the contribution is an in-kind contribution, a description of the provided goods or services must be included.

e. The date of election and the county in which the recipient committee is located if the committee is a county or local committee.

f. The date and signature of the person filing Form DR-OTC. A Form DR-OTC that is filed electronically using the board's Web site is deemed signed when filed.

A permanent organization that makes more than one contribution is not eligible to file Form DR-OTC and is required to file a statement of organization, file disclosure reports, and file a notice of dissolution.

4.35(2) *Place of filing.* Form DR-OTC shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, filed by fax at (515)281-4073, or filed electronically using the board's Web site at www.iowa.gov/ethics.

4.35(3) *Time of filing.* Form DR-OTC shall be filed with the board within ten days after the one-time contribution in excess of $750 is made. The form must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. A faxed or electronically filed Form DR-OTC must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.35(4) *Failure to register.* If the board discovers that a permanent organization has become subject to the provisions of Iowa Code Supplement chapter 68A but did not timely file a statement of organization or file Form DR-OTC, as applicable, the permanent organization is subject to the possible imposition of board sanctions.

4.35(5) *Partial refund of contribution.* A committee that receives a contribution from a permanent organization that causes the organization to become subject to the provisions of Iowa Code Supplement chapter 68A may refund all or part of a contribution to the organization so as to reduce the contribution to $750 or less and remove the organization's filing obligations.

This rule is intended to implement Iowa Code sections 68A.102(18) and 68A.402.

351—4.36(68A) Cash transactions. All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check, debit card, or credit card. Cash withdrawals and "petty cash" accounts are not permitted. If a committee fundraising activity necessitates a cash drawer

for making change or other cash transactions, the committee may issue a check payable to the committee treasurer or the candidate, in the case of a candidate's committee, or payable to the committee treasurer or the committee chairperson, in the case of a political committee. The purpose of the expenditure shall be reported on Schedule B as "cash advance for (describe activity, e.g., concession stand cash drawer)." Upon completion of the fundraising activity, the committee shall redeposit the same amount as that which was advanced into the committee account. The redeposit shall be reported as a reverse entry on Schedule B as a "redeposit of cash advance for (describe activity)." The proceeds of the fundraising activity (excluding the cash advance) shall be reported on Schedule A - Contributions Received.

This rule is intended to implement Iowa Code sections 68A.203 as amended by 2005 Iowa Acts, House File 312, section 5, and 68A.402A.

351—4.37(68A,68B) Record keeping.

4.37(1) *Copies of reports.* A committee shall preserve a copy of every report it files for at least three years following the filing of the report.

4.37(2) *Supporting documentation.* The documentation which supports a committee's disclosure report shall be preserved by the committee for at least five years after the due date of the report that covers the activity documented in the records; however, a committee is not required to preserve these records for more than three years from the certified date of dissolution of the committee. At a minimum, the supporting documentation shall consist of all of the following:

a. A ledger or similar record-keeping device which details all contributions received by the committee. This record shall include the name and address of each person making a contribution in excess of $10, with the date and amount of the contribution. In lieu of or in addition to a ledger, the committee may record contributions received through a receipt book or other method of individually documenting the contributions, such as by making and keeping copies of the contribution checks.

b. The check register for the committee's account(s).

c. Bank statements for the committee's account(s).

d. Copies of canceled or duplicate checks for committee expenditures, if available.

e. Copies of bills or receipts for committee expenditures.

f. For committees which pay reimbursement for committee-related mileage, copies of vehicle mileage logs, including travel dates, distance driven, and travel purpose (description of event or activity). For a candidate's committee which leases a vehicle, the mileage log shall detail all mileage driven on the vehicle, including non-committee-related mileage.

This rule is intended to implement Iowa Code Supplement sections 68A.203, 68A.302, 68A.402 and 68A.403 and Iowa Code section 68B.32A.

DIVISION III
POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

351—4.38(68A) Political attribution statement—contents. Published material that expressly advocates the election or defeat of a candidate or that expressly advocates the passage or defeat of a ballot issue shall contain a statement identifying the person paying for the published material. This statement is referred to as the "attribution statement." The term "published material" means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, Internet Web site, campaign sign, or any other form of printed general public political advertising.

4.38(1) *Registered committee.* If the person paying for the published material is a committee that has filed a statement of organization, the words "paid for by" and the name of the committee shall appear on the material.

4.38(2) *Individual, married couple, or unregistered candidate's committee.* If the person paying for the published material is an individual, the words "paid for by" and the name and address of the individual shall appear on the material. Published material that is jointly paid for by a married couple shall include the words "paid for by" and the name and address of one member of the married couple. For purposes of

this subrule, "individual" includes a candidate who has not filed a statement of organization to register a committee.

4.38(3) *Multiple individuals.* If more than one individual paid for the published material, the words "paid for by", the names of the individuals, and either the addresses of the individuals or a statement that the addresses of the individuals are on file with the Iowa ethics and campaign disclosure board shall appear on the material. The addresses shall be provided to the board and made available for public inspection.

4.38(4) *Organization or unregistered political committee.* If the person paying for the published material is an organization, the words "paid for by", the name and address of the organization, and the name of one officer of the organization shall appear on the material. For purposes of this subrule, "organization" includes an organization advocating the passage or defeat of a ballot issue but that has not filed a statement of organization to register a political committee.

4.38(5) *Pooled efforts.* If the published material is paid for by more than one person, the words "paid for by" and the identification of the persons as set out in this rule shall appear on the material.

This rule is intended to implement Iowa Code Supplement section 68A.405 as amended by 2004 Iowa Acts, House File 2319, section 4.

351—4.39(68A) Specific items exempted from or subject to attribution statement requirement; multiple pages. Iowa Code Supplement section 68A.405 requires the placement of a "paid for by" attribution statement on political advertising and political material, with certain exceptions.

4.39(1) *Items exempted from requirement.* The requirement to place a "paid for by" attribution statement does not apply to the following:

a. Editorials or news articles of a newspaper or magazine that are not political advertisements.

b. Small items upon which the inclusion of the attribution statement would be impracticable, such as yard signs, bumper stickers, pins, buttons, pens, pencils, emery boards, matchbooks and, except as set out in subrule 4.39(2), items that are smaller than 2 inches by 4 inches.

c. T-shirts, caps, and other articles of clothing.

d. Means of communication such as television and radio that are subject to federal regulations regarding an attribution requirement.

e. Political advertising or political material placed by an individual who acts independently and spends $100 or less of the individual's own money to expressly advocate the passage or defeat of a ballot issue.

For purposes of this subrule, "yard sign" means a political sign with a total dimension of 32 square feet or less, regardless of whether both sides of the sign are used, that has been placed or posted on real property.

4.39(2) *Items subject to requirement.* The requirement to place a "paid for by" attribution statement applies to the following:

a. Advertising such as yard signs larger than 32 square feet, billboards, posters, portable sign carriers, and signs affixed or painted to the side or top of a building or vehicle.

b. Advertisements in a newspaper, magazine, shopper, or other periodical regardless of the size of the advertisement.

c. Direct mailings, flyers, brochures, postcards, or any other form of printed general public advertising that is larger than 2 inches by 4 inches.

d. Campaign Web sites.

4.39(3) *Multiple pages.* If the political advertising or political material consists of more than one page, the "paid for by" attribution statement need only appear on one page of the advertising or material. For a campaign Web site, the attribution statement need only appear on the home page of the site.

This rule is intended to implement Iowa Code Supplement section 68A.405.

351—4.40(68A,68B) Newspaper or magazine. For the purposes of these rules and Iowa Code Supplement section 68A.405, "newspaper or magazine" means a regularly scheduled publication

of news, articles of opinion, and features available to the general public which does not require membership in or employment by a specific organization.

This rule is intended to implement Iowa Code Supplement section 68A.405.

351—4.41(68A,68B) Apparent violations; remedial action.

4.41(1) *Administrative resolution.* In an effort to informally resolve apparent violations of the requirement to place a "paid for by" attribution statement, the board may order administrative resolution of the matter. The board may direct the person responsible for placing the original published political material that did not include the attribution statement to place a correction notice in a local newspaper that reaches the same or substantially the same portion of the public that received the original published political material. A person may also resolve a violation of the "paid for by" attribution statement by resending corrected published political material to the same portion of the public that received the original published political material and by filing a copy of the corrected material with the board.

4.41(2) *Form of correction notice.* The correction notice shall be in substantially the following form: "On (date) (describe the type of published political material) was distributed that did not state who paid for it. The (describe the type of published political material) was paid for by (insert name)."

4.41(3) *Board notice.* The board shall notify the person who paid for the original published political material of the requirements of this rule.

4.41(4) *Refusal to place correction notice.* The board may initiate a contested case proceeding and impose discipline against any person who refuses to place a correction notice under this rule.

This rule is intended to implement Iowa Code section 68A.405 and Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

351—4.42(56,68B) Specific items exempted from or subject to attribution statement requirement. Rescinded IAB 2/4/04, effective 3/10/04.

351—4.43(56,68B) Apparent violations; remedial actions. Rescinded IAB 2/4/04, effective 3/10/04.

DIVISION IV
CORPORATE POLITICAL ACTIVITY

351—4.44(68A,68B) Use of corporate property prohibited. It is unlawful for a candidate's committee or other political committee to use any property of a corporate entity, and it is unlawful for a corporate entity to knowingly permit the use of its property by a candidate's committee or other political committee. "Corporate entity" as used in these rules means any profit or nonprofit corporation, and includes, but is not limited to, farm corporations, professional corporations (P.C.s), banks, savings and loan institutions, credit unions and insurance companies. For the purpose of these rules, the prohibited use of the property of a corporate entity shall include, but not be limited to, the following:

4.44(1) The physical placement of campaign materials on corporate property except as permitted under Iowa Code sections 68A.406 and 68A.503.

4.44(2) The use of motor vehicles, telephone equipment, long-distance lines, computers, typewriters, office space, duplicating equipment and supplies, stationery, envelopes, labels, postage, postage meters or communication systems of corporate entities.

4.44(3) The use of corporate entity facilities, premises, recreational facilities and housing that are not ordinarily available to the general public.

4.44(4) The furnishing of beverages and other refreshments that cost in excess of $50 and that are not ordinarily available to the general public.

4.44(5) The contributing of money of the corporate entity.

4.44(6) Any other transaction conducted between a corporation and a candidate's committee or political committee is presumed to be a corporate contribution unless the candidate's committee or political committee establishes to the contrary.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.45(68A,68B) Corporate-sponsored political committee. These rules do not prevent a corporate entity from soliciting eligible members to join or contribute to its own corporate-sponsored political committee (PAC), so long as the corporate entity adheres to the provisions of Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.46(68A) Voter education. These rules do not prevent a corporate entity from providing or publicizing voter registration procedures, election day information, voting procedures or other voter education information, so long as the information provided does not expressly advocate the election or defeat of a clearly identified candidate. Also, these rules do not prevent a candidate's committee from using a corporate computer to generate and file a campaign disclosure report so long as the report does not expressly advocate the election or defeat of a clearly identified candidate.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.47(68A,68B) Permitted activity—reimbursement required. The prohibitions against certain transactions between corporate entities and candidates or committees expressly advocating the election or defeat of candidates contained in Iowa Code Supplement section 68A.503 and in rule 351—4.44(68A,68B) are not construed to prohibit activity that occurs consistent with this rule.

4.47(1) *Purchase or rental of office facility.* A candidate's committee or any other committee that expressly advocates the election or defeat of a candidate may purchase or rent property belonging to a corporate entity, so long as the purchase or rental is at fair market value. For the purpose of this subrule, "fair market value" means the amount that a member of the general public would expect to pay to purchase or rent a similar property within the community in which the property is located.

4.47(2) *Use of corporate facilities to produce or mail materials.* Any person who uses the facilities of a corporate entity to produce or mail materials in connection with a candidate election is required to reimburse the corporate entity within a commercially reasonable time for the normal and usual charge for producing or mailing such materials in the commercial market. For example, if it would otherwise cost 10 cents per page to have a brochure copied at a commercial printer, the corporate entity must be reimbursed at 10 cents per page even if the overhead and operating cost is only 5 cents per page. Likewise, the corporate entity must be reimbursed at the first-class mail rate even if the direct cost to the corporate entity is less through the use of its bulk mail permit. This subrule does not affect the ability of a commercial vendor to charge an amount for postage which is less than for first-class mail where the reduced or bulk mail charge is available to all similarly situated customers without respect to the political identity of the customer.

4.47(3) *Use or rental of corporate facilities by other persons.* Persons other than stockholders, administrative officers or employees of a corporate entity who make any use of corporate facilities, such as using telephones, facsimile machines, typewriters or computers or borrowing office furniture for activity in connection with a candidate election, are required to reimburse the corporate entity within a commercially reasonable time in the amount of the normal and usual rental charge. If one or more telephones of a corporate entity are used as a telephone bank, a rebuttable presumption is established that $3 per telephone per hour, plus any actual long distance charges, is acceptable as a normal and usual rental charge.

4.47(4) *Use of airplanes and other means of transportation.*

a. *Air travel.* A candidate, candidate's agent, or person traveling on behalf of a candidate who uses noncommercial air transportation made available by a corporate entity shall, in advance, reimburse the corporate entity as follows:

(1) Where the destination is served by regularly scheduled commercial service, the coach class airfare (without discounts).

(2) Where the destination is not served by a regularly scheduled commercial service, the usual charter rate.

b. Other transportation. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation made available by a corporate entity shall, within a commercially reasonable time, reimburse the corporate entity at the normal and usual rental charge.

4.47(5) *Equal access not required.* For the purpose of this rule, it is not necessary that the corporate entity be in the business of selling or renting the property, good or service to the general public; further, it is not necessary that the corporate entity provide access to the same property, good or service to other candidates or committees.

4.47(6) *Commercially reasonable time.* For the purpose of this rule, a rebuttable presumption is established that reimbursement to the corporate entity within ten business days is acceptable as within a commercially reasonable time.

4.47(7) *Loans and debts.* A financial institution may make a loan to a candidate or candidate's committee so long as the loan is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.18(68A,68B). A candidate or candidate's committee may owe a debt to an insurance company, financial institution, or corporation so long as the debt is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.16(68A,68B). The repayment of a loan or debt under this subrule shall be made prior to the dissolution of the committee pursuant to rule 351—4.57(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.48(68A) Sham newspapers not entitled to press exception. Iowa Code chapter 68A provides that when a media organization discusses candidates and public affairs, the media organization does not trigger the campaign laws. Iowa Code section 68A.503(2)*"d"* directs the board to adopt a rule prohibiting the owner, publisher, or editor of a sham newspaper from using the sham newspaper to promote in any way the candidacy of the person for public office. In determining whether or not a publication is entitled to the press exception or is a sham newspaper that triggers the campaign laws, the board will consider the following factors:

1. Whether the publication is published and made available on a regular schedule or interval;
2. The proximity to the election in which the candidates and public affairs are discussed;
3. Whether the publication contains news items and articles of opinion of a general character separate from discussions concerning candidates and public affairs;
4. How widely the publication is circulated or is otherwise made available to the public in comparison to a targeted audience for potential campaign purposes;
5. Whether the publication discusses all candidates for a particular election or otherwise gives all candidates equal space; and
6. Whether the publication expressly advocates for the candidacy of the owner, publisher, or editor of the publication or for the defeat of a campaign opponent of the owner, publisher, or editor of the publication.

This rule is intended to implement Iowa Code section 68A.503(2)*"d."*

[**ARC 7866B**, IAB 6/17/09, effective 7/22/09]

351—4.49(68A,68B) Individual property. These rules do not apply to the personal or real property of corporate officers or of individuals employed or associated with a corporate entity and shall not abridge the free-speech rights and privileges of individuals.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.50(68A) Political corporations. The prohibitions in Iowa Code Supplement section 68A.503 on corporations that make expenditures to expressly advocate for or against a clearly identified candidate do not apply to a nonprofit advocacy corporation that has received certification as a political corporation pursuant to this rule.

4.50(1) *Applicability.* A political corporation may make an independent expenditure as defined in Iowa Code Supplement section 68A.404(1) to expressly advocate for or against a clearly identified candidate. However, a political corporation may not make direct contributions to a candidate's

committee, state statutory political committee, county statutory political committee, or any political committee (PAC) that is established to expressly advocate for or against a clearly identified candidate.

4.50(2) *Criteria.* A corporate entity applying for certification as a political corporation shall meet all of the following criteria:

a. The corporation was organized solely for political purposes and engages in minor business activities that generate minimal income and that are incidental to its political purposes.

b. The corporation is not sponsored by a business corporation and has a policy of accepting only an insignificant and insubstantial amount of income from business corporations.

c. The corporation has no shareholders or others that have claims on its assets or earnings.

4.50(3) *Application.* A corporate entity seeking certification as a political corporation shall submit a letter affirming that the corporate entity meets all of the criteria set out in subrule 4.50(2). The application letter shall also include all other pertinent details of the corporate entity's activities and shall be signed by a corporate officer.

4.50(4) *Board review.* The board shall review an application letter from a corporate entity seeking status as a political corporation and shall issue a letter of approval or denial.

4.50(5) *Denial or failure to seek certification.* It shall be deemed a violation of Iowa Code Supplement section 68A.503 for a corporate entity that is denied certification as a political corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate. It shall be deemed a violation of Iowa Code Supplement section 68A.503 for a corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate without first seeking certification as a political corporation.

4.50(6) *Filing.* As required by Iowa Code Supplement section 68A.404, a corporate entity granted political corporation status that makes an independent expenditure in excess of $750 in the aggregate shall file an independent expenditure statement within 48 hours after the making of the expenditure.

4.50(7) *Campaign committee incorporation.* An Iowa committee organized under Iowa Code Supplement chapter 68A that chooses to incorporate may do so without applying for certification as a political corporation. A committee that chooses to incorporate is not a prohibited contributor under Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement sections 68A.404 and 68A.503.

351—4.51(68A) Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable. Iowa Code Supplement section 68A.503 prohibits corporations from making contributions to state or local candidates in Iowa. This prohibition does not apply to incorporated media organizations that host candidate debates described in this rule.

4.51(1) *Media organization defined.* "Media organization" means a broadcaster, cable television operator, television programmer, television producer, bona fide newspaper, magazine, or any other periodical publication. The media organization shall not be owned or controlled by a political party, political committee, or candidate.

4.51(2) *Debate structure.* The structure of the debate shall be left to the discretion of the media organization provided that at least two or more candidates for the particular office are invited to participate. The debate shall not be structured to promote or advance one candidate over another. In choosing which candidates to invite to a debate, the media organization shall use good faith editorial judgment that is reasonable and viewpoint-neutral.

4.51(3) *Funding debates.* A media organization may use its own funds and may accept funds donated by corporations to defray costs incurred in staging a candidate debate under this rule.

4.51(4) *Contribution reporting inapplicable.* The costs of a debate under this rule are not a reportable monetary or in-kind contribution under Iowa Code Supplement section 68A.402.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.503.

351—4.52(68A,68B) Corporate involvement with political committee funds.

4.52(1) *Corporate payroll deductions.* For purposes of interpretation of Iowa Code Supplement section 68A.503, the administrative functions performed by a corporation (profit or nonprofit

corporation including, but not limited to, a bank, savings and loan institution, credit union or insurance company) to make payroll deductions for an employee organization's political committee and to transmit the deductions in lump sum to the treasurer of the political committee shall not be a prohibited corporate activity so long as the corporate entity is serving only as a conduit for the contributions.

4.52(2) *Electronic transfer of deposits.* A corporation, financial institution, or insurance company may receive and deposit checks that include both dues and PAC contributions. Contributions for the PAC shall be transferred as soon as possible into the PAC checking account and all disclosure, record-keeping, and record-retention requirements of Iowa Code chapter 68A shall be followed.

4.52(3) *Allowable costs of administration.* For the purposes of interpreting Iowa Code Supplement section 68A.503, subsection 3, which permits an entity otherwise forbidden from contributing to a candidate or a candidate's committee for "financing the administration of a committee sponsored by that entity," the following are considered to be allowable costs of administration:

a. Full or partial compensation for political committee staff, which may include both wages and benefits.

b. Expenses of transportation and travel incurred by political committee staff; however, this does not include expenses of transportation or travel if provided by a political committee or a staff member to a candidate, nor does this include expenses of meals or events held on behalf of a candidate.

c. Printing and office supplies related to routine office administration so long as the printing and supplies are not used to expressly advocate for or against any candidate.

d. Postage and stationery, including that necessary for mailing contributions to specific candidates. Postage and stationery necessary for distributing political material expressly advocating a specific candidate to persons other than the committee membership are not permitted.

e. Expenses of maintaining committee records and preparing financial disclosure reports, including costs associated with services provided by an accountant or other professional.

f. Promotional materials, such as stickers, pens, and coffee cups, so long as the items promote the political committee itself, but not a specific candidate.

An item which is excluded by this subrule from being an allowable cost of administration may still be provided by the committee, so long as that cost is paid for from contributions or other sources of funds other than the parent entity.

This rule is intended to implement Iowa Code Supplement section 68A.503.

DIVISION V
INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

351—4.53(68A,68B) Express advocacy; in-kind contributions; independent expenditures—definitions. For the purposes of Iowa Code Supplement chapter 68A, the following definitions apply.

4.53(1) *Express advocacy.* "Express advocacy" means any communication as defined in Iowa Code Supplement section 68A.102(14). "Express advocacy" includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

4.53(2) *In-kind contribution.* "In-kind contribution" means the provision of any good or service to a committee without charge or at a charge that is less than the usual and normal charge for such good or service. If a good or service is provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the good or service at the time of the contribution and the amount charged the committee. An in-kind contribution also includes any expenditure that meets the definition of a coordinated expenditure in subrule 4.53(4).

4.53(3) *Independent expenditure.* "Independent expenditure" means an expenditure by a person for goods or services, including express advocacy communication, on behalf of a candidate or a ballot issue which is not made with the knowledge and approval of a candidate or a ballot issue committee. "Independent expenditure" does not include incidental expenses (expenses of $25 or less per incident absorbed by the volunteer which result from or arise out of the volunteer work) incurred by an individual in performing volunteer work.

4.53(4) *Coordinated expenditure.* "Made with the knowledge and approval of a candidate or ballot issue committee" means that there has been arrangement, coordination, or direction by the candidate or an agent or officer of the candidate's committee or a ballot issue committee prior to the procurement or purchase of the good or service, or the publication, distribution, display, or broadcast of an express advocacy communication. This may also be referred to as a "coordinated expenditure." An expenditure will be presumed to be coordinated when it is:

a. Based on information provided to the expending person by the candidate, the candidate's committee, or the ballot issue committee with a view toward having an expenditure made; or

b. Made by or through any person who is or has been authorized to raise or expend funds; who is or has been an officer of the candidate's committee or the ballot issue committee; or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate's committee, or the ballot issue committee.

This rule is intended to implement Iowa Code Supplement section 68A.404.

DIVISION VI
COMMITTEE DISSOLUTION

351—4.54(68A) Committee dissolution; disposition of property; resolution of loans or debts. A committee shall not dissolve until all loans and debts are paid, forgiven, or transferred, and the remaining funds in the committee's campaign account are distributed according to Iowa Code sections 68A.302 and 68A.303 and rule 351—4.25(68A,68B). In the case of a candidate's committee, the disposition of all campaign property with a residual value of $100 or more must be accomplished before dissolution.

4.54(1) *Manner of disposition—candidates' committees.* A candidate's committee shall dispose of campaign property with a residual value of $100 or more through a sale of the property at fair market value, with proceeds treated as any other campaign funds, or through donation of the property as set out in Iowa Code section 68A.303(1). The candidate's committee shall disclose on the committee's campaign report the manner of disposition.

4.54(2) *Resolution of loans and debts.* The loans and debts of a committee may be transferred, assumed, or forgiven except that a loan or debt owed to a financial institution, insurance company, or corporation may not be forgiven unless the committee is a ballot issue committee. The committee shall disclose on the committee's campaign report the transfer, assumption, or forgiveness of a loan or debt on the appropriate reporting schedules.

4.54(3) *Settlement of disputed loans and debts.* A dispute concerning a loan or debt may be resolved for less than the original amount if the committee discloses on the committee's campaign report the resolution of the dispute. If the dispute is between a candidate's committee and a financial institution, insurance company, or corporation, the candidate's committee shall submit a written statement to the board describing the loan or debt, the controversy, and the steps taken to settle or collect the loan or debt. The board will review the statement and determine whether to permit the candidate's committee to report the loan or debt as discharged.

4.54(4) *Unavailable creditor.* If the committee cannot locate a person to whom it owes a loan or debt, the committee shall provide the board with a written statement describing the steps the committee has taken to locate the creditor and shall request direction from the board as to what additional steps, if any, should be taken. If a candidate's committee owes a loan or debt to a financial institution, insurance company, or corporation, resolution of the matter shall include payment to a charitable organization or the general fund of the state of Iowa.

This rule is intended to implement Iowa Code section 68A.402B.

351—4.55(68A) Statement of dissolution; final report; final bank statement.

4.55(1) *Statement of dissolution.* A statement of dissolution (Form DR-3) shall be filed after the committee terminates its activity, disposes of its funds and assets, and has discharged all of its loans and debts. The statement shall be either typewritten or printed legibly in black ink and shall be signed by the

person filing the statement. A statement of dissolution filed electronically using the board's Web site is deemed signed when filed.

4.55(2) *Place of filing.* Statements of dissolution shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.55(3) *Time of filing.* A committee seeking dissolution shall file a statement of dissolution within 30 days of terminating activity, disposing of funds and assets, and discharging all loans and debts. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the required due date. Faxed or electronically filed statements must be submitted at or before 11:59 p.m. on the required due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the next working day.

4.55(4) *Final report.* The committee shall file a final report disclosing the committee's closing transactions. Once the board staff reviews the report and determines that the committee has complied with all of the requirements of Iowa Code chapter 68A, the committee is no longer required to file campaign reports. If the board staff determines that the committee has not complied with all of the requirements of Iowa Code chapter 68A, the committee, prior to being dissolved, shall resolve all issues.

4.55(5) *Final bank statement.* A copy of the committee's final bank statement showing the committee's closing transactions and a zero balance shall be attached to or submitted with the committee's final report. A committee participating in an election at the county, city, school, or other political subdivision level is not required to file a final bank statement unless requested to do so by the board. A committee seeking a waiver from the requirements of this subrule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code section 68A.402B.

351—4.56(68A,68B) Disposition of property for dissolution of committee. Rescinded IAB 6/22/05, effective 7/27/05.

351—4.57(68A,68B) Assumption or settlement of debts and obligations. Rescinded IAB 6/22/05, effective 7/27/05.

DIVISION VII
CIVIL PENALTIES FOR LATE REPORTS

351—4.58(68B) Late-filed campaign disclosure reports.

4.58(1) *Late reports.* A campaign disclosure report is deemed filed late if it is not received on or before the applicable due date as set out in rule 351—4.9(68A).

4.58(2) *Methods of filing.* A campaign disclosure report may be filed by any of the following methods: hand-delivered, mailed, faxed, sent as an E-mail attachment, or sent electronically via the Internet. The location for filing reports is set out in rule 351—4.8(68A,68B).

4.58(3) *Physical receipt.* A report must be physically received by the board as set out in rule 351—4.10(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.59(68B) Routine civil penalty assessment for late-filed disclosure reports.

4.59(1) *Administrative resolution.* In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all late-filed disclosure reports. The board shall notify any person assessed a penalty of the amount of the assessment and the person's ability to request a waiver under rule 351—4.60(68B). A committee using the board's electronic filing system shall not be assessed a civil penalty if the board's electronic filing system is not properly functioning and causes the committee to be unable to timely file the report.

4.59(2) *County and local committee assessments.* County, county statutory, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same committee in 12-month period
1 to 14 consecutive days delinquent	$20	$50
15 to 30 consecutive days delinquent	$50	$100
31 to 45 consecutive days delinquent	$100	$200

4.59(3) *State committee assessments.* Statewide, general assembly, state statutory, and state political committees, and a judge standing for retention shall be assessed civil penalties for late-filed reports, except for supplementary and special election reports, in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same committee in 12-month period
1 to 14 consecutive days delinquent	$50	$100
15 to 30 consecutive days delinquent	$100	$200
31 to 45 consecutive days delinquent	$200	$300

4.59(4) *Supplementary report assessments.* General assembly candidates' committees required to file supplementary disclosure reports shall be assessed a $200 civil penalty for filing a supplementary report one or more days late. Statewide committees required to file supplementary disclosure reports shall be assessed a $400 civil penalty for filing a supplementary report one or more days late.

4.59(5) *Special election assessments.* The committees of general assembly candidates to fill vacancies in special elections shall be assessed a $100 civil penalty for filing a special election report one or more days late. The committees of statewide candidates to fill vacancies in special elections shall be assessed a $200 civil penalty for filing a special election report one or more days late.

4.59(6) *Verified statement of registration assessments.* An out-of-state committee that chooses to file a verified statement of registration (VSR) as provided in Iowa Code Supplement section 68A.201 and rule 351—4.32(68A), but fails to file the VSR on or before the fifteenth day after the date of the contribution, shall be assessed a $25 civil penalty per late-filed VSR. However, if there is a repeat delinquency by the committee in a 12-month period, the penalty shall be $50.

For purposes of this subrule, "date of the contribution" means the day, month and year the contribution check is dated.

4.59(7) *Independent expenditure assessment.* A person that is delinquent in filing an independent expenditure statement shall be assessed a $25 civil penalty for filing the statement one or more days delinquent, except that if there is a repeat delinquency by the person in timely filing an independent expenditure statement within a 12-month period, the penalty shall be $50.

4.59(8) *Form DR-OTC assessment.* A permanent organization that has not previously made a contribution in excess of $750 and that fails to file Form DR-OTC within ten days of notice to do so by the board shall be assessed a $20 civil penalty. A permanent organization that has previously made a contribution in excess of $750 and that fails to file Form DR-OTC within ten days of the date on which the contribution check is issued shall be assessed a $20 civil penalty.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

[**ARC 7645B**, IAB 3/25/09, effective 4/29/09]

351—4.60(68B) Requests for waiver of penalties. If a person believes that there are mitigating circumstances that prevented the timely filing of a report, the person may make a written request to the board for waiver of the penalty. A person seeking a waiver must submit the request to the board within 30 days of receiving a civil penalty assessment order. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or seek a contested case proceeding pursuant to rule 351—4.61(68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.61(68B) Contested case challenge.

4.61(1) *Request.* If the person accepts administrative resolution of a matter through the payment of the assessed penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

4.61(2) *Procedure.* Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

4.61(3) *Failure to request hearing.* Failure to request a contested case proceeding to appeal the board's decision on a waiver request is failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.62(68B) Payment of penalty.

4.62(1) *Where payment made.* Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Such funds shall be deposited in the general fund of the state of Iowa.

4.62(2) *Who may make payment.* Payment may be made at the person's discretion, including from funds of a committee or from personal funds of an officer of a committee.

4.62(3) *Disclosure of payment.* Rescinded IAB 3/25/09, effective 4/29/09.

This rule is intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

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◊ Two or more ARCs

1 Effective date of rule 4.16 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).

CHAPTER 25
DISABILITY SERVICES MANAGEMENT

PREAMBLE

This chapter provides for reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injury.

DIVISION I
DETERMINATION OF STATE PAYMENT AMOUNT
[Rescinded IAB 1/16/08, effective 2/20/08]

441—25.1 to **25.10** Reserved.

DIVISION II
COUNTY MANAGEMENT PLAN

PREAMBLE

These rules define the standards for county management plans for mental health, mental retardation, and developmental disability services, including the single point of entry process for accessing services and supports paid from the county mental health, mental retardation, and developmental disability services fund (Iowa Code section 331.424A). Each county must complete a plan in order to meet the requirements of Iowa Code section 331.439. The single point of entry process is hereinafter called the central point of coordination (CPC). The CPC is an administrative gatekeeper to the service's fund and is not meant to replace case management or service coordination. The county management plan describes how persons with disabilities receive appropriate services and supports within the financial limitations of federal, state, and county resources. In partnership with the state, the county develops a management plan that describes the capacities of the county to manage the county mental health, mental retardation, and developmental disability services fund in a manner that is cost-efficient. These rules are designed to give counties maximum flexibility to manage the public mental health and developmental disabilities (MH/DD) system themselves or, if a county so chooses, to contract with a private managed care company to manage all or part of the county's system. However, even when a county contracts with a private entity to manage its system, the county must approve the county management plan in which it defines the parameters of consumer eligibility and service criteria to be used by the contractor. The county management plan shall be guided by the following principles: choice, empowerment, and community.

441—25.11(331) Definitions.

"Access point" means a part of the service system or the community that shall be trained to complete applications for persons with a disability and forward them to the central point of coordination. Access points may include, but need not be limited to, providers, public or private institutions, advocacy organizations, legal representatives, and educational institutions.

"Applicant" means a person who applies to receive services and supports from the service system.

"Assistive technology account" means funds in contracts, savings, trust or other financial accounts, financial instruments, or other arrangements with a definite cash value that are set aside and designated for the purchase, lease, or acquisition of assistive technology, assistive technology services, or assistive technology devices. Assistive technology accounts must be held separately from other accounts. Funds must be used to purchase, lease, or otherwise acquire assistive technology services or devices for a working person with a disability. Any withdrawal from an assistive technology account other than for the designated purpose becomes a countable resource.

"Authorized representative" means a person designated by the consumer or by Iowa law to act on the person's behalf in specified affairs to the extent prescribed by law.

"Board" means a county board of supervisors.

"Central point of coordination (CPC)" means the administrative entity designated by a board, or the boards of a consortium of counties, to act as the single entry point to the service system as required in Iowa Code section 331.440.

"Clinical assessment" means those activities conducted by a qualified professional to identify the consumer's current level of functioning and to identify the appropriate type and intensity of services and supports.

"Commission" means the mental health, mental retardation, developmental disabilities, and brain injury commission established in Iowa Code section 225C.5.

"Consortium" means two or more counties that join together to carry out the responsibilities of this division.

"Consumer" means a person who is eligible to receive services and supports from the service system.

"Countable resource" means real or personal property that has a cash value that is available to the owner upon disposition and is capable of being liquidated.

"Countable value" means the equity value of a resource, which is the current fair market value minus any legal debt on the item.

"County" means a single county or a consortium of counties legally organized to develop and implement the county management plan.

"County management plan" means the county plan, developed pursuant to Iowa Code section 331.439, for organizing, financing, delivering, and evaluating mental health, mental retardation, and developmental disabilities services and supports in a manner that deliberately seeks to control costs while delivering high-quality mental health, mental retardation, and developmental disabilities services and supports. The plan shall consist of three parts: (1) a policies and procedures manual, (2) a three-year strategic plan, and (3) an annual plan review.

"County of residence" means the county in Iowa where, at the time an adult applies for or receives services, the adult is living and has established an ongoing presence with the declared, good-faith intention of living permanently or for an indefinite period. The county where a person is "living" does not mean the county where a person is present for the purpose of receiving services in a hospital, a correctional facility, a halfway house for community corrections or substance abuse treatment, a nursing facility, an intermediate care facility for persons with mental retardation, or a residential care facility or for the purpose of attending a college or university. For an adult who is an Iowa resident and who falls within the exclusion for county where a person is "living" as described in this rule, the county where the adult is physically present and receiving services shall be the county of residence. The county of residence of an adult who is a homeless person is the county where the adult usually sleeps.

"CPC administrator" means a person who possesses a baccalaureate degree from an accredited school and has demonstrated competency in human services program administration and planning and has two years of experience working with people with disabilities. A person continually employed by a county to implement a central point of coordination process or to perform similar duties, prior to April 1, 1996, shall be considered to be a qualified CPC administrator. This exemption shall only be valid for a person initially appointed as CPC administrator for fiscal year 1997. An individual employed under this exemption and continually employed as a CPC administrator may be employed by any county as a CPC administrator.

"Department" means the Iowa department of human services.

"Director" means the director of the Iowa department of human services.

"Emergency service" means a service needed immediately to protect the life or safety of a consumer or others.

"Evaluation" means evaluation services as described in 441—subrule 24.4(16).

"Exempt resource" means a resource that is disregarded in the determination of eligibility for public funding assistance and in the calculation of client participation amounts.

"Household," for consumers who are 18 years of age or over, means the consumer, the consumer's spouse or domestic partner, and any children, stepchildren, or wards under the age of 18 who reside with the consumer. For consumers under the age of 18, "household" means the consumer, the consumer's

parents (or parent and domestic partner), stepparents or guardians, and any children, stepchildren, or wards under the age of 18 of the consumer's parents (or parent and domestic partner), stepparents, or guardians who reside with the consumer.

"Income" means all gross income received by the consumer's household, including but not limited to wages, income from self-employment, retirement benefits, disability benefits, dividends, annuities, public assistance, unemployment compensation, alimony, child support, investment income, rental income, and income from trust funds.

"Individualized services" means services and supports that are tailored to meet the individual needs of the consumer.

"Legal settlement" is as defined in Iowa Code sections 252.16 and 252.17.

"Liquid assets" means assets that can be converted to cash in 20 days. These include but are not limited to cash on hand, checking accounts, savings accounts, stocks, bonds, cash value of life insurance, individual retirement accounts, certificates of deposit, and other investments.

"Managed care" means a system that provides the coordinated delivery of services and supports that are necessary and appropriate, delivered in the least restrictive settings and in the least intrusive manner. Managed care seeks to balance three factors:

1. Achieving high-quality outcomes for participants.
2. Coordinating access.
3. Containing costs.

"Managed system" means a system that integrates planning, administration, financing, and service delivery. The system consists of the financing or governing organization, the entity responsible for care management, and the network of service providers.

"Management organization" means an organization contracted to manage part or all of the service system for a county.

"Medical savings account" means an account that is exempt from federal income taxation pursuant to Section 220 of the United States Internal Revenue Code (26 U.S.C. §220) as supported by documentation provided by the bank or other financial institution. Any withdrawal from a medical savings account other than for the designated purpose becomes a countable resource.

"Nonliquid assets" means assets that cannot be converted to cash in 20 days. Nonliquid assets include, but are not limited to, real estate, motor vehicles, motor vessels, livestock, tools, machinery, and personal property.

"Provider" means a person or group of persons or agency providing services for people with disabilities.

"Qualified professional" means a person who has education, training, licensure, certification, or experience to make the particular decision at issue as required by federal or state law.

"Resources" means all liquid and nonliquid assets owned in part or in whole by the consumer household that could be converted to cash to use for support and maintenance and that the consumer household is not legally restricted from using for support and maintenance.

"Retirement account" means any retirement or pension fund or account listed in Iowa Code section 627.6(8)*"f."*

"Retirement account in the accumulation stage" means a retirement account into which a deposit was made in the previous tax year. Any withdrawal from a retirement account becomes a countable resource.

"Screening" means the process used by the central point of coordination to determine eligibility for the service system.

"Service coordinator" means a person as defined in rule 441—22.1(225C). For purposes of these rules this may include department social workers providing social casework as defined in rule 441—130.6(234), county caseworkers, county social workers, or qualified case managers as defined in rule 441—24.1(225C).

"Services fund" means the county mental health, mental retardation, and developmental disability services fund created in Iowa Code section 331.424A, subsection 2.

"Service system" refers to the services and supports administered and paid from the county mental health, mental retardation, and developmental disability services fund.

"State case status" is the status of a person who does not have a county of legal settlement as defined in Iowa Code sections 252.16 and 252.17.

"System principles" means:

1. *"Choice"* which means the consumer or authorized representative chooses the services, supports, and goods needed to best meet the consumer's individual goals and accepts the responsibility and consequences of those choices.

2. *"Community"* which means that the system ensures the rights and abilities of all consumers to live, learn, work, and recreate in natural communities of their choice.

3. *"Consumer empowerment"* which means that the service system ensures the rights, dignity, and ability of consumers and their families to exercise choices, take risks, provide input, and accept responsibility.

"Unique identifier" means the social security number or the personal identifier for a consumer determined using a methodology adopted by the state-county management committee.

[**ARC 7768B**, IAB 5/20/09, effective 7/1/09]

441—25.12(331) County management plan—general criteria. A county shall develop a plan for providing an array of cost-effective, individualized services and supports that assist the consumers to be as independent, productive, and integrated into the community as possible within the constraints of the services fund.

25.12(1) *Geographical area.* The plan shall define the geographical area covered by the plan.

25.12(2) *Three-part plan.* The plan shall consist of three parts:

a. A policies and procedures manual.

b. A management plan annual review.

c. A three-year strategic plan.

441—25.13(331) Policies and procedures manual. The policies and procedures manual shall describe system management and plan administration.

25.13(1) *System management section.* The system management section of the manual shall describe, but shall not be limited to, the following:

a. Plan development. The process for the development of the policies and procedures manual, the strategic plan, and amendments to those documents shall involve the various stakeholders in a meaningful way. These stakeholders shall include, but not be limited to, consumers, family members, county officials, advocates, and providers. The process used to involve the stakeholders shall be documented in the strategic plan including how stakeholder input was considered in the development of the final plan. Each process shall include at least one public hearing.

b. Plan administration. A statement that the county will directly administer the plan or a description of the management organization responsible for plan administration shall be included in the plan. If the county contracts for plan administration, the plan shall contain a description of how the county will monitor the management organization's performance through designated county staff or through another contractor independent of the management organization. The management organization shall comply with Iowa Code section 331.439(1)*"c."*

c. The financial accountability process. The process to ensure the ongoing financial accountability of the plan shall be included. Financial accountability shall include the rate-setting and reimbursement methods used to reimburse service and support providers, which may include vouchers and other nontraditional payment mechanisms.

d. Risk-bearing managed care contracts. A county that enters a risk-bearing contract shall include the methodology used to determine the solvency of any plan administered by a management organization in its policies and procedures manual. This shall include, but not be limited to:

(1) A required annual independent audit of the management organization responsible for plan administration.

(2) The rate-setting and reimbursement methods used by the county to reimburse the management organization.

(3) Description of contract requirements prohibiting a management organization from achieving administrative costs or profit from elimination or reduction of services appropriate to consumer needs.

e. *A funding policy.* A policy shall be included indicating that the county is responsible for funding only those services and supports that are authorized in accordance with the process described in the county management plan (including those that are required by law).

f. *Conflict of interest policy.* The manual shall describe a conflict of interest policy that shall, at a minimum, ensure that service authorization decisions are either made by individuals or organizations which have no financial interest in the services or supports to be provided, or that such interest is fully disclosed to consumers, counties, and other stakeholders. The process for this disclosure shall be described in the manual.

g. *Provider network selection.* The manual shall require that providers that are subject to license, accreditation or approval meet established standards. The manual shall detail the approval process, including criteria, developed to select providers that are not currently subject to license, accreditation or approval standards. The manual shall identify the process the county will use to contract with providers.

h. *Delegated functions.* A county may contract with providers to perform functions of the central point of coordination for persons coming to the designated provider for service or may contract with a management organization to carry out the functions of the central point of coordination. When delegation is made, the county shall be responsible for ensuring that the contractor complies with Iowa Code section 331.440 as well as 441—Chapter 25 for any delegated duties and responsibilities.

i. *Access points.* The county shall designate access points and their function in the enrollment process. A process shall be included to ensure that applications received by an access point are forwarded by the end of the working day during which they are received to the consumer's county of residence. The county shall provide training to designated access points on the intake process and use of the application form.

j. *Staffing plan.* The county shall employ, directly or through contract, an adequate number of staff persons to administer the plan. At least one person who meets the qualifications of a central point of coordination administrator shall be designated to implement the central point of coordination process. Elected county or state officials shall not be hired or appointed as the central point of coordination administrator.

k. *Application form.* The policies and procedures manual shall designate the use of an application form, which shall be available in formats and languages appropriate to consumers' needs.

l. *Consumer access.* The manual shall describe how the county will provide access to appropriate, flexible, cost-effective community services and supports to meet the consumer needs in the least restrictive environment possible. This may include guidelines for individualized services and supports and may vary by eligibility group and type of service and support. The manual shall describe how the county of residence will ensure access to services and supports while legal settlement is determined or in dispute.

m. *Consumer eligibility.* The manual shall describe the eligibility criteria for services and supports. This description shall include, but not be limited to, a description of who is eligible to receive services and supports by eligibility group and type of service or support. Financial eligibility and copayment criteria shall meet the requirements of rule 441—25.20(331).

n. *Confidentiality.* The manual shall describe a confidentiality policy that shall ensure compliance with all applicable state and federal statutes on confidentiality.

o. *Emergency services.* The manual shall specify the policy for accessing emergency services, including the county's protocol for voluntary and involuntary commitments. The policy shall include the criteria and time frames for application for emergency services.

p. *Waiting lists.* The policies and procedures manual shall specify if the county will use waiting lists, when needed. If the policies and procedures manual specifies the use of waiting lists for funding services and supports, it shall specify criteria for the use and review of each waiting list, including the criteria to be used to determine how and when a consumer will be placed on a waiting list. The manual

shall specify how waiting list data will be used in future planning. If the county enters into a risk-bearing contract with a management organization, the contract shall specify that the management organization shall not use waiting lists.

q. Quality assurance. The policies and procedures manual shall describe a detailed quality improvement process that provides for ongoing and periodic evaluation of the service system and of the providers of services and supports in the system. The stakeholders shall be involved in the development and implementation of the quality assurance process and evaluation of the system with emphasis on consumer input. The quality assurance policies shall include, but not be limited to, the following:

(1) *System evaluation.* The system evaluation shall include, but not be limited to, an evaluation of consumer satisfaction, including empowerment and quality of life; provider satisfaction; patterns of service utilization; responsiveness to consumer needs and desires; the number and disposition of consumer appeals and the implementation of corrective action plans based on these appeals; and cost-effectiveness.

(2) *Quality of provider services.* The services and supports evaluation shall include, but not be limited to, an evaluation of the quality of provider services and supports based on consumer satisfaction and achievement of desired consumer outcomes; the number and disposition of appeals of provider actions and the implementation of corrective action plans based on these appeals; and the cost-effectiveness of the services and supports developed and provided by individual providers. The evaluation shall ensure that services and supports are provided in accordance with provider contracts.

r. Collaboration. The policies shall describe the county's collaboration with other funders, service providers, consumers and their families or authorized representatives, and advocates to ensure that authorized services and supports are responsive to consumers' needs and desires and are cost-efficient. The manual shall specifically describe the process for collaboration with the court to ensure that the court is aware of the services and supports available through the county management plan as alternatives to commitment and to coordinate funding for services to persons who are under court-ordered commitment pursuant to Iowa Code chapter 222 or 229.

s. The ongoing education process. The plan shall include the process the county will use to provide ongoing education, in various accessible formats, on its planning process and the intake and service authorization process to the community, including consumers, family members, and providers.

25.13(2) *Plan administration section.* The plan administration section of the policies and procedures manual shall specifically outline procedures for administering the plan at the consumer level. These procedures shall include, but shall not be limited to:

a. Application (intake) procedure. The plan administration section of the manual shall describe an application process that is readily accessible to applicants and their families or authorized representatives. This procedure shall describe where applicants can apply for services and how and when the applications will reach the CPC office. It shall outline an application review process including, but not limited to, how additional needed information shall be gathered to complete an application, a timeline for the review process, and qualifications of the professional reviewing the application.

(1) Applications shall be accepted and processed by the applicant's county of residence. If an applicant applies to the CPC of the county of residence and has legal settlement in another county, the application process shall be performed by the CPC of the applicant's county of residence in accordance with the county of residence's management plan, and the applicant's county of legal settlement shall be responsible for the cost of the services or other supports authorized at the rates reimbursed by the county of residence.

(2) If the county of legal settlement has implemented a waiting list in accordance with Iowa Code section 331.439(5), the services and other supports for the person shall be authorized by the county of residence in accordance with the county of legal settlement's waiting list provisions.

(3) If the county of residence has implemented a waiting list, the services and other supports for the person shall be authorized by the county of residence in accordance with the county of residence's waiting list provisions.

b. Eligibility determination. Eligibility determination shall include, but not be limited to, the criteria used to authorize or deny funding for services and supports. This may include guidelines for

individualized services and supports and may vary by eligibility group and type of service and support. The procedure shall specify the time frames for conducting eligibility determination that provides for timely access to services, including necessary and immediate services.

c. *Notice of decision.* The review process shall ensure a prompt screening for eligibility and initial decision to approve or reject the application or to gather more information. The policies and procedures manual shall include the process for development of a written notice of decision. The time frame for sending a written notice of decision shall be included.

(1) The notice of decision shall:

1. Explain the action taken on the application and the reasons for that action;
2. State what services are approved and name the service providers;
3. Outline the applicant's right to appeal; and
4. Describe the appeal process.

(2) If the applicant is placed on the county of residence's waiting list for funding, the notice issued by the county of residence shall also include:

1. An explanation of waiting-list status;
2. An estimate of how long the applicant is expected to be on the waiting list; and
3. The process for the applicant or authorized representative to obtain information regarding the applicant's status on the waiting list.

(3) The county of residence shall send the notice of decision to:

1. The applicant (or the family in the case of a minor) or the applicant's authorized representative;
2. The applicant's county of legal settlement (if different from the county of residence); and
3. The listed service providers.

(4) If the applicant's county of legal settlement is different from the county of residence, the county of legal settlement shall sign the notice of decision accepting legal settlement and return it to:

1. The county of residence; and
2. The listed service providers.

(5) If the applicant is placed on the county of legal settlement's waiting list for funding, the county of legal settlement shall add to the notice of decision:

1. An explanation of waiting-list status;
2. An estimate of how long the applicant is expected to be on the waiting list; and
3. The process for the applicant or authorized representative to obtain information regarding the consumer's status on the waiting list.

d. *Referral.* The plan administration section of the manual shall describe to whom and for what purpose referral of the application is made. This may include, but is not limited to, description of referral directly to a provider for services and supports, referral for service coordination, or referral for clinical assessment.

e. *Consumer plan development.* The plan administration section of the manual shall describe the role of the service coordinator in consumer plan development and how the service coordinator will interface with the CPC. If review of the service request is deemed necessary, a qualified professional shall do the review.

f. *Request for funding.* The plan administration section shall indicate the process and format for a funding request.

g. *Service funding authorization and reauthorization.* The plan administration section of the manual shall describe who makes the funding authorization and reauthorization decisions and the qualifications of that individual. The procedures shall describe the criteria for authorization and reauthorization of funding and a timeline for responding to the request for funding. For consumers whose county of residence differs from the county of legal settlement, the following procedures shall be used:

(1) The county of legal settlement may continue to authorize services for any consumer receiving services on or before June 30, 2007, even if the service is not in the management plan of the county of residence.

(2) The consumer shall apply for additional services with the CPC of the county of residence. The same procedure shall be followed as for a new applicant.

(3) Once an applicant has been enrolled with the county of legal settlement, the county of legal settlement shall manage reauthorizations of enrollment, such as gathering annual updates of income and resources to confirm continuing eligibility.

(4) The county of legal settlement may also work directly with the consumer or service provider to do periodic service reauthorizations. Services and supports funding must be reauthorized in accordance with the management plan of the county of residence.

(5) A written notice of reauthorization for service funding shall be sent to:

1. The consumer;
2. The county of residence; and
3. The listed service providers.

h. *Service and cost tracking.* The plan administration section of the manual shall include a description of a system to track services and supports and payments made on behalf of all approved consumers. The tracking system shall provide an unduplicated consumer count and expenditure data. The tracking system shall also record denials of services and supports and indicate the reason why the applications were denied.

i. *Service monitoring.* The plan administration section of the manual shall outline the process of service and funding monitoring.

j. *Appeals.* The county shall develop and implement a process for appealing the decisions of the county or its agent. This appeal process shall be based on objective criteria, specify time frames, provide for notification in accessible formats of the decisions to all parties, and provide some assistance to consumers in using the process. Responsibility for the final administrative decision on an appeal shall not rest with the county board of supervisors. If the appellant has state case status, responsibility for the final administrative decision on an appeal shall rest with the department, following the procedures established in 441—Chapter 7.

25.13(3) *Management plan annual review.* The policies and procedures manual shall address the process for preparation and distribution of the management plan annual review.

25.13(4) *Three-year strategic plan.* The policies and procedures manual shall address the process for development and approval of the three-year strategic plan.

[**ARC 7768B**, IAB 5/20/09, effective 7/1/09]

441—25.14(331) Policies and procedures manual review. The policies and procedures manual shall be submitted by April 1, 2000, as a part of the county's management plan for the fiscal year beginning July 1, 2000. The director, in consultation with the commission, shall review all county management plans submitted by the dates specified. Based on the recommendations of the commission, and if the director finds the county policies and procedures manual in compliance with these rules and state and federal laws, the director may approve the manual. A manual approved by the director for the fiscal year beginning July 1, 2000, shall remain in effect subject to amendment.

25.14(1) *Criteria for acceptance.* The director shall determine a manual is acceptable when it contains all the required information, meets the criteria described in this division, and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the manual contains all the required information and meets criteria described in this division.

25.14(2) *Notification.* Except as specified in subrule 25.14(3), the director shall notify the county in writing of the decision on the manual by June 1, 2000. The decision shall specify that either:

a. The manual is approved as it was submitted, either with or without supplemental information already requested and received.

b. The manual will not be approved until revisions are made. The letter will specify the nature of the revisions requested and the time frames for their submission. The director may authorize a county to continue operation, for up to 90 days, using the previously approved county management plan. The extension begins on July 1, 2000.

25.14(3) *Review of late submittals.* The director may review manuals not submitted by April 1, 2000, after all manuals submitted by that date have been reviewed. The director will proceed with the late submittals in a timely manner.
[**ARC 7768B**, IAB 5/20/09, effective 7/1/09]

441—25.15(331) Amendments. An amendment to the manual shall be submitted to the department at least 45 days before the date of implementation. Before implementation of any amendment to the manual, the director must approve the amendment. When an amendment substantially changes a county's policies and procedures manual, the department shall present the amendment to the commission.

25.15(1) *Criteria for acceptance.* The director shall determine an amendment is acceptable when it contains all the required information and meets the criteria described in this division for the applicable part of the policies and procedures manual and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the amendment contains all the required information and meets criteria described in this division.

25.15(2) *Notification.* The director shall notify the county, in writing, of the decision on the amendment within 45 days of receipt of the amendment. The decision shall specify either that:

a. The amendment is approved as it was submitted, either with or without supplemental information already requested and received.

b. The amendment is not approved. The notification will include why the amendment is not approved.
[**ARC 7768B**, IAB 5/20/09, effective 7/1/09]

441—25.16(331) Reconsideration. Counties dissatisfied with the director's decision on a manual or an amendment may file a letter with the director requesting reconsideration. The letter of reconsideration must be received within 30 working days of the date of the notice of decision and shall include a request for the director to review the decision and the reasons for dissatisfaction. Within 30 working days of the receipt of the letter requesting reconsideration, the director, in consultation with the commission, will review both the reconsideration request and evidence provided. The director shall issue a final decision in writing.
[**ARC 7768B**, IAB 5/20/09, effective 7/1/09]

441—25.17(331) Management plan annual review. The county shall prepare a management plan annual review for the county stakeholders, the department of human services and the commission. The management plan annual review shall be submitted to the department for informational purposes by December 1. The management plan annual review shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by a managed care entity on behalf of the county. The management plan annual review shall include, but not be limited to:

1. Progress toward goals and objectives.
2. Documentation of stakeholder involvement.
3. Actual provider network.
4. Actual expenditures.
5. Actual scope of services.
6. Number, type, and resolution of appeals.
7. Quality assurance implementation, findings and impact on plan.
8. Waiting list information.

[**ARC 7768B**, IAB 5/20/09, effective 7/1/09]

441—25.18(331) Strategic plan. The strategic plan shall describe the county's vision for its mental health, mental retardation, and developmental disabilities system for the ensuing three fiscal years. The strategic plan development shall follow the process outlined in the policies and procedures manual. The strategic plan shall be submitted, for informational purposes, to the department by April 1, 2000, and by April 1 of every third year thereafter. The strategic plan shall include, but not be limited to:

25.18(1) *Needs assessment.* The strategic plan shall include an assessment of current needs. This plan shall describe how information from the annual reports from the previous years was incorporated into the current strategic plan and how the information will be used to develop future plans for the funding and provision of services to eligible groups.

25.18(2) *Goals and objectives.* The strategic plan shall list goals and objectives that are guided by the system principles of choice, empowerment, and community. The goals and objectives shall reflect the system which the county plans to have in place in three years, the action steps which will be taken to develop the future system, and how progress toward implementation will be measured. Projected costs for future projects should be included.

25.18(3) *Services and supports.* The strategic plan shall list services and supports that the county will fund, when requested, by eligibility group.

25.18(4) *Provider network.* The strategic plan shall include a list of providers used to provide the scope of services and supports described in the plan.

25.18(5) *Access points.* The strategic plan shall list designated access points and their function in the enrollment process.

441—25.19(331) Technical assistance. The department shall provide technical assistance and other necessary support to counties to assist in the development and implementation of the county management plans and completion of reports.

441—25.20(331) Consumer financial eligibility and payment responsibility. The county management plan shall identify basic financial eligibility standards for disability services consistent with this rule. The county may choose to assign responsibility for copayment to the consumer consistent with this rule. Nothing in this rule shall preclude a consumer from voluntarily paying a greater copayment than is provided in the county management plan.

25.20(1) *General requirements.* The basic financial eligibility standards identified in this rule are the minimum standards allowable. A county management plan may establish less restrictive financial standards, but shall not establish standards that are more restrictive.

a. The county management plan shall provide that a consumer who is eligible under all other eligibility standards of the county management plan shall be eligible for county disability services paid with public funding if the consumer meets the basic financial eligibility standards set forth in this rule.

b. The county management plan shall require no copayments by consumers, whether collected by the county or a provider, except as defined in this rule.

c. The county management plan may establish a policy to allow exceptions to the basic or extended financial eligibility standards on a case-by-case basis to benefit an individual consumer.

d. The income and resource standards in this rule shall not supersede the eligibility guidelines of any other federal, state, county, or municipal program, including general assistance guidelines adopted by the county board of supervisors.

e. Nothing in this rule shall be construed as relieving any consumer of financial obligations incurred pursuant to a Social Security Administration interim assistance agreement.

25.20(2) *Basic eligibility standards.* Except as otherwise provided in these rules, an applicant shall be financially eligible for county funding when the applicant meets the following standards:

a. If the applicant is eligible for federally funded or state-funded services or supports, the applicant has applied for and accepted those services and supports.

b. The applicant's household has:

(1) Income that is equal to or less than 150 percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services; and

(2) Resources that are equal to or less than $2,000 in countable value for a single-person household or $3,000 in countable value for a multiperson household.

25.20(3) *Resource standards.* Basic financial eligibility standards shall include the following provisions for determining financial eligibility:

a. The countable value of all countable resources, both liquid and nonliquid, shall be included in the eligibility determination except as exempted in this subrule.

b. A transfer of property or other assets within five years of the time of application with the result of, or intent to, qualify for assistance may result in denial or discontinuation of funding.

c. The following resources shall be exempt:

(1) The homestead, including equity in a family home or farm that is used as the consumer household's principal place of residence. The homestead shall include all land that is contiguous to the home and the buildings located on the land.

(2) One automobile used for transportation.

(3) Tools of an actively pursued trade.

(4) General household furnishings and personal items.

(5) Burial spaces.

(6) Cash surrender value of life insurance with a face value of less than $1,500 on any one person.

(7) Any resource determined excludable by the Social Security Administration as a result of an approved Social Security Administration work incentive.

d. Additional exemptions. If a person does not qualify for federally funded or state-funded services or other support, but meets all income, resource, and functional eligibility requirements of this chapter, the following types of resources shall additionally be considered exempt from consideration in eligibility determination:

(1) A retirement account that is in the accumulation stage.

(2) A medical savings account.

(3) An assistive technology account.

25.20(4) *Basic copayment standards.* Any copayments or other client participation required by any federal, state, county, or municipal program in which the consumer participates shall be required. Such copayments include, but are not limited to:

a. Client participation for maintenance in a residential care facility through the state supplementary assistance program.

b. Client participation for an intermediate care facility or an intermediate care facility for persons with mental retardation.

c. A portion of rent in conjunction with a rental assistance program consistent with guidelines of the United States Department of Housing and Urban Development.

d. A copayment, deductible, or spenddown required by the Medicare or Medicaid programs or any other third-party insurance coverage.

e. The financial liability for institutional services paid by counties as provided in Iowa Code sections 222.31 and 230.15.

f. The financial liability for attorney fees related to commitment as provided by Iowa Code section 229.19.

25.20(5) *Copayment for services provided by a facility participating in the state supplementary assistance program.* A county may require a copayment for a disability service provided to a consumer by a licensed residential care facility that participates in the state supplementary assistance program as follows:

a. A consumer who is approved for state supplementary assistance and pays client participation as determined through the state supplementary assistance program shall be considered eligible for disability services with no additional copayment.

b. A consumer who is ineligible for state supplementary assistance due to income or resources may be eligible for financial assistance under the county management plan through determination and payment of client participation as follows.

(1) Client participation in the service payment shall be determined by allowing the following deductions from available income and resources:

1. Any income earned by the consumer in a supported employment, sheltered workshop, day habilitation, or adult day care program.

2. A personal allowance equivalent to the personal allowance provided under the state supplementary assistance program.

3. Room and board payment made by the consumer to the facility at the state supplementary assistance rate.

4. Payment for any medical expenses for which the consumer is financially responsible.

(2) Any income remaining after deduction of the expenses allowed in subparagraph (1) and any resources in excess of $2,000 shall be considered the required client participation toward the service in the facility. For any consumer whose client participation does not equal 100 percent of the service cost, the county shall participate in payment to the facility up to that level.

25.20(6) *Extended eligibility and copayment standards.* Each county management plan shall indicate if additional, less restrictive financial eligibility standards will be applied. The county management plan may permit a person with an income above 150 percent of the federal poverty level or resources above the basic resource limits to be eligible for public funding provided that the plan meets the requirements in this subrule. To apply less restrictive financial eligibility standards, the county management plan shall include:

a. Policies relating to any income or resource limits that are different from the basic income and resource standards.

b. Policies relating to any resource exemptions that are different from the basic financial eligibility standards.

c. Policies relating to any other factors included in determination of financial eligibility and calculation of client participation.

d. Policies defining procedures for calculation and collection of client participation.

e. Policies providing for a copayment or other cost-sharing arrangement determined on a sliding fee scale based on household income and resources. Any sliding fee scale used for copayments shall be graduated and shall be based on the federal poverty guidelines. Policies shall address updates to the sliding fee scale.

f. Policies regarding any county payment of third-party insurance copayment.

g. Policies relating to exception provisions for financial eligibility determination and client participation calculation.

h. Policies relating to informing consumers of the client participation required.

These rules are intended to implement Iowa Code sections 331.424A, 331.439, and 331.440.

441—25.21 to **25.40** Reserved.

DIVISION III
MINIMUM DATA SET

441—25.41(331) Minimum data set. Each county shall maintain data on all clients served through the MH/DD services fund.

25.41(1) *Submission of data.* Each county shall submit to DHS a copy of the data regarding each individual that the county serves through the central point of coordination process.

a. DHS state payment program, state supplementary assistance program, mental health institutes, state resource centers, Medicaid program, and Medicaid managed care contractors shall provide the equivalent data in a compatible format on the same schedule as the required submission from the counties.

b. DHS shall maintain the data in the data analysis unit for research and analysis purposes only. Only summary data shall be reported to policymakers or the public.

25.41(2) *Data required.* The data to be submitted are as follows:

a. Basic client information including a unique identifier, name, address, county of residence and county of legal settlement.

b. The state I.D. number for state payment cases.

c. Demographic information including date of birth, sex, ethnicity, marital status, education, residential living arrangement, current employment status, monthly income, income sources, type of

insurance, insurance carrier, veterans' status, guardianship status, legal status in the system, source of referral, DSM IV diagnosis, ICD-9 diagnosis, disability group (i.e., mental retardation, developmental disability, chronic mental illness, mental illness), central point of coordination (county number preceded by A 1), and central point of coordination (CPC) name.

d. Service information including the decision on services, date of decision, date client terminated from CPC services and reason for termination, residence, approved service, service beginning dates, service ending dates, reason for terminating each service, approved units of services, unit rate for service, expenditure data, and provider data.

e. Counties shall not be penalized in any fashion for failing to collect data elements in situations of crisis or in outreach efforts to identify or engage people in needed mental health services. For the purposes of this rule:

(1) Situations of crisis include but are not limited to voluntary and involuntary hospitalizations, legal and transportation services associated with involuntary hospitalizations, emergency outpatient services, mobile crisis team services, jail diversion services, mental health services provided in a county jail, and other services for which the county is required to pay but does not have access to the client to collect the required information.

(2) Outreach efforts to identify or engage people in needed mental health services include but are not limited to mental health advocate services; services for homeless persons, refugees, or other legal immigrants; services for state cases who do not have documentation with them and are unable to help the county locate appropriate records; consultation; education to raise public awareness; 12-step or other support groups for persons with dual disorders; and drop-in centers.

f. Although all of the data in the minimum data set are important to provide support for program analysis, a county shall be penalized for noncompliance with this rule if the county does not provide 100 percent reporting of the data elements listed in this paragraph. Beginning with the data reported for state fiscal year 2008, less than 100 percent reporting for the following items shall be viewed as noncompliance unless the data are exempted by paragraph *"e"*:

(1) Client identifiers:

1. Lname3 (the first three letters of the client's last name).
2. Last4SSN (the last four digits of the client's social security number).
3. SEX (the client's sex).
4. BDATE (the client's birth date).

(2) CPC (central point of coordination).

(3) Payment information:

1. PYMTDATE (CoMIS payment date).
2. FUND CODE (CoMIS fund code).
3. DG (CoMIS diagnosis).
4. COACODE (CoMIS chart of accounts code).
5. BEGDATE (CoMIS service beginning date).
6. ENDDATE (CoMIS service ending date).
7. UNITS (CoMIS units of service).
8. COPD (CoMIS county paid).

(4) ValidSSN (valid social security number indicator).

(5) IsPerson (IsPerson indicator).

g. Although all of the data in the minimum data set are important to provide support for program analysis, a county shall be penalized for noncompliance with this rule if the county does not provide 90 percent reporting of the data elements listed in this paragraph beginning with the data reported for fiscal year 2008. Less than 90 percent reporting for the following items shall be viewed as noncompliance unless the data are exempted by paragraph *"e"*:

(1) Application Date (application date).

(2) RESCO (residence county).

(3) LEGCO (legal county).

(4) Provider ID (vendor number).

h. The department shall analyze the data received on or before December 1 each year by December 15 or by the next business day if December 15 falls on a weekend or holiday.

(1) When a county's data submission does not meet the specifications in paragraph *"f"* or *"g,"* the department will notify the county by E-mail.

(2) The county shall have 30 days from the date of the E-mail notice to submit the missing data or to provide an explanation of why the data cannot be reported.

(3) If the county does not report the data or provide an adequate explanation within 30 days, the department shall find the county in noncompliance.

i. The department shall post the aggregate reports received by December 1 on the department's Web site within 90 days.

25.41(3) *Method of data collection.* A county may choose to collect this information using the county management information system (CoMIS) that was designed by the department or may collect the information through some other means. If a county chooses to use another system, the county must be capable of supplying the information in the same format as CoMIS.

a. Except as provided in subparagraph (3), each county shall submit the following files in Microsoft Excel format (version 97 to 2000) or comma-delimited text file (CSV) format using data from the associated CoMIS table or from the county's chosen management information system:

Files to submit	Associated CoMIS Table
WarehouseClient.xls or WarehouseClient.csv	Client Data
WarehouseIncome.xls or WarehouseIncome.csv	Income Review
WarehousePayment.xls or WarehousePayment.csv	Payment
WarehouseProvider.xls or WarehouseProvider.csv	Provider
WarehouseProviderServices.xls or WarehouseProviderServices.csv	tblProviderServices
WarehouseService.xls or WarehouseService.csv	Service Authorizations

(1) Paragraphs *"b"* through *"g"* list the data required in each file and specify the structure or description for each data item to be reported.

(2) The field names used in the report files must be exactly the same as indicated in the corresponding paragraph, including spaces, and must be entered in the first row for each sheet.

(3) The file labeled WarehouseService.xls or WarehouseService.csv or service authorization (described in paragraph *"g"* of this subrule) shall be removed from this requirement on June 30, 2011, if data from this file have not been used by that date.

b. File name: WarehouseClient.xls or WarehouseClient.csv.

Sheet name: Warehouse_Client_Transfer_Query.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth

Field Name	Data Type	Field Size	Format	Description
SEX	Text	1		Sex of client: M = Male F = Female
Last Update	Date	10	mm/dd/yyyy	Date of last update to client record
SID	Text	8	9999999a	State identification number of client, if applicable (format of a valid number is 7 digits plus 1 alphabetical character).
ADD1	Text	50		First address line
ADD2	Text	50		Second address line (if applicable)
CITY	Text	50		City address line
STATE	Text	2		State code
ZIP	Number	5	0 decimal places	5-digit ZIP code
ETHN	Number	1	0 decimal places	Ethnicity of client: 0 = Unknown 1 = White, not Hispanic 2 = African-American, not Hispanic 3 = American Indian or Alaskan native 4 = Asian or Pacific Islander 5 = Hispanic 6 = Other (biracial; Sudanese; etc.)
MARITAL	Number	1	0 decimal places	Marital status of client: 1 = Single, never married 2 = Married (includes common-law marriage) 3 = Divorced 4 = Separated 5 = Widowed
EDUC	Number	2	0 decimal places	Education level of the client
RARG	Number	2	0 decimal places	Residential arrangement of client: 1 = Private residence/household 2 = State MHI 3 = State resource center 4 = Community supervised living 5 = Foster care or family life home 6 = Residential care facility 7 = RCF/MR 8 = RCF/PMI 9 = Intermediate care facility 10 = ICF/MR 11 = ICF/PMI 12 = Correctional facility 13 = Homeless shelter or street 14 = Other
LARG	Number	1	0 decimal places	Living arrangement of client: 1 = Lives alone 2 = Lives with relatives 3 = Lives with persons unrelated to client
INS	Number	1	0 decimal places	Health insurance owned by client: 1 = Client pays 3 = Medicaid 4 = Medicare 5 = Private third party 6 = Not insured 7 = Medically Needy
INSCAR	Text	50		First insurance company name, if applicable
INSCAR1	Text	50		Second insurance company name, if applicable
INSCAR2	Text	50		Third insurance company name, if applicable

Field Name	Data Type	Field Size	Format	Description
VET	Text	1		Veteran status of client: Y = Yes N = No
CONSERVATOR	Number	1	0 decimal places	Conservator status of client: 1 = Self 2 = Other
GUARDIAN	Number	1	0 decimal places	Guardian status of client: 1 = Self 2 = Other
LEGSTAT	Number	1	0 decimal places	Legal status of client: 1 = Voluntary 2 = Involuntary, civil commitment 3 = Involuntary, criminal commitment
REFSO	Number	1	0 decimal places	Referral source of client: 1 = Self 2 = Family or friend 3 = Targeted case management 4 = Other case management 5 = Community corrections 6 = Social service agency other than case management 7 = Other
DSMIV	Text	50		DSM IV diagnosis code of client
ICD9	Text	50		ICD-9 diagnosis code (optional for county use; not tied to CoMIS entry)
DG	Number	2	0 decimal places	Disability group of client: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
Application Date	Date	10	mm/dd/yyyy	Date of client's initial application
Outcome decision	Number	1	0 decimal places	Decision on client's application: 1 = Application accepted 2 = Application denied 3 = Decision pending
Decision date	Date	10	mm/dd/yyyy	Date decision was made on client's application
Denial reason	Text	2		Denial reason code: 00 = Not applicable 01 = Over income guidelines 1A = Over resource guidelines 02 = Does not meet county plan criteria 2A = Legal settlement in another county 2B = State case 3A = Brain injury 3B = Alzheimer's 3C = Substance abuse 3D = Other 04 = Does not meet service plan criteria 05 = Client desires to discontinue process 5A = Client fails to return requested information
Client exit date from CPC	Date	10	mm/dd/yyyy	Date client was terminated from CPC services

Field Name	Data Type	Field Size	Format	Description
Exit reason	Number	1	0 decimal places	Reason client left the CPC system: 0 = Unknown 1 = Client voluntarily withdrew 2 = Client deceased 3 = Unable to locate consumer 4 = Ineligible due to reasons other than income 5 = Ineligible, over income guidelines 6 = Client moved out of state 7 = Client no longer needs service 8 = Client has legal settlement in another county
Review Date	Date	10	mm/dd/yyyy	Date of last application review
PhoneNumber	Text	50		Phone number of client
ValidSSN	Text	3	Generated for CoMIS users in the data extract only	Populate this field with YES if the client has a valid social security number. If the client does not have a valid social security number, populate this field with NO.
IsPerson	Text	3	Generated for CoMIS users in the data extract only	Populate this field with YES if the client is a person. If the client entry represents a nonperson such as administrative costs, populate this field with NO.

c. File name: WarehouseIncome.xls or WarehouseIncome.csv.
Sheet name: Warehouse_Income_Transfer_Query.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female
EMPL	Number	2	0 decimal places	Employment situation of client: 1 = Unemployed, available for work 2 = Unemployed, unavailable for work 3 = Employed full-time 4 = Employed part-time 5 = Retired 6 = Student 7 = Work activity employment 8 = Sheltered work employment 9 = Supported employment 10 = Vocational rehabilitation 11 = Seasonally employed 12 = In the armed forces 13 = Homemaker 14 = Other or not applicable 15 = Volunteer

Field Name	Data Type	Field Size	Format	Description
House Hold Size	Number	2	0 decimal places	Number of people in client's household
INCSOUR	Number	2	0 decimal places	Primary income source of client: 1 = Family and friends 2 = Private relief agency 3 = Social security disability benefits 4 = Supplemental Security Income 5 = Social security benefits 6 = Pension 7 = Food assistance 8 = Veterans benefits 9 = Workers compensation 10 = General assistance 11 = Family investment program (FIP) 12 = Wages
Public Assistance Payments	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Social Security	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Social Security Disability	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
SSI	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
VA Benefits	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
R/R Pension	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Child Support	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Employment Wages	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Dividend Interest	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Other Income	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Description 1	Text	50		Description of "Other Income"
Cash on hand	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Checking	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Savings	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Stocks/Bonds	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Time Certificates	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Trust Funds	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Other Resources	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Description 2	Text	50		Description of "Other Resources" (where applicable)
Other Resources 2	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Description 3	Text	50		Description of "Other Resources 2"
Date reviewed	Date	10	mm/dd/yyyy	Date income was last reviewed (where applicable)

d. File name: WarehousePayment.xls or WarehousePayment.csv. Sheet name: Warehouse_Payment_Transfer_Quer.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female
PYMTDATE	Date	10	mm/dd/yyyy	Date county approves or makes payment
VENNAME	Text	50		Vendor or provider paid
COCODE	Number	3	0 decimal places	County where service was provided
FUND CODE	Text	10		Fund code for payment
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
COACODE	Number	5	0 decimal places	Chart of accounts code for payment
BEGDATE	Date	10	mm/dd/yyyy	Beginning date of payment period
ENDDATE	Date	10	mm/dd/yyyy	Ending date of payment period
UNITS	Number	4	0 decimal places	Number of service units for payment
COPD	Currency	14	2 decimal places	Amount paid by the county
RECEIVED	Currency	14	2 decimal places	Amount received for reimbursement (if applicable)

e. File name: WarehouseProvider.xls or WarehouseProvider.csv. Sheet name: Warehouse_Provider_Transfer_Que. (If the provider has more than one office location, enter information for the headquarters office.)

Field Name	Data Type	Field Size	Format	Description
Provider ID	Text	50		Provider identifier (tax ID code)
Provider Name	Text	50		Provider name
Provider Address1	Text	50		Provider address line 1
Provider Address2	Text	50		Provider address line 2 (if applicable)
City	Text	50		Provider city
State	Text	2		Provider state code
Zip	Text	10		Provider ZIP code

Field Name	Data Type	Field Size	Format	Description
COCODE	Number	3	0 decimal places	Provider county code
PhoneNumber	Text	50		Provider phone number
Date of Last Update	Date	10	mm/dd/yyyy	Provider last updated date

f. File name: WarehouseProviderServices.xls or WarehouseProviderServices.csv. Sheet name: Warehouse_Provider_Services_Tra.

Field Name	Data Type	Field Size	Format	Description
Provider ID	Text	50		Provider identifier (tax ID code)
Provider Name	Text	50		Provider name
FUND CODE	Text	10		Fund code for payment
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
COACODE	Number	5	0 decimal places	Chart of accounts code for service
RATE	Currency	14	2 decimal places	Payment rate

g. File name: WarehouseService.xls or WarehouseService.csv. Sheet name: Warehouse_Service_Transfer_Quer.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 200 = Iowa nonresident 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female
FUND CODE	Text	10		Fund code for service
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other category
COACODE	Number	5	0 decimal places	Chart of accounts code for service
Begin Date	Date	10	mm/dd/yyyy	Beginning date of service period
End Date	Date	10	mm/dd/yyyy	Ending date of service period

Field Name	Data Type	Field Size	Format	Description
Ending Reason	Number	1	0 decimal places	Reason for terminating approval of service: 0 = NA 1 = Voluntary withdrawal 2 = Client no longer needs service 3 = Ineligible, over income guidelines 4 = Ineligible due to other than income 5 = Client moved out of state 6 = Client deceased 7 = Reauthorization
Units	Number	4	0 decimal places	Average number of service units approved monthly
Rate	Currency	14	2 decimal places	Dollar amount per service unit
Review Date	Date	10	mm/dd/yyyy	Date for next service review

This rule is intended to implement Iowa Code sections 331.438 and 331.439.

441—25.42 to **25.50** Reserved.

DIVISION IV
INCENTIVE AND EFFICIENCY POOL FUNDING

PREAMBLE

These rules establish requirements for counties to receive funding from the incentive and efficiency pool. To be eligible for these funds, a county must select five performance indicators, submit a proposal, collect data, report data, and show improvement over time on the selected performance indicators.

441—25.51(77GA,HF2545) Desired results areas. In order to receive funds from the incentive and efficiency pool established in 1998 Iowa Acts, House File 2545, section 8, subsection 2, each county shall collect and report performance measure data in the following areas:

25.51(1) *Equity of access.* Each county shall measure the extent to which services are available and used. Each county shall:

a. Report annually the total number of consumers served, as well as an unduplicated total of the number of consumers served by disability category.

b. Calculate and report annually the percentage of service provision by dividing the number of consumers served in a year by the county's population as defined in 1998 Iowa Acts, House File 2545, section 7.

c. Calculate and report annually the percentage of denial of access by dividing the number of new, completed applications denied by the total number of new applications for service that year. A new, completed application shall be defined as an initial application of a consumer or any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

d. Report annually the county's eligibility guidelines, which may include, but are not limited to, the income level below which an individual or family must be in order to be eligible for county-funded services, the maximum amount of resources which an individual or family may have in order to be eligible for county-funded services, covered populations, and service access criteria.

25.51(2) *Community-based supports.* Each county shall measure the extent to which community-based supports are available and used. Each county shall calculate and report annually:

a. The service setting percentage by dividing the unduplicated number of persons served in each of the following service settings in a fiscal year by the total unduplicated number of consumers served, both in total and by population group: mental health institutes, state hospital schools, intermediate care facilities for the mentally retarded, other living arrangements over five beds as captured by the county chart of accounts, and employment settings which include sheltered workshops, enclaves and supported employment.

b. The home-based percentage by subtracting the number of consumers currently being served in residential placements from the total unduplicated number of consumers served, and dividing the difference by the total number of consumers served. The calculation shall be made both in total and by population group.

c. The inpatient spending percentage by dividing the amount the county spent for inpatient services by the amount the county spent for outpatient services. Each county shall also divide the unduplicated number of consumers who received inpatient services during the fiscal year by the total unduplicated number of consumers who received services during that same fiscal year. Inpatient services shall be defined as any acute care for which the county is wholly or partially financially responsible.

25.51(3) *Consumer participation.* Each county shall measure the extent to which consumers participate in all aspects of the service system.

a. Each county shall report annually on the number of opportunities during the year for consumers to participate in planning activities, which may include, but are not limited to, open forums, focus groups, consumer advisory committee meetings, and planning council meetings by calculating the total number of consumers participating in these activities and dividing by the unduplicated number of consumers served and also by the total population of the county. In addition, the county shall report duplicated and unduplicated total attendance at all of these meetings. These calculations shall be made for consumers and family members separately.

b. Each county which has a planning group shall calculate and report annually the planning group percentage by dividing the number of consumers who actively serve on the planning group by the total number of people on the planning group. This calculation shall be made for consumers and family members separately. For the purposes of this subrule, a planning group is any group of individuals designated by the board of supervisors, or if no designation has been made, any group acknowledged by the central point of coordination administrator as assisting in the development of the county management plan.

c. Each county shall conduct a consumer satisfaction survey following adoption of more detailed rules for the survey.

25.51(4) *Administration.* Each county shall measure the extent to which the county services system is administered efficiently and effectively. Each county shall:

a. Calculate and report annually the administrative cost percentage by dividing the amount spent administering the county services system by the total amount spent from the services fund for the fiscal year.

b. Calculate and report annually the service responsiveness average by measuring the number of days between the date a new, completed application was submitted and the date a notice of decision of eligibility was sent to the consumer, adding all of these numbers of days, and dividing by the total number of new, completed applications for the fiscal year. A new, completed application shall be defined as an initial application of a consumer or an application of any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

c. Report annually the number of appeals filed as a percent of the unduplicated total number of consumers served per year.

441—25.52(77GA,HF2545) Methodology for applying for incentive funding. Beginning with the county management plan for the fiscal year which begins July 1, 1999, each county applying for funding under 1998 Iowa Acts, House File 2545, section 8, subsection 2, shall include with its county management plan a performance improvement proposal for improving the county's performance on at least five performance measures. Three of the measures must be selected from at least two of the desired results areas stated in rule 441—25.51(77GA,HF2545). For the remaining two measures, the county either may propose measures not identified in these rules or may use measures described in these rules. A performance improvement proposal is not a mandatory element of a county management plan.

25.52(1) *Performance improvement proposal.* Each county shall identify the performance measures which the county has targeted for improvement and shall propose a percentage change for each indicator. The proposal shall include the county's rationale for selecting the indicators and may include any supporting information the county deems necessary. The proposal shall describe the process the county will use to involve consumers in the evaluation.

25.52(2) *Committee responsibility.* The state county management committee shall review all county proposals, and may either accept the proposal, request modifications, or reject the proposal. In order to interpret and provide context for each county's performance improvement proposal, the state county management committee shall, by January 1, 1999, establish the background data to be collected and aggregated for all counties.

25.52(3) *County ineligibility.* A county which does not have an accepted proposal prior to July 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to July 1. The petition shall describe the circumstances which will cause the proposal to be delayed and identify the date by which the proposal will be submitted. In addition, the state county management committee may grant an extension for the purposes of negotiation.

441—25.53(77GA,HF2545) Methodology for awarding incentive funding. Each county shall report on all performance measures listed in this division, plus any additional performance measures the county has selected, by December 1 of each year.

25.53(1) *Reporting.* Each county shall report performance measure information on forms, or by electronic means, developed for the purpose by the department in consultation with the state county management committee.

25.53(2) *Scoring.* The department shall analyze each county's report to determine the extent to which the county achieved the levels contained in the proposal accepted by the state county management committee. Prior to distribution of incentive funding to counties, results of the analysis shall be shared with the state county management committee.

25.53(3) *County ineligibility.* A county which does not report performance measure data by December 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to December 1. The petition shall describe the circumstances which will cause the report to be delayed and identify the date by which the report will be submitted.

441—25.54(77GA,HF2545) Subsequent year performance factors. For any fiscal year which begins after July 1, 1999, the state county management committee shall not apply any additional performance measures until the county management information system (CoMIS) developed and maintained by the division of mental health and developmental disabilities has been modified, if necessary, to collect and calculate required data elements and performance measures and each county has been given the opportunity to establish baseline measures for those measures.

441—25.55(77GA,HF2545) Phase-in provisions.

25.55(1) *State fiscal year 1999.* For the fiscal year which begins July 1, 1998, each county shall collect data as required above in order to establish a baseline level on all performance measures. A county which collects and reports all required data by December 1, 1999, shall be deemed to have received a 100 percent score on the county's performance indicators.

25.55(2) *State fiscal year 2000.* A county which submits a proposal with its management plan for the fiscal year which begins July 1, 1999, and reports the levels achieved on the selected performance measures by December 1, 2000, shall be deemed to have received a 100 percent score on the county's performance indicators, regardless of the actual levels achieved.

These rules are intended to implement 1998 Iowa Acts, House File 2545, section 8, subsection 2.

441—25.56 to **25.60** Reserved.

DIVISION V
RISK POOL FUNDING

PREAMBLE

These rules establish a risk pool board to administer the risk pool fund established by the legislature and set forth the requirements for counties for receiving and repaying funding from the fund.

441—25.61(426B) Definitions.

"Available pool" means those funds remaining in the risk pool less any actuarial and other direct administrative costs.

"Central point of coordination (CPC)" means the administrative entity designated by a county board of supervisors, or the boards of a consortium of counties, to act as the single entry point to the service system as required in Iowa Code section 331.440.

"Commission" means the mental health, mental retardation, developmental disabilities, and brain injury commission.

"Division" means the mental health and disability services division of the department of human services.

"Mandated services" means those services for which a county is required to pay. Mandated services include, but may not be limited to, the following:

1. The costs for commitments for persons with mental illness, chronic mental illness, mental retardation, or developmental disabilities.
2. Inpatient services at the state mental health institutes for persons with mental illness or chronic mental illness.
3. Inpatient services at the state resource centers for persons with mental retardation or developmental disabilities.
4. Medicaid-funded care in an intermediate care facility for persons with mental retardation.
5. Medicaid-funded partial hospitalization and day treatment services for persons with chronic mental illness.
6. Medicaid-funded case management services for persons with mental retardation or developmental disabilities and for anyone not covered under the Iowa Plan.
7. Services provided under the Medicaid home- and community-based services mental retardation waiver.
8. Services provided under the Medicaid home- and community-based services brain injury waiver for which the county is responsible according to rule 441—83.90(249A).
9. Medicaid habilitation services for persons with chronic mental illness.

"Services fund" means a county's mental health, mental retardation, and developmental disabilities services fund created in Iowa Code section 331.424A.

441—25.62(426B) Risk pool board. This ten-member board consists of two county supervisors, two county auditors, a member of the commission who is not a member of a county board of supervisors, a member of the county finance committee created in Iowa Code chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected from nominees submitted by the Iowa Association of Community Providers, and two central point of coordination administrators, all appointed by the governor, subject to confirmation by two-thirds of the members of the senate, and one member appointed by the director of the department of human services.

25.62(1) *Organization.*

a. The members of the board shall annually elect from the board's voting membership a chairperson and vice-chairperson of the board.

b. Members appointed by the governor shall serve three-year terms.

25.62(2) *Duties and powers of the board.* The board's powers and duties are to make policy and to provide direction for the administration of the risk pool established by Iowa Code section 426B.5, subsection 2. In carrying out these duties, the board shall do all of the following:

a. Recommend to the commission for adoption rules governing the risk pool fund.

b. Determine application requirements to ensure prudent use of risk pool assistance.

c. Accept or reject applications for assistance in whole or in part.

d. Review the fiscal year-end financial records for all counties that are granted risk pool assistance and determine if repayment is required.

e. Approve actuarial and other direct administrative costs to be paid from the pool.

f. Compile a list of requests for risk pool assistance that are beyond the amount available in the risk pool fund for a fiscal year and the supporting information for those requests and submit the list and supporting information to the commission, the department of human services, and the general assembly.

g. Perform any other duties as mandated by law.

25.62(3) *Board action.*

a. A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

b. When a quorum is present, an action is carried by a majority of the qualified members of the board.

25.62(4) *Board minutes.*

a. Copies of administrative rules and other materials considered are made part of the minutes by reference.

b. Copies of the minutes are kept on file in the office of the administrator of the division.

25.62(5) *Board meetings.*

a. The board shall meet in August of each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

b. Any county making application for risk pool funds must be represented at the board meeting for awarding funds when that request is considered.

(1) The division shall notify the county of the date, time and location of the meeting.

(2) Any other persons with questions about the date, time or location of the meeting may contact the Administrator, Division of Mental Health and Disability Services, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, telephone (515)281-7277.

c. The board shall comply with applicable provisions of Iowa's open meetings law, Iowa Code chapter 21.

25.62(6) *Records.* Any records maintained by the board or on behalf of the board shall be made available to the public for examination in compliance with Iowa's open records law, Iowa Code chapter 22. To the extent possible, before submitting applications, records and documents, applicants shall delete any confidential information. These records shall be maintained in the office of the division.

25.62(7) *Conflict of interest.* A board member cannot be a part of any presentation to the board of that board member's county's application for risk pool funds nor can the board member be a part of any action pertaining to that application.

25.62(8) *Robert's Rules of Order.* In cases not covered by these rules, Robert's Rules of Order shall govern.

25.62(9) *Report.* On or before March 1 and September 1 of each fiscal year, the department of human services shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include, but is not limited to, an itemization of the funding source's balances, types and amount of revenues credited and payees and payment amounts for the expenditures made from the funding source during the reporting period.

[**ARC 7879B**, IAB 6/17/09, effective 6/1/09]

441—25.63(426B) Application process.

25.63(1) *Applicants.* A county may be eligible for risk pool assistance when the county demonstrates that it meets the conditions in this subrule.

a. *Basic eligibility.*

(1) The county complies with the requirements of Iowa Code section 331.439.

(2) The county levied the maximum amount allowed for the county's services fund under Iowa Code section 331.424A for the fiscal year of application.

(3) In the fiscal year that commenced two years before the fiscal year of distribution, the county's services fund ending balance under generally accepted accounting principles was equal to or less than 20 percent of the county's actual gross expenditures for that fiscal year.

b. Circumstances indicating need for assistance. Risk pool assistance is needed for one or more of the following purposes:

(1) To continue support for mandated services.

(2) To avoid the need for reduction or elimination of:

1. Critical services, creating risk to a consumer's health or safety;
2. Critical emergency or mobile crisis services, creating risk to the public's health or safety;
3. Services or other support provided to an entire disability category; or
4. Services or other support provided to maintain consumers in a community setting, creating risk of placement in a more restrictive, higher-cost setting.

25.63(2) *Application procedures.*

a. Format for submission. The county shall submit the application package electronically or send an original plus 15 copies to the division. Facsimiles are not acceptable.

b. Deadline. The division must receive the application no later than 4:30 p.m. on July 1 of each year; or, if July 1 is a holiday, Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day thereafter.

c. Signature. The application shall be signed and dated by both the chairperson of the county board of supervisors and the central point of coordination administrator.

d. Notice of receipt. Staff of the division shall notify each county of receipt of the county's application.

e. Content. In addition to Form 470-3723, Risk Pool Application, the application package shall include the following forms for the fiscal year that commenced two years before the fiscal year of distribution:

(1) Form 634C, Service Area 4 Supporting Detail (pages 1 to 8).

(2) Form 638R, Statement of Revenues, Expenditures, and Changes in Fund Balance—Actual and Budget (pages 1 and 2).

(3) If the budget has been amended, Form 653A-R, Record of Hearing and Determination on the Amendment to County Budget (sheet 2), as last amended.

25.63(3) *Request for additional information.* Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after July 1 to request the information needed to complete the application. If July 1 is a holiday, Saturday or Sunday, the division shall make this contact within five working days after July 1. The county shall submit the required information within five working days from the date of the division's request for the additional information.

[**ARC 7879B**, IAB 6/17/09, effective 6/1/09]

441—25.64(426B) Methodology for awarding risk pool funding. The risk pool board shall make an eligibility decision on each application within 45 days after receiving the application and shall make a funding decision no later than August 15.

25.64(1) *Notice of decision.* The risk pool board shall send a notice of decision of the board's action to the chairperson of the applying county's board of supervisors. Copies of the notice of decision shall be sent to the county auditor and the central point of coordination administrator.

25.64(2) *Distribution of funds.* The total amount of the risk pool shall be limited to the available pool for a fiscal year.

a. If the total dollar amount of the approved applications exceeds the available pool, the board shall prorate the amount paid for an approved application. The funds will be prorated to each county based upon the proportion of each approved county's request to the total amount of all approved requests.

b. The division shall authorize the issuance of warrants payable to the county treasurers for the amounts due. The warrants shall be issued on or before September 15.
[**ARC 7879B**, IAB 6/17/09, effective 6/1/09]

441—25.65(426B) Repayment provisions.

25.65(1) *Required repayment.* Counties shall be required to repay risk pool funds if the county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county. The county shall refund the lesser of:

a. The amount of assistance awarded; or

b. An amount such that the fund balance after refund will not exceed 5 percent of the expenditures for the year as determined on a modified accrual basis.

25.65(2) *Year-end report.* Each county granted risk pool funds shall complete a year-end financial report as required by Iowa Code section 225C.6A(2)(c)(3). The division shall review the accrual information and notify the mental health risk pool board if any county that was granted assistance in the prior year received more than the county's actual need based on the submitted financial report.

25.65(3) *Notification to county.* The chairperson of the mental health risk pool board shall notify each county by January 1 of each fiscal year of the amount to be reimbursed. The county shall reimburse the risk pool within 30 days of receipt of notification by the chairperson of the mental health risk pool board. If a county fails to reimburse the mental health risk pool, the board may request a revenue offset through the department of revenue. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the central point of coordination administrator of the county.
[**ARC 7879B**, IAB 6/17/09, effective 6/1/09]

441—25.66(426B) Appeals. The risk pool board may accept or reject an application for assistance from the risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement Iowa Code section 426B.5, subsection 2.

441—25.67 to **25.70** Reserved.

DIVISION VI
TOBACCO SETTLEMENT FUND RISK POOL FUNDING

PREAMBLE

These rules provide for use of an appropriation from the tobacco settlement fund to establish a risk pool fund which may be used by counties with limited county mental health, mental retardation and developmental disabilities services funds to pay for increased compensation of the service staff of eligible purchase of service (POS) providers and establish the requirements for counties for receiving and repaying the funding. Implementation of the rate increases contemplated by the tobacco settlement fund in a timely manner will require cooperation among all eligible counties and providers.

441—25.71(78GA,ch1221) Definitions.

"Adjusted actual cost" means a POS provider's cost as computed using the financial and statistical report for the provider's fiscal year which ended during the state fiscal year beginning July 1, 1998 (state fiscal year 1999), as adjusted by multiplying those actual costs by 103.4 percent or the percentage adopted by the risk pool board in accordance with 2000 Iowa Acts, chapter 1221, section 3, subsection 3, paragraph *"c."*

"Department" means the Iowa department of human services.

"Division" means the mental health and developmental disabilities division of the department of human services.

"Financial and statistical report" means a report prepared by a provider and submitted to host counties that is prepared in accordance with department rules for cost determination set forth in 441—Chapter 150.

"Host county" means the county in which the primary offices of a POS provider are located. However, if a POS provider operates separate programs in more than one county, "host county" means each county in which a separate program is operated.

"Purchase of service provider" or *"POS provider"* means a provider of sheltered work, work activity, supported employment, job placement, enclave services, adult day care, transportation, supported community living services, or adult residential services paid by a county from the county's services fund created in Iowa Code section 331.424A under a state purchase of service or county contract.

"Risk pool board" means that board established by Iowa Code section 426B.5, subsection 3.

"Separate program" means a POS service operated in a county other than the county in which the provider's home office is located and for which the provider allocates costs separately from similar programs located in the county where the provider's home office is located.

"Services fund" means the fund defined in Iowa Code section 331.424A.

"Tobacco settlement fund loan" or *"TSF loan"* means the tobacco settlement fund risk pool funds a county received in a fiscal year in which the county did not levy the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed.

441—25.72(78GA,ch1221) Risk pool board. The risk pool board is organized and shall take action and keep minutes and records as set out in rule 441—25.62(426B).

A risk pool board member cannot be a part of any presentation to the board of that board member's county's application for tobacco settlement fund risk pool funds nor can the board member be a part of any action pertaining to that application. If a risk pool board member is employed by or is a board member of a POS provider whose increases in compensation caused the host county to apply to the fund, the board member cannot be a part of any presentation to the board nor can the board member be a part of any action pertaining to that application.

441—25.73(78GA,ch1221) Rate-setting process. For services provided on or after July 1, 2000, each county shall increase its reimbursement rates for each program to the lesser of the adjusted actual cost or 105 percent of the rate paid for services provided on June 30, 2000.

25.73(1) *Financial and statistical report.* Each provider of POS services shall submit a financial and statistical report to each host county for each program that the provider operates within that county. These reports shall include actual costs for each separate program for the provider's fiscal year that ended during state fiscal year 1999 and state fiscal year 2000. These reports shall be submitted to the central point of coordination (CPC) administrator of the host county or counties no later than August 15, 2000.

25.73(2) *Rate determination.* The CPC administrator in each host county shall receive and review provider financial and statistical reports for each separate program for which that county is the host county. If the host county determines that all or part of the provider's increase in costs is attributable to increases in service staff compensation and that the adjusted actual cost is more than the rate paid by the county on June 30, 2000, the CPC administrator shall notify the provider in writing of the new rate for each program no later than September 1, 2000.

If a rate paid for services provided on June 30, 2000, exceeds the adjusted actual cost, the county shall not be required to adjust the rate for services provided on or after July 1, 2000.

The provider shall, no later than September 11, 2000, send to the CPC administrator of any other counties with consumers in those programs a copy of the rate determination signed by the CPC administrator of the host county. A county may delay payment of the reimbursement rate established pursuant to this subrule until the risk pool board has completed action as to adopting or not adopting a different percentage for the definition of adjusted actual cost, provided however that any increased rates required by 2000 Iowa Acts, chapter 1221, section 3, subsection 2, paragraph *"c,"* shall be paid retroactively for all services provided on or after July 1, 2000.

25.73(3) *Exemptions.*

a. A POS provider that has negotiated a reimbursement rate increase with a host county as of July 1, 2000, has the option of exemption from the provisions of these rules. However, a county shall not be eligible to receive tobacco settlement funds for any rates established outside of the process established in these rules.

b. Nothing in these rules precludes a county from increasing reimbursement rates of POS providers by an amount that is greater than that specified in these rules. However, a county shall not be eligible for tobacco settlement funds for the amount of any rate increase in excess of the amount established pursuant to these rules.

441—25.74(78GA,ch1221) Application process.

25.74(1) *Who may apply.* If a county determines that payment of POS provider rates in accordance with these rules will cause the county to expend more funds in FY2001 than budgeted for POS services, the county may apply for assistance from the tobacco settlement fund. However, any fiscal year 2000 projected accrual basis fund balances in excess of 25 percent of fiscal year 2000 services fund gross expenditures will reduce the amount for which a county is eligible. In considering the cost of implementing these provisions, a county shall not include the cost of rate increases granted to any providers who fail to complete financial and statistical reports as provided in these rules.

25.74(2) *How to apply.* The county shall send the original and 15 copies of Form 470-3768, Tobacco Settlement Fund Risk Pool Application, to the division. The division must receive the application no later than 4:30 p.m. on September 25, 2000. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by the chairperson of the county board of supervisors, the county auditor, and the CPC administrator. Staff of the division shall notify each county of receipt of the county's application.

25.74(3) *Request for additional information.* Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county by October 5, 2000, and request the information needed to complete the application. The county shall submit the required information by October 16, 2000.

441—25.75(78GA,ch1221) Methodology for awarding tobacco settlement fund risk pool funding.

25.75(1) *Review of applications.* The risk pool board shall review all of the applications from counties for assistance from the tobacco settlement fund. If the total amount requested from the tobacco settlement fund does not exceed $2 million, eligible counties shall be awarded funding pursuant to this division. The risk pool board shall determine for each county whether any or all of the assistance granted to that county is a TSF loan.

25.75(2) *Notice of decision.* The risk pool board shall notify the chair of the applying county's board of supervisors of the board's action no later than November 3, 2000. Copies shall be sent to the county auditor and the CPC administrator.

25.75(3) *Distribution of funds.* The total amount of the risk pool shall be limited to $2 million. If the total dollar amount of the eligible applications exceeds the available pool, the risk pool board shall revise the percentage adjustment to actual cost to arrive at adjusted actual cost as defined in this division and prorate funding to the eligible counties. If it becomes necessary to revise the percentage adjustment used to determine adjusted actual cost, the risk pool board shall determine if applicant counties remain eligible under this program.

25.75(4) *Notification of adjustment.* If the risk pool board rolls back the percentage adjustment used to determine adjusted actual cost, the risk pool board shall notify the chair of the board of supervisors of all counties, and copies shall be sent to the county auditor and the CPC administrator of each county. Each host county shall recalculate the reimbursement rate under this division using the revised adjusted actual cost percentage and notify each provider in writing of the revised rate within 30 days of receiving notice of the percentage adjustment. The provider shall, within 30 days of receipt of notice, send to the CPC administrator of any other counties with consumers in those programs a copy of the revised rate determination signed by the CPC administrator of the host county.

441—25.76(78GA,ch1221) Repayment provisions.

25.76(1) *Required repayment.* Counties shall be required to repay TSF loans by January 1, 2002. Repayments shall be credited to the tobacco settlement fund.

25.76(2) *Notification to county.* In the notice of decision provided pursuant to these rules, the chairperson of the risk pool board shall notify each county of the portion, if any, of the assistance that is considered a TSF loan. If a county fails to reimburse the tobacco settlement fund by January 1, 2002, the board may request a revenue offset through the department of revenue. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the CPC administrator of the county.

441—25.77(78GA,ch1221) Appeals. The risk pool board may accept or reject an application for assistance from the tobacco settlement fund risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement 2000 Iowa Acts, chapter 1221, section 3, as amended by chapter 1232, section 4.

441—25.78 to **25.80** Reserved.

DIVISION VII
COMMUNITY MENTAL HEALTH CENTER WAIVER REQUEST

PREAMBLE

This division establishes a process for the mental health and developmental disabilities commission to grant a waiver to any county not affiliated with a community mental health center.

441—25.81(225C) Waiver request. Counties that have not established or that are not affiliated with a community mental health center under Iowa Code chapter 230A are required to expend a portion of the money received from the MI/MR/DD/BI community services fund to contract with a community mental health center for services. When a county determines that a contractual arrangement is undesirable or unworkable, it may request a waiver from this requirement for a fiscal year. The waiver request and justification may be submitted to the mental health and developmental disabilities commission with the application for MI/MR/DD/BI community services funds on Form 470-0887, Waiver Request, or it may be submitted separately. The commission may grant a waiver if the request successfully demonstrates that all of the following conditions are met:

25.81(1) *Accreditation of provider.* The provider or network of providers that the county has contracted with to deliver the identified mental health services is accredited as another mental health provider pursuant to 441—Chapter 24.

25.81(2) *Contracted services.* The county has contracted to provide services that are equal to or greater than the smallest set of services provided by an accredited community mental health center in the department's service area for that county.

25.81(3) *Eligible populations.* The county contract includes the following eligible populations:

a. Children.
b. Adults.
c. Elderly.
d. Chronically mentally ill.
e. Mentally ill.

This rule is intended to implement Iowa Code section 225C.7.

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◊ Two or more ARCs

NATURAL RESOURCE COMMISSION[571]

[Prior to 12/31/86, see Conservation Commission [290], renamed Natural Resource Commission[571] under the "umbrella" of Department of Natural Resources by 1986 Iowa Acts, chapter 1245]

TITLE I
GENERAL

CHAPTER 1
OPERATION OF NATURAL RESOURCE COMMISSION
1.1(17A,455A) Scope
1.2(17A,455A) Time of meetings
1.3(17A,455A) Place of meetings
1.4(17A,455A) Notification of meetings
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CHAPTER 15
GENERAL LICENSE REGULATIONS

[Prior to 12/31/86, see Conservation Commission[290] Chs 17, 66, 67, and 75]

571—15.1(483A) Scope. The purposes of this chapter are to provide rules for license sales, refunds and administration; implement the wildlife violator compact and penalties for multiple offenses; administer special licenses available for hunting and fishing; and describe and implement certification and education programs of the department of natural resources.
[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

DIVISION I
LICENSE SALES, REFUNDS AND ADMINISTRATION

571—15.2(483A) Definitions. For the purposes of this division, the following definitions shall apply:

"Administration fee" means the fee collected by the department to pay a portion of the cost of administering the sale of licenses through electronic means.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"License" means any license or privilege issued by the department to an individual for hunting or fishing in the state of Iowa. Multiple types of licenses are described in these rules.

"License agent" means an individual, business, or governmental agency authorized to sell a license.

"Licensee" means the person who applies for and receives a license under these rules from the department.

"Retail" means the sale of goods or commodities to the ultimate consumer, as opposed to the sale of goods or commodities for further distribution or processing.

"Wholesale" means the sale of goods or commodities for resale by a retailer, as opposed to the sale of goods or commodities to the ultimate consumer.
[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.3(483A) Form of licenses. Every license shall contain a general description of the licensee. At the time of application, the applicant for a license must provide the applicant's date of birth and either a social security number or a valid Iowa driver's license number. The license shall be signed by the applicant and shall clearly indicate the privilege granted.
[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.4(483A) Administration fee. An administration fee of 50 cents per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free lifetime fishing licenses, and free group home fishing licenses.
[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.5(483A) Electronic license sales.

15.5(1) Designation as license agent. The director may designate a retail business establishment, an office of a governmental entity, or a nonprofit corporation as an agent of electronically issued licenses in accordance with the provisions of this rule. The provisions of 571—15.6(483A) shall not apply to a license agent engaging in, or applying to engage in, the electronic sale and issuance of licenses.

15.5(2) Application. Application forms to sell electronically issued licenses may be secured by a written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. The following information must be provided on the application form:

a. The legal name, address, and telephone number of the entity applying for designation;

b. The hours open for business and general service to the public;

c. A brief statement of the nature of the business or service provided by the applicant;

d. Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system; and

e. A signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.5(3) Application review.

a. The director shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

(1) The need for a license agent in the area;

(2) The hours open for business or general service to the public;

(3) The potential volume of license sales;

(4) The apparent financial stability and longevity of the applicant;

(5) The number of point-of-sale (POS) terminals available to the department; and

(6) Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system.

b. If necessary, the department may utilize a waiting list for license agent designation. The order of priority for the waiting list will be determined by the time of submittal of a complete and correct application and receipt of the required security deposit, as outlined in the application.

15.5(4) Issuance of electronic licensing equipment. Upon the director's approval of an application under this rule and designation of a license agent for electronic license sales, the equipment necessary to conduct such sales will be issued to the license agent by the department subject to the following terms and conditions:

a. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department an equipment security deposit in an amount to be determined by the department.

b. Prior to the issuance of the electronic licensing equipment, the approved license agent shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales, including the authorized amounts to be retained by the license agent.

c. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.5(5).

d. Electronic licensing equipment and supplies must be stored in a manner to provide protection from damage, theft, and unauthorized access. Any damage to or loss of equipment or loss of moneys derived from license sales is the responsibility of the license agent.

e. Upon termination of the agreement by either party, all equipment and supplies, as outlined in the agreement, must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available to the department by law.

15.5(5) License fees. All moneys received from the sale of licenses, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department.

a. All license agents must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of license fees received by the license agent.

b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license agent shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license agent is responsible for ensuring that enough money is in the account to cover the amount due.

c. License agents may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license agent, not to the department. The license agent shall be responsible for ensuring that the license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license agent.

15.5(6) Upon the termination of the electronic license sales agreement pursuant to subrule 15.5(7) or 15.5(8), the department may disconnect or otherwise block the license agent's access to the electronic licensing system.

15.5(7) Equipment shut down and termination. The department reserves the right to disconnect the license agent's access to the electronic licensing system or terminate the license agent's electronic license sales agreement for cause. Cause shall include, but is not limited to, the following:

a. Failing to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;

b. Charging or collecting any fees in excess of those authorized by law;

c. Discriminating in the sale of a license in violation of state or federal law;

d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;

e. Using license sale proceeds, other than the service fee, for personal or business purposes;

f. Disconnecting or blocking access to the electronic licensing system for a period of 30 days or more; or

g. Violating any of these rules or the terms of the electronic license sales agreement. Repeated violations of these rules may result in termination of the license agent's electronic license sales agreement.

15.5(8) Voluntary termination. A license agent may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department. Voluntary termination shall become effective 30 days after the department's receipt of notice.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.6(483A) Paper license sales. Paper licenses shall be sold only in the event that the electronic licensing system is no longer available.

15.6(1) *Depositary designation.* The director may designate a retail business establishment, an office of a governmental entity, or a nonprofit corporation as a depositary for the sale of hunting and fishing licenses in accordance with the provisions of this rule.

15.6(2) *Application.*

a. An application form to act as a depositary may be secured by a written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. Requests for an application form may be made through department field staff or field officers. The applicant must provide the following information on the form:

(1) The name of the retail business establishment, governmental entity, or nonprofit corporation, and location(s) and telephone numbers.

(2) A general description of the type of retail business establishment, governmental entity, or nonprofit corporation.

(3) The form of ownership if a retail business establishment. If a partnership, the full names and addresses of all partners must be provided. If a corporation, the date and state of incorporation must be provided.

(4) If a governmental entity, the name and title of the responsible official.

(5) If a nonprofit corporation, the date and state of incorporation.

(6) The hours and days open to the public.

(7) The contact information of the person signing the application.

(8) The name, address, and telephone number of three credit references, including the bank used by the retail business establishment, governmental entity, or nonprofit corporation.

b. The application form contains a statement by which the applicant agrees to the terms and conditions as set forth in this rule. The application form must be signed by the owner if a sole proprietorship; by a partner if a partnership; by an authorized corporate official if a corporation; or by the elected or appointed official administratively in charge of the governmental entity. The signature must be attested to by a notary public.

15.6(3) *Security.* The applicant under this rule must provide security, either a surety bond from an association or corporation whose business is assuring the fidelity of others and which has the authority by law to do business in this state, a collateral assignment of a certificate of deposit, or a letter of credit.

a. Condition of security. A surety bond required by this rule shall generally provide that the applicant render a true account of and turn over all moneys, license blanks, and duplicates when requested to do so by the director or an authorized representative and that the applicant comply with all applicable provisions of the application, the Iowa Administrative Code, and the Iowa Code.

b. Amount of security. All forms of security required by this rule shall be in the amount of $5,000 each or a larger amount as jointly agreed to by the department and the depositary.

c. Term of bond. The bond required by this rule shall run continuously from the date the application is approved.

d. Termination of bond. The surety or principal may terminate the bond at any time by sending written notice by certified mail, return receipt requested, to the Director, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. The termination shall become effective 30 days after the receipt of the notice by the director.

e. Collateral assignment of a certificate of deposit and letters of credit. Collateral assignments of certificates of deposit and letters of credit shall be subject to the following terms and conditions:

(1) Certificates of deposit shall be assigned, in writing, to the department, and the assignment shall be recorded on the books of the bank issuing the certificate.

(2) Banks issuing these certificates shall waive all rights of setoff or liens which they have or might have against these certificates.

(3) Certificates of deposit shall be automatically renewed unless the director approves, in writing, release of the funds. Letters of credit shall be without reservation and shall remain in effect continuously, or as otherwise agreed to by the director.

(4) The director will release the certificates of deposit or approve the cancellation of a letter of credit upon termination of a license agent agreement if all licenses and moneys have been accounted for satisfactorily or if the depositary provides a satisfactory surety bond in lieu thereof.

15.6(4) *Multiple establishment locations.* An application and security may be submitted for retail business establishments with multiple locations. For purposes of reporting and for determining the amount of the security, each application will be considered on a case-by-case basis and as mutually agreed upon by the depositary and the director.

15.6(5) *Approval of application and security.* The director will approve the application upon the receipt of a satisfactory bond, collateral assignment of deposit, or letter of credit and a determination that the credit references are satisfactory. However, the director reserves the right not to approve any application received from a party whose depositary agreement has previously been terminated by the department for cause. Upon approval by the director, the department will provide the depositary with license blanks, reporting forms, and instructions.

15.6(6) *Depositary reporting standards.* All depositaries shall comply with the following reporting standards:

a. Monthly reports. A full and complete monthly sales report, including duplicate copies of the licenses sold and a check or other monetary instrument in the amount due, shall be remitted to the department the following month on a prescheduled due date. A depositary that does not provide the monthly report to the department within 10 days after the due date shall be considered seriously delinquent. However, if the depositary's office or business is operated on a seasonal basis, a monthly report is not required for any month that the office or business is not open to the public.

b. Annual report. An annual report for all sales for the calendar year and all unused license blanks for the year shall be remitted to the department by January 31 of each year. A depositary will be considered seriously delinquent if the annual report is not received by February 15. An annual report shall also be submitted at the time a depositary agreement is terminated for any reason during the calendar year. This report must be received within 15 days after the director issues or, in the case of a voluntary termination, receives the notice of termination.

15.6(7) *Accountability.* The depositary shall be fully accountable to the state for all proceeds collected from the sale of licenses. This accountability shall not be diminished by reason of bankruptcy, fire loss, theft loss, or other similar reason.

15.6(8) *Probation.*

a. A depositary shall be placed on probation under any of the following circumstances:

(1) The depositary is seriously delinquent for the second time during any consecutive six-month period.

(2) The depositary fails to correct a serious delinquency within ten days.

(3) A check is returned by the bank due to insufficient funds.

b. Notice of probation shall be sent to the depositary by certified mail, return receipt requested.

c. The probation will be automatically canceled after six months of satisfactory performance by the depositary.

15.6(9) *Termination of depositary agreement.* A depositary may terminate the agreement at any time by notifying the director by certified mail, return receipt requested. The termination shall be effective 30 days after the receipt of the notice by the director and after the depositary has fully accounted for all moneys and unused license blanks. The director may terminate the depositary agreement and require an immediate and full accounting of all moneys and unused license blanks under any of the following circumstances:

a. The occurrence of a third serious delinquency during any consecutive six-month period.

b. When an insufficient funds check is received by the department, not correcting the deficiency within 10 days after proper notice by the director.

c. Failing to correct a serious delinquency within 15 calendar days.

d. Knowingly placing a date, other than the correct date, on any license.

e. Knowingly selling a resident license to a nonresident or selling a license to a person not qualified for such license.

f. Charging more than the statutory writing fee.

g. Refusing to sell a license to any individual by reason of creed, sexual orientation, gender identity, religion, pregnancy or public accommodation.

h. Canceling a bond, certificate of deposit, or letter of credit or allowing one to expire.

i. Failing to make a full and complete monthly sales report and monthly remittance.

j. Knowingly making a false entry on any license being sold or knowingly issuing any license to a person to whom issuance of that license is improper.

15.6(10) *Forms available from the department.* Copies of the forms required for application, bond, monthly reports, and collateral as assignment may be obtained by written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.7(483A) Lost or destroyed license blanks.

15.7(1) *Accountability for license blanks.* Whenever a depositary or county recorder requests to be relieved from accountability for license blanks that have been lost or destroyed, the depositary or county recorder (recorder) shall file a bond for the face value of such lost or destroyed license blanks and provide an explanation to the director.

15.7(2) *Explanation.*

a. The depositary or recorder shall submit a written statement in the form of an affidavit regarding the facts and circumstances surrounding the alleged loss or destruction. Pictures, drawings, or other pertinent information may be attached and referenced in the statement. The loss or destruction must relate to one or a combination of the following reasons:

(1) Loss or destruction by fire.

(2) Loss from theft.

(3) Loss while in transit.

(4) Loss from natural causes, including but not limited to floods, tornadoes, and severe storms.

(5) Loss or accidental destruction during the course of normal business operations or facility maintenance and repair.

b. The statement must also include a specific description of the precautions and procedures normally utilized by the recorder or depositary to prevent or to guard against the loss or destruction described, and a further statement as to why the precautions or procedures failed in this particular instance.

c. The director shall consider the written explanation as provided. The director shall also consider the past record of the depositary or recorder regarding losses and destructions and the past record of the depositary or recorder regarding prompt and accurate reporting. The director may direct department staff to further investigate the circumstances and facts.

(1) If the director determines that the depositary or recorder exercised reasonable and prudent care, the director shall relieve the depositary or recorder of accountability upon the filing of a bond.

(2) If the director determines that there was gross negligence by the depositary or recorder and holds the depositary or recorder accountable, the depositary or recorder may file a request for a contested case proceeding as provided in 571—Chapter 7 of the Iowa Administrative Code.

15.7(3) *Bond.* The depositary or recorder shall provide a bond in the amount of the face value of the lost or destroyed licenses. The bond shall be on a bond form provided by the department. The bond shall be conditioned to the effect that the depositary or recorder agrees to surrender the subject licenses to the department in the event that they are located at any future time; or in the event of proof showing that any or all of the subject licenses have been issued, the depositary, recorder, or sureties jointly and severally agree to pay the state the face value of all licenses covered by the bond.

a. For a face amount of $500 or less, the personal bond of the depositary or recorder is sufficient. One additional personal surety is required for a face amount up to $1,000; and two personal sureties, in addition to the depositary or recorder, are required if the face amount is more than $1,000.

b. A corporate surety authorized to do business in Iowa may be provided in lieu of the personal sureties required, in addition to the depositary or recorder.

c. The value assigned to a lost or destroyed blank license form shall be $25. This amount will be paid by the depositary to the department, except as relief from such payment is provided according to this rule.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.8(483A) Refund or change requests for special deer and turkey hunting licenses and general licenses.

15.8(1) *Invalid applications.* Deer and turkey hunting license applications that are received after the closing date for acceptance of applications and applications that are invalid on their face will be returned unopened to the applicant. Any license fee related to an application determined invalid by a computer analysis or other analysis after the application has been processed will be refunded to the applicant, less a $10 invalid application fee to compensate for the additional processing cost related to an invalid application.

15.8(2) *Death of licensee.* The fee for a deer or turkey hunting license will be refunded to the licensee's estate when the licensee's death predates the season for which the license was issued and a written request from the licensee's spouse, executor or estate administrator is received by the department within 90 days of the last date of the season for which the license was issued.

15.8(3) *National or state emergency.* The fee for a deer or turkey hunting license will be refunded if the licensee is a member of the National Guard or a reserve unit and is activated for a national or state emergency which occurs during the season for which the license was issued. A written refund request must be received by the department within 90 days of the last date of the season for which the license was issued.

15.8(4) *License changes.* The department will attempt to change an applicant's choice of season or type of license if a written or telephonic request is received by the licensing section in sufficient time (usually 20 days) before the license is printed and if the requested change does not result in disadvantage to another applicant. A change request made by telephone must be verified in writing by the requester

before the change request will be honored. The department's ability to accommodate requests to change the season or license type is dependent on workload and processing considerations. If the department cannot accommodate a request to change a season or license type, the license will be issued as originally requested by the applicant. No refund will be allowed. The department will not change the name on the license from that submitted on the application.

15.8(5) *Duplicate purchases of general hunting and fishing licenses.* Upon a showing of sufficient documentation (usually a photocopy of the licenses) that more than one hunting or fishing license was purchased by or for a single person, the department will refund the amount related to the duplicate purchase. A written request for refund, with supporting documentation, must be received by the licensing section within 90 days of the date on the face of the duplicate licenses.

15.8(6) *Other refund requests.* Except as previously described in this rule, the department will not issue refunds for any licenses as defined in 571—15.2(483A).

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.9 to **15.15** Reserved.

DIVISION II
MULTIPLE OFFENDER AND WILDLIFE VIOLATOR COMPACT

571—15.16(481A,481B,482,483A,484A,484B) Multiple offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be multiple offenders.

15.16(1) *Definitions.* For the purpose of this rule, the following definitions shall apply:

"Department" means the Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

"License" means any paid or free license, permit, or certificate to hunt, fish, or trap listed in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716, including the authorization to hunt, fish, or trap pursuant to any reciprocity agreements with neighboring states.

"Licensee" means the holder of any license.

"Multiple offender" means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 during a consecutive three-year period as provided in 15.16(3).

"Revocation" means the taking or cancellation of an existing license.

"Suspension" means to bar or exclude one from applying for or acquiring licenses for future seasons.

15.16(2) *Record-keeping procedures.* For the purpose of administering this rule, it shall be the responsibility of the clerk of district court for each county to deliver, on a weekly basis, disposition reports of each charge filed under Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

a. *License suspensions.* In the event of a license suspension pursuant to Iowa Code section 481A.133, the clerk of court shall immediately notify the department.

b. *Entering information.* Upon receipt of the disposition information from the clerks of court, the department will, on a monthly basis, enter this information into a computerized system that is directly accessible by the department of public safety communications system for use by the department's licensing section, and all state and local law enforcement officers. Direct access through the department of public safety communications system will be available as soon as practical and is dependent on the development of appropriate computer linkage by the department of public safety.

c. *Disposition report information.* Information from the disposition report that will be entered into a computerized system which includes but may not be limited to the following:

County of violation, name of defendant, address of defendant, social security or driver's license number, date of birth, race, sex, height, weight, date and time of violation, charge and Iowa Code section, officer name/C-number who filed charge, and date of conviction.

15.16(3) *Point values assigned to convictions.* For the purposes of defining a multiple offender, the person shall be classified as a multiple offender when the person equals or exceeds a total of five points during a consecutive three-year period using the values attached to the following offenses. Multiple citations and convictions of the same offense will be added as separate convictions:

a. Convictions of the following offenses shall have a point value of three attached to them:

(1) Illegal sale of birds, game, fish, or bait.
(2) More than the possession or bag limit for any species of game or fish.
(3) Hunting, trapping, or fishing during the closed season.
(4) Hunting by artificial light.
(5) Hunting from aircraft, snowmobiles, all-terrain vehicles or motor vehicle.
(6) Any violation involving threatened or endangered species.
(7) Any violations of Iowa Code chapter 482, except sections 482.6 and 482.14.
(8) Any violation of nonresident license requirements.
(9) No fur dealer license (resident or nonresident).
(10) Illegal taking or possession of protected nongame species.
(11) The taking of any fish, game, or fur-bearing animal by illegal methods.
(12) Illegal taking, possession, or transporting of a raptor.
(13) Hunting, fishing, or trapping while under license suspension or revocation.
(14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish hatchery.
(15) Any fur dealer violations except failure to submit a timely annual report.
(16) Any resident or nonresident making false claims to obtain a license.
(17) Illegal taking or possession of hen pheasant.
(18) Applying for or acquiring a license while under suspension or revocation.
(19) For a repeat offense of acquiring a hunting license without hunter safety certification.
(20) Taking game from the wild—see Iowa Code section 481A.61.
(21) Violation of Iowa Code section 483A.27(7).
(22) Any violation of Iowa Code Supplement section 716.8 as amended by 2008 Iowa Acts, House File 2612, section 21, while hunting deer.

b. Convictions of the following offenses shall have a point value of two attached to them:

(1) Hunting, fishing, or trapping on a refuge.
(2) Illegal possession of fur, fish, or game.
(3) Chasing wildlife from or disturbing dens.
(4) Trapping within 200 yards of an occupied building or private drive.
(5) Possession of undersized or oversized fish.
(6) Snagging of game fish.
(7) Shooting within 200 yards of occupied building or feedlot.
(8) No valid resident license relating to deer or turkey.
(9) Illegal importation of fur, fish, or game.
(10) Failure to exhibit catch to an officer.
(11) Trapping or poisoning game birds, or poisoning game animals.
(12) Violations pertaining to private fish hatcheries and aquaculture.
(13) Violations of the fur dealers reporting requirements.
(14) Violation of Iowa Code section 481A.126 pertaining to taxidermy.
(15) Loaded gun in a vehicle.
(16) Attempting to take any fish, game, or fur-bearing animals by illegal methods.
(17) Attempting to take game before or after legal shooting hours.
(18) Wanton waste of fish, game or fur-bearing animals.
(19) Illegal discharge of a firearm pursuant to Iowa Code section 481A.54.
(20) Any violation of Iowa Code section 482.14 pertaining to commercial fishing.
(21) Failure to tag deer or turkey.
(22) Applying for or obtaining more than the legal number of licenses allowed for deer or turkey.
(23) Illegal transportation of game, fish or furbearers.

(24) Violation of Iowa Code section 483A.27, except subsection (7).

c. All other convictions of provisions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B shall have a point value of one attached to them.

15.16(4) *Length of suspension or revocation.*

a. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: 5 points through 8 points is one year, 9 points through 12 points is two years, and 13 points or over is three years.

b. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(2) shall have an additional suspension of one year. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(3) shall have an additional suspension of two years. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(4) shall have an additional suspension of three years. The foregoing provisions apply whether or not a person has been found guilty of a simple misdemeanor, serious misdemeanor or aggravated misdemeanor pursuant to Iowa Code subsections 481A.135(2), 481A.135(3) and 481A.135(4). If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

15.16(5) *Points applicable toward suspension or revocation.* If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a suspended sentence or deferred sentence by the court as defined in Iowa Code section 907.1, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation.

15.16(6) *Notification of intent to suspend and revoke license.* If a person reaches a total of five or more points, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.16(7) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in 15.16(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

15.16(8) *Magistrate authority.* This chapter does not limit the magistrate authority as described in Iowa Code section 483A.21.

15.16(9) *Suspension for failure to comply with a child support order.* The department is required to suspend or deny all licenses of an individual upon receipt of a certificate of noncompliance with child support obligation from the Iowa child support recovery unit pursuant to Iowa Code section 252J.8(4).

a. The receipt by the department of the certificate of noncompliance shall be conclusive evidence. Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action taken due to the department's receipt of a certificate of noncompliance with a child support obligation but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

b. Suspensions for noncompliance with a child support obligation shall continue until the department receives a withdrawal of the certificate of noncompliance from the Iowa child support recovery unit.

c. After the department receives a withdrawal of the certificate of noncompliance, an individual may obtain a new license upon application and the payment of all applicable fees.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.17(456A) Wildlife violator compact. The department has entered into the wildlife violator compact (the compact) with other states for the uniform enforcement of license suspensions. The

compact, a copy of which may be obtained by contacting the department's law enforcement bureau, is adopted herein by reference. The procedures set forth in this rule shall apply to license suspensions pursuant to the wildlife violator compact.

15.17(1) *Definitions.* For purposes of this rule, the following definitions shall apply:

"Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

"Department" means the Iowa department of natural resources.

"Home state" means the state of primary residence of a person.

"Issuing state" means a participating state that issues a fish or wildlife citation to a person.

"License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any fish or wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.

"Participating state" means any state which enacts legislation to become a member of the wildlife violator compact. Iowa is a participating state pursuant to Iowa Code section 456A.24(14).

15.17(2) *Suspension of licenses for noncompliance.* Upon the receipt of a valid notice of failure to comply, as defined in the compact, the department shall issue a notice of suspension to the Iowa resident. The notice of suspension shall:

a. Indicate that all department-issued hunting (including furbearer) or fishing licenses shall be suspended, effective 30 days from the receipt of the notice, unless the department receives proof of compliance.

b. Inform the violator of the facts behind the suspension with special emphasis on the procedures to be followed in resolving the matter with the court in the issuing state. Accurate information in regard to the court (name, address, telephone number) must be provided in the notice of suspension.

c. Notify the license holder of the right to appeal the notice of suspension within 30 days of receipt. Said appeal shall be conducted pursuant to 571—Chapter 7 but shall be limited to the issues of whether the person so notified has a pending charge in the issuing state, whether the person has previously received notice of the violation from the issuing state, and whether the pending charge is subject to a license suspension for failure to comply pursuant to the terms of the compact.

d. Notify the license holder that, prior to the effective date of suspension, a person may avoid suspension through an appearance in the court with jurisdiction over the underlying violations or through the payment of all fines, costs, and surcharges associated with the violations.

e. Indicate that, once a suspension has become effective, the suspension may only be lifted upon the final resolution of the underlying violations.

15.17(3) *Reinstatement of licenses.* Any license suspended pursuant to this rule may be reinstated upon the receipt of an acknowledgement of compliance from the issuing state, a copy of a court judgment, or a certificate from the court with jurisdiction over the underlying violations and the payment of applicable Iowa license fees.

15.17(4) *Issuance of notice of failure to comply.* When a nonresident is issued a citation by the state of Iowa for violations of any provisions under the jurisdiction of the natural resource commission which is covered by the suspension procedures of the compact and fails to timely resolve said citation by payment of applicable fines or by properly contesting the citation through the courts, the department shall issue a notice of failure to comply.

a. The notice of failure to comply shall be delivered to the violator by certified mail, return receipt requested, or by personal service.

b. The notice of failure to comply shall provide the violator with 14 days to comply with the terms of the citation. The violator may avoid the imposition of the suspension by answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

c. If the violator fails to achieve compliance, as defined in this rule, within 14 days of receipt of the notice of failure to comply, the department shall forward a copy of the notice of failure to comply to the home state of the violator.

15.17(5) *Issuance of acknowledgement of compliance.* When a person who has previously been issued a notice of failure to comply achieves compliance, as defined in this rule, the department shall issue an acknowledgement of compliance to the person who was issued the notice of failure to comply.

15.17(6) *Reciprocal recognition of suspensions.* Upon receipt of notification from a state that is a member of the wildlife violator compact that the state has suspended or revoked any person's hunting or fishing license privileges, the department shall:

a. Enter the person's identifying information into the records of the department.

b. Deny all applications for licenses to the person for the term of the suspension or until the department is notified by the suspending state that the suspension has been lifted.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.18 to **15.20** Reserved.

DIVISION III
SPECIAL LICENSES

571—15.21(483A) Fishing license exemption for patients of substance abuse facilities.

15.21(1) *Definition.* For the purpose of this rule, the definition of "substance abuse facility" is identical to the definition of "facility" in Iowa Code subsection 125.2(9).

15.21(2) *Procedure.* Each substance abuse facility may apply to the department of natural resources for a license exempting patients from the fishing license requirement while fishing as a supervised group as follows:

a. Application shall be made on a form provided by the department and shall include the name, address and telephone number of the substance abuse facility including the name of the contact person. A general description of the type of services or care offered by the facility must be included as well as the expected number of participants in the fishing program and the water bodies to be fished.

b. A license will be issued to qualifying substance abuse facilities and will be valid for all patients under the care of that facility.

c. Patients of the substance abuse facility must be supervised by an employee of the facility while fishing without a license pursuant to this rule. An employee of the substance abuse facility must have the license in possession while supervising the fishing activity of patients.

d. Notwithstanding the provisions of this rule, each employee of the substance abuse facility must possess a valid fishing license while participating in fishing.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.22(481A) Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals.

15.22(1) *Definitions.* For the purpose of this rule:

"Bow and arrow" means a compound, recurve, or longbow.

"Crossbow" means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical or electric trigger and a working safety.

"Handicapped" means a person possessing a physical impairment of the upper extremities that makes a person physically incapable of shooting a bow and arrow. This includes difficulty in lifting and reaching with arms as well as difficulty in handling and fingering.

15.22(2) *Application for authorization card.* An individual requesting use of a crossbow for hunting deer or turkey must submit an application for an authorization card on forms provided by the department. The application must include a statement signed by the applicant's physician declaring that the individual is not physically capable of shooting a bow and arrow. A first-time applicant must submit the authorization card application no later than ten days before the last day of the license application period for the season the person intends to hunt.

15.22(3) *Authorization card—issuance and use.* Approved applicants will be issued a card authorizing the individual to hunt deer and turkey with a crossbow. The authorization card must be

carried with the license and on the person while hunting deer and turkey and must be exhibited to a conservation officer upon request.

15.22(4) *Validity and forfeiture of authorization card.* A card authorizing the use of a crossbow for hunting deer and turkey will be valid for as long as the person is incapable of shooting a bow and arrow. If a conservation officer has probable cause to believe the person's handicapped status has improved, making it possible for the person to shoot a bow and arrow, the department may, upon the officer's request, require the person to obtain in writing a current physician's statement.

If the person is unable to obtain a current physician's statement confirming that the person is incapable of shooting a bow and arrow, the department may initiate action to revoke the authorization card pursuant to 571—Chapter 7.

15.22(5) *Restrictions.* Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer or turkey. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead with at least three blades.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.23(483A) Free hunting and fishing license for low-income persons 65 years of age and older or low-income persons who are permanently disabled.

15.23(1) *Purpose.* Pursuant to Iowa Code subsection 483A.24(15), the department of natural resources will issue a free annual combination hunting and fishing license to low-income persons who meet the age status or permanently disabled status as defined.

15.23(2) *Definitions.*

"Age status" means a person who has achieved the sixty-fifth birthday.

"Low-income person" means a person who is a recipient of a program administered by the state department of human services for persons who meet low-income guidelines.

"Permanently disabled" means a person who meets the definition in Iowa Code section 483A.4.

15.23(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. The applicant shall indicate on the application which low-income assistance program the applicant is receiving. The application shall include an authorization allowing the department of human services to verify that the applicant is a recipient of the low-income assistance program checked on the application.

b. The free annual combination license will be issued by the department upon receipt of a properly completed application. The license will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines, but is not a recipient of a state assistance program, may apply for this license by providing the following:

(1) A statement listing income from all sources (i.e., social security, retirement income, wages, dividends and interest, cash gifts, rents and royalties, and other cash income).

(2) A copy of any available document that verifies income (i.e., income tax return, bank statement, social security statement, or other document the applicant considers supportive of income status).

(3) A signed statement by the applicant that the applicant's annual cash income does not exceed the federal poverty limit for the current year.

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the new limits are available in the subsequent year. The income limit will be shown on the application and will be available upon request from the department.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.24(483A) Free lifetime fishing license for persons who have severe physical or mental disabilities.

15.24(1) *Purpose.* Pursuant to Iowa Code subsection 483A.24(9), the department of natural resources will issue a free lifetime fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the definitions of "severe mental disability" and "severe physical disability" in 15.24(2).

15.24(2) *Definitions.* For the purposes of this rule, the following definitions apply:

"Severe mental disability" means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Are likely to continue indefinitely;
3. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
4. Reflect the person's need for a combination and sequence of services which are of lifelong or an extended duration and are individually planned and coordinated.

"Severe physical disability" means a disability that limits or impairs the person's ability to walk under any of the following circumstances:

1. The person cannot walk 200 feet without stopping to rest.
2. The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device.
3. The person is restricted by lung disease to such an extent that the person's forced expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest.
4. The person must use portable oxygen.
5. The person has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association. They include:

- Class 3—Persons with cardiac disease resulting in marked limitation of physical activity. The person is comfortable at rest, but less than ordinary activity causes fatigue, palpitation, dyspnea, or angina pain.
- Class 4—Persons with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of heart failure or the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.

6. The person is severely limited in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

15.24(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant.

b. The application shall be signed and certified by the applicant's attending physician and, based upon the criteria listed in this rule, declare that the applicant has a severe mental or physical disability.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.25(483A) Transportation tags for military personnel on leave from active duty.

15.25(1) *Military transportation tags for deer and turkey.* The military transportation tag shall include the following information: name, birth date, current address of military person; species and sex of animal taken; date of kill; and weapon used. Only conservation officers of the department shall be authorized to issue military transportation tags.

15.25(2) *Annual limit for military transportation tags.* A person receiving a military transportation tag shall be limited to one military deer tag and one military turkey tag annually.

15.25(3) *Regulations apply to military personnel.* With the exception of the license requirement exemption set forth in Iowa Code section 483A.24(6), all hunting and fishing regulations shall apply to active duty military personnel.
[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.26 to **15.40** Reserved.

DIVISION IV
EDUCATION AND CERTIFICATION PROGRAMS

571—15.41(483A) Hunter safety and ethics education program. This division clarifies the term "hunting license" as used in Iowa Code section 483A.27 in relation to the hunter safety and ethics education course requirement, clarifies the need for exhibiting a hunter safety and ethics education course certificate when applying for a deer or wild turkey license, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter safety and ethics to qualify for purchase of an Iowa hunting license. For the purpose of this division, a hunting license, pursuant to Iowa Code sections 483A.1 and 483A.24, includes:

1. Hunting licenses for legal residents except as otherwise provided. (Iowa Code section 483A.1(1))
2. Hunting licenses for nonresidents. (Iowa Code section 483A.1(2))
3. Hunting preserve license.
4. Free annual hunting and fishing licenses for persons who are disabled or are 65 years of age or older and qualify for low-income status as defined in Iowa Code section 483A.24.
5. Veteran's lifetime hunting and fishing license as defined in Iowa Code section 483A.24.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.42(483A) Testing procedures.

15.42(1) *General testing procedures.* Upon completion of the required curriculum, each person shall score a minimum of 75 percent on the written or oral test provided by the department and demonstrate safe handling of a firearm. Based on the results of the written or oral test and demonstrated firearm safe handling techniques as prescribed by the department, the volunteer instructor shall determine the persons who shall be issued a certificate of completion.

15.42(2) *Special testing out provisions.* Any person born after January 1, 1972, who does not complete the required ten-hour hunter safety and ethics course (as described in Iowa Code section 483A.27, subsection (1)), must meet the following requirements to be eligible to purchase an Iowa hunting license:

a. To comply with Iowa Code section 483A.27, subsection (5), an individual must pass a written examination compiled by the department of natural resources under the direct supervision of a state conservation officer or certified hunter safety instructor.

b. If the applicant does not pass the examination by a score of 95 percent or more, the applicant must then wait seven days to take the examination again.

c. If the applicant does not pass the second examination with a score of 95 percent or more, the applicant must successfully complete the ten-hour safety and ethics course to obtain a certificate of completion (as described in Iowa Code section 483A.27, subsection (2)).

15.42(3) *Exemptions.* The following groups of individuals do not need hunting licenses and therefore do not need to satisfactorily complete a hunter safety and ethics education course:

a. *Landowners and tenants.* Owners or tenants of land and their children when hunting on the land which they own or on which they are tenants.

b. *Residents under 16.* Residents of the state under 16 years of age accompanied by their parent or guardian or in the company of any other competent adult if the adult accompanying said minor possesses a valid hunting license, providing, however, there is one licensed adult accompanying each person under 16 years of age.

15.42(4) *Deer and wild turkey license applications.* Individuals are not required to exhibit a certificate showing satisfactory completion of a hunter safety and ethics education course only when applying for a deer or wild turkey license.
[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

571—15.43(321G,462A,483A) Volunteer bow and fur harvester education instructors, snowmobile and all-terrain vehicle (ATV) safety instructors, boating safety instructors and hunter education instructors.

15.43(1) *Purpose.* Pursuant to Iowa Code sections 321G.23(2), 462A.3 and 483A.27(4), the department will certify volunteer instructors to teach bow, fur harvester, snowmobile, ATV, boating and hunter education courses.

15.43(2) *Definitions.* For the purpose of this rule:

"Certified instructor" means a person who has met all criteria in this rule for one or more of the above-named courses.

"Course" means the department's bow, fur harvester, snowmobile, ATV, boating and hunter education and ethics courses.

"Department" means the department of natural resources.

"Instructor applicant" means a person who has applied to become a certified volunteer instructor for one of the above-named courses.

15.43(3) *Minimum qualifications.* The following conditions must be satisfied before any person can become a certified instructor. Failure to meet these conditions will result in the denial of the application. An applicant may be disqualified if the applicant has accumulated any habitual offender points pursuant to rule 571—15.16(481A,481B,482,483A,484A,484B), or other license suspension by the court or department. The instructor applicant will be notified of the denial by the recreational safety coordinator. An instructor applicant shall:

a. Submit an application as provided by the department to the local conservation officer or recreational safety officer.

b. Be at least 18 years of age.

c. Have experience in handling equipment, such as firearms, bows and arrows, furbearer traps, snowmobiles, ATVs and various navigational vessels, that is necessary for the various prescribed courses.

d. Have completed the course as defined in subrule 15.43(2).

e. Attend and pass an instructor's training and certification course administered by the department.

f. Submit to a background check. This check will include, but not be limited to, a criminal history check as provided by the department of public safety. A record of a felony conviction will disqualify the applicant. A record of serious or aggravated misdemeanors may disqualify the applicant based on type of offense and year committed.

g. Successfully complete the apprenticeship as required in subrule 15.43(4).

15.43(4) *Instructor applicant apprenticeship.* In addition to subrule 15.43(3), the following conditions must be satisfied to complete the instructor applicant apprenticeship:

a. Participate in one course.

b. Apprentice with a certified instructor.

The recreational safety officer may make the determination as to which certified instructor will be supervising the instructor applicant during the apprenticeship.

15.43(5) *Certified education instructor responsibilities.* A certified instructor has the following responsibilities:

a. To complete all prerequisites to becoming an instructor as provided in subrules 15.43(3) and 15.43(4).

b. To follow all policies and procedures as set forth in the current "Instructor Procedures Manual."

c. To assist in the recruitment and training of additional volunteer instructors.

d. To recruit and train students in the applied-for prescribed course program.

e. To actively promote the program in the instructor's county and to arrange for publicity for each new class.

f. To maintain order and discipline in the classroom and outdoor classroom at all times.

g. To accurately fill out required forms and reports for each class and mail that material to the recreational safety coordinator within 15 days after completion of the course.

h. To teach the course as prescribed by the department.

i. To maintain a file on all students that the instructor teaches.

j. To actively participate in one course every two years. If this requirement is not met, the instructor's certification may be terminated after notification by letter by the recreational safety coordinator. The person may reapply to become a volunteer safety education instructor pursuant to subrule 15.43(3).

k. To attend a minimum of one continuing education instructor workshop every three years for hunter education as provided by the department.

15.43(6) *Grounds for revocation of instructor certification.* The department may, at any time, seek to revoke the instructor certification of any person who:

a. Fails to meet the instructor responsibilities as outlined in subrules 15.43(4) and 15.43(5).

b. Fails to follow the policies and procedures as set forth in the current "Instructor Procedures Manual."

c. Falsifies any information as may be required by the department.

d. Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.

e. Is convicted of or forfeits bond for any fish and game, snowmobile, ATV or navigation violation of this state or any other state.

f. Uses abusive or foul language while conducting a course.

g. Participates in a course while under the influence of alcohol or any illegal drug.

h. Has substantiated complaints filed against the instructor by the public, department personnel or other certified instructor(s).

i. Fails to meet the requirements in subrule 15.43(5), paragraphs *"j"* and *"k."*

j. Is convicted of a felony or an aggravated or serious misdemeanor as defined in the statutes of this state. This would also include any felonies or comparable misdemeanors of any other state.

k. Receives compensation directly or indirectly from students for time spent preparing for or participating in a course.

15.43(7) *Termination of certification.* Any certified instructor has the right, at any time, to voluntarily terminate certification. If an instructor voluntarily terminates certification or certification is terminated by the department, the instructor must return to the department the certification card and all materials that were provided.

15.43(8) *Compensation for instructors.* Instructor applicants and certified instructors shall not receive any compensation for their time either directly or indirectly from students while preparing for or participating in a course. However, instructor applicants and certified instructors may require students to pay for actual course-related expenses involving facilities, meals or materials other than those provided by the department.

15.43(9) *Hearing rights.* If the department seeks to revoke an instructor certification pursuant to subrule 15.43(6), the department shall provide written notice of intent to revoke the certification as provided in 571—Chapter 7. If the certified instructor requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

[**ARC 7852B**, IAB 6/17/09, effective 7/22/09]

These rules are intended to implement Iowa Code chapters 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

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TITLE VII
FORESTRY

CHAPTER 71
NURSERY STOCK SALE TO THE PUBLIC

[Prior to 12/31/86, Conservation Commission[290] Ch 48]

571—71.1(456A,461A) Purpose. The department of natural resources shall sell nursery stock to private landowners and public agencies to encourage the establishment of wildlife habitat and erosion control plantings and to promote forestry.

571—71.2(456A,461A) Procedures.

71.2(1) *Description of nursery stock to be sold.*

a. Plants sold for use on private land shall not exceed four years of age.

b. Plants sold for use on private land shall be barerooted.

c. Only those species in accepted use for wildlife habitat, erosion control and forestry plantings shall be sold for use on private land.

d. Seeds and cuttings of those species in paragraph *"c"* may be sold for use on private land.

71.2(2) *Order limitations.*

a. The minimum acceptable order shall be 500 plants in total with the minimum number of 100 plants of one species.

(1) To complete the previous year's planting, a purchaser may order less than 500 plants with a minimum of 100 plants of one species.

(2) Special purpose packets shall contain the number and species of plants as determined annually by the state forester but not to exceed 400 plants.

b. If a shortage occurs, substitution of suitable species may be made at the discretion of the state forester.

c. Nursery stock shall be sold only for planting within the state of Iowa.

71.2(3) *Customer obligation.*

a. Nursery stock planted on private land shall be for the purpose of wildlife habitat establishment, the control of soil erosion or to establish forest cover.

b. Purchasers of nursery stock for planting on private land shall, as a part of the order, be required to certify the plants will be used for wildlife habitat, erosion control or forestation purposes and will not be used to establish a new farmstead windbreak, shade trees or ornamental plantings.

c. All purchasers of stock shall, as a part of the plant order, be required to certify as to the county in which the nursery stock will be planted.

d. All purchasers shall be required as a part of the plant order, to certify that the plants purchased will not be sold with roots attached.

571—71.3(456A,461A) Nursery stock prices.

71.3(1) Prices for hardwoods shall be as follows:

a. Aspen, oak, hickory, walnut, pecan and basswood, 6″ to 16″—$40 per hundred plants.

b. Aspen, oak, hickory, walnut, pecan and basswood, 17″ and larger—$55 per hundred plants.

c. Other hardwood tree species, 6″ to 16″—$37 per hundred plants.

d. Other hardwood tree species, 17″ and larger—$52 per hundred plants.

71.3(2) Prices for shrubs shall be as follows:

a. Elderberry, buttonbush, dogwood, and Nanking cherry, 6″ to 16″—$37 per hundred plants.

b. Elderberry, buttonbush, dogwood, and Nanking cherry, 17″ and larger—$52 per hundred plants.

c. Other shrub species, 6″ to 16″—$40 per hundred plants.

d. Other shrub species, 17″ and larger—$55 per hundred plants.

71.3(3) Prices for conifers shall be as follows:

a. Conifers, 6″ to 16″—$25 per hundred plants.

b. Conifers, 17″ and larger—$40 per hundred plants.

71.3(4) Prices for wildlife packets shall be $110 each.

71.3(5) Prices for songbird packets shall be $25 each.

71.3(6) Prices for walnut seed shall be $3 per pound.

71.3(7) For promotion of conservation plantings, nursery stock may be provided to schools and conservation and education groups to use for Arbor Day and other special events.

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These rules are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

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CHAPTER 5
FIRE MARSHAL ADMINISTRATION

[Ch 5 as appeared in July 1974 IDR Supplement, rescinded June 30, 1975]
[Prior to 4/20/88, Public Safety Department [680] Ch 5]

GENERAL PROVISIONS

661—5.1(100) Description. This division's charter is to prevent fires. Fire causes are determined and communicated to the public by various means including the division's annual report. The division requires building standards necessary for fire safety and apprehends those who violate such standards or fire-related criminal statutes.

5.1(1) The division's administrator is entitled the state fire marshal. The fire marshal has one assistant. The nonclerical employees of this division are peace officers designated as special agents, fire prevention inspectors, fire prevention specialists, and designated subordinates.

5.1(2) Special agents examine a fire or a fire scene to determine its cause, and arrest any who unlawfully cause fires or violate fire-related laws.

5.1(3) Inspectors examine buildings to determine the compliance of its system with applicable laws or rules.

5.1(4) A fire prevention specialist examines blueprints and specifications of proposed buildings.

5.1(5) Variance from rules. Rescinded IAB 10/31/01, effective 1/1/02.

661—5.2(17A,80,100,101,101A) Definitions. The following definitions apply generally to the provisions of this chapter unless a specific exception is made with reference to a particular rule or sequence of rules within the chapter.

"Basement" means a usable or unused floor space not meeting the definition of a "story."

"Building" is any structure used for or intended for supporting or sheltering any use or occupancy. Each portion of a building separated by one or more area separation walls with a fire-resistive rating of at least two hours may be considered a separate building.

"Corridor" means an enclosed exit access component that defines and provides a path of egress travel to an exit.

"Fire" includes explosions in which fire, combustion or rapid oxidation is an element but does not include explosions caused by nonflammable gases, liquids or other materials.

"Fire marshal" means the fire marshal, the assistant fire marshal, fire prevention inspectors, special agents, fire prevention specialist and designated subordinates.

"Fire marshal's office" means the headquarters of the fire marshal.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

"Owner" (For service of notice, criminal sanctions and penalties.) If a building is owned by a corporation, the chairperson or president of the board of directors is considered the owner. If a building is owned by an organization governed by a board of trustees, the president or chairperson of the board is considered the owner. If a partnership is shown to be the owner of a building, any partner is considered the owner. If an individual is shown to be the owner, the individual, or the guardian or conservator of such individual is considered to be the owner. If the building is shown to be owned by a trade name, the person who registered the trade name is considered the owner.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than 6 feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused underfloor space shall be considered as a story.

661—5.3(17A,100) Building plan approval. Plans for the proposed construction of certain new buildings or additions, alterations or changes to existing buildings require the approval of the fire marshal. Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the fire marshal for approval, unless the plans have been submitted to a local fire or building department for approval based upon compliance with the rules of the fire marshal or a local fire ordinance recognized in rule 661—201.4(100):

- Any educational building or facility serving kindergarten through twelfth grade,
- Any college or university building or facility,
- Any child care facility intended to serve seven or more children at one time,
- Any correctional facility, or
- Any gaming facility.

Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the department of inspections and appeals and are not required to be submitted to the fire marshal:

- Adult day services, or
- Assisted living facilities.

Plans for initial construction or alterations, changes, additions, renovations or remodeling of any building or facility subject to the provisions of 661—Chapter 205 shall be submitted to the fire marshal.

5.3(1) An initial evaluation or review by the fire marshal may be obtained on preliminary plans by submitting the plan that shows the building outline with rooms, corridors and exits indicated. The fire marshal informally responds to such preliminary plan.

5.3(2) Building plan submittals.

a. Working plans and specifications. When approval of building construction projects is required by this chapter or when requested by the submitter for other building construction projects covered by this chapter, one complete set of the final working plans and specifications shall be submitted to the fire marshal's office. The submittal shall comply with Iowa Code chapters 542B and 544A. The submittal is examined and submitter is notified of the findings. If the working plans and specifications comply with this chapter, an approval letter shall be sent to the submitter.

b. Shop drawings. Shop drawings, equipment specifications and supporting documentation for fire alarm and sprinkler systems may be submitted for review and approval. If the system is being installed as part of a project which has been designed by an engineer or architect, the submittal shall be approved by the responsible architect or engineer prior to submittal to the fire marshal. The submittal is examined and submitter is notified of the findings. If the submittal complies with the applicable standards, all copies are stamped approved and one copy is retained and the other copies, if any, are returned to the submitter. If only one copy of shop drawings, equipment specifications and supporting documentation is received, a letter shall be sent to the submitter in lieu of returning approved shop drawings.

c. Changes. No changes shall be made to the approved final working plans and specifications or shop drawings unless the changes are submitted to and approved by the fire marshal's office.

EXCEPTION: Submittal of working plans and specifications or shop drawings is not required when the plans and specifications or shop drawings have been reviewed for compliance with this chapter by the chief, or an employee authorized by the chief, of a fire department organized under Iowa Code chapter 400.

NOTE: Building, planning and design services are required to be in conformance with Iowa Code chapters 542B and 544A.

5.3(3) If the blueprints and specifications are not acceptable, the fire marshal's office specialist notifies the submitter of the deficiencies and requests that the submitter either forward changes or request a review of the blueprints and specifications with the specialist.

5.3(4) If, after such review, the submitter disputes the specialist's findings, the submitter may request that the disputed questions be referred to the national fire protection association or other similar generally recognized authority, at the submitter's expense, and the specialist submits the blueprints and specifications to the national fire protection association or other similar generally recognized authority for their analysis.

5.3(5) If the submitter disputes the findings of the national fire protection association, the submitter may appeal to the fire marshal under the procedures of 661—Chapter 10.

5.3(6) For any construction project requiring approval of the state fire marshal, construction shall not begin until such approval has been received.

NOTE: It is recommended that approval of the fire marshal be obtained prior to the release of bid documents.

661—5.4(17A,100,101,101A) Inspections. Certain buildings as designated in the Iowa Code shall comply with the Iowa Code and fire safety rules. The fire marshal determines and enforces such compliance. To do so, the fire marshal may enter such building or premises at any time without notice to inspect it.

5.4(1) Such inspection may be of a particular system in the building. For example, the electrical, heating, exit, valve, piping and venting systems may be inspected. The inspection may include the entire building. For example, the building may be so dilapidated as to be especially liable to fire.

5.4(2) Such inspection is conducted by the fire marshal or by a consultant as requested by the fire marshal. A consultant would be a person with the necessary degree of training, education or experience to examine a system within a building required to be in compliance with the law or rules and determine if such system or systems is in compliance with such requirements.

5.4(3) Inspections are conducted without announcement and occur on a random basis, upon anyone's request, upon any complaint or when fire appears to be possible. For example, the presence of flammable liquids or gases or the odor thereof outside a building storing such gases or liquids may cause an inspection.

5.4(4) When the member or consultant arrives at the building that is to be inspected, the member or consultant usually advises the owner. If a person in such a position cannot be contacted, the inspection commences anyway. If the owner or representative wishes to accompany the member or consultant, they may do so, but the inspection is not delayed.

5.4(5) The member or consultant examines the system or systems being inspected to determine compliance with the laws or rules. To guide the inspection, the member or consultant uses state rules or a manual recommended by the national fire protection association or a similar acceptable fire protection agency.

5.4(6) Upon completion of an inspection, the member or consultant completes written inspection orders. The original is filed in the fire marshal's office by county; a copy is filed in the member's office in a geographical area file; and a copy is left with the fire department having jurisdiction.

5.4(7) Upon completion of the inspection, if the building does not comply with applicable laws or rules, the member or consultant identifies specifically such noncompliance and notifies the owner. The owner may be ordered to correct or repair the deficiency or may order the building removed or demolished.

a. Copies of the notice of deficiencies or order are distributed to the fire marshal's office and the fire department having jurisdiction and a copy is filed in the member's office.

b. The time to comply with the order is determined by the member considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish and other reasonable, relevant information.

c. If the owner of the building does not agree with the deficiency findings and order, the owner asks the fire marshal to review the order. The provisions of 661—Chapter 10 are then used.

d. Failure to comply with an order may incur penalties.

661—5.5(100) Certificates and inspection fees.

5.5(1) *Certificates for license.* Several Iowa statutes provide that a license to conduct certain functions cannot be issued until the fire marshal has approved the building to be used for such function. Upon receipt of a written request, the fire marshal conducts or has conducted an inspection using the procedures contained in the building inspection rule 5.4(17A,100,101,101A). Upon completion of an inspection showing the building to be in compliance, the fire marshal issues a certificate. If the building

is found to be in noncompliance, the certificate applicant may file a petition requesting a review and the same procedure is used as if an order were being requested to be reviewed. Upon completion of the review process, if the building is found to be in compliance, a certificate is then issued.

5.5(2) *Inspection fees.* The following fees shall apply respectively to inspections of the facilities of the types listed where a certificate of inspection from the fire marshal is required in order to obtain licensure or certification under Iowa law. The inspection fee shall be paid by check made payable to "Fire Marshal Division, Iowa Department of Public Safety" prior to the issuance of the certificate provided for in subrule 5.5(1).

a. The inspection fee for a health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135C or a group home licensed or seeking licensure in this state is $2 per bed.

b. The inspection fee for an elder group home certified or seeking certification pursuant to Iowa Code chapter 231B or an assisted living facility licensed or seeking licensure pursuant to Iowa Code chapter 231C is $7.50 per bed.

c. The inspection fee for an adult day services program certified or seeking certification pursuant to Iowa Code Supplement chapter 231D is $50 per facility.

d. The inspection fee for a child care facility licensed or seeking licensure pursuant to Iowa Code chapter 237A is $20 per facility.

e. When an initial inspection which requires a fee pursuant to paragraphs *"a," "b,"* or *"c"* of this subrule results in a finding of a deficiency or deficiencies which require a reinspection, the initial reinspection shall be performed without the imposition of any additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of $100 for each additional reinspection after the initial reinspection is required until the original deficiency or deficiencies have been corrected.

f. The fee for a suitability inspection of a prospective site for a facility which may seek licensure or certification from the state of Iowa is $100.

This rule is intended to implement Iowa Code chapter 100 as amended by 2000 Iowa Acts, House File 2552.

661—5.6(17A,80,100) Fire investigations.

5.6(1) The fire marshal has the authority to investigate any fire in the state of Iowa.

5.6(2) City and township officers have the primary responsibility to and shall investigate fires. The city or township officer shall file a report of each fire with the fire marshal's office within one week of the fire even if the fire marshal's division participated in, assisted with, directed or supervised the fire investigation. Upon written request, the fire marshal may grant an extension of the time for filing this report for a period not to exceed 14 days. The request shall set forth compelling reasons for such extension.

5.6(3) The city or township officer shall immediately report a fire that involves death or suspected arson and does so by contacting the member assigned to that area or, if not available, the fire marshal's office or the fire marshal or assistant or, if no such contact can be made, the officer asks the county sheriff to relay the information to the Iowa police radio or teletype system (patrol communications division). The officer's report will be recorded or logged.

5.6(4) The notice of a fire involving death or arson contains the following information, if known:

a. If death has occurred or is suspected, the name, age and address of person or persons deceased or missing; the date, time and address of the fire; and the suspected cause of fire.

b. If arson is suspected, the date, time, address of the fire; the reasons for suspecting arson; whether there is obvious evidence of arson and if there is an arson suspect.

c. Whether an explosion occurred.

5.6(5) If Iowa police radio has been so notified, it immediately notifies the fire marshal or the nearest available member of the fire marshal's division.

5.6(6) The fire marshal may, while investigating the cause of a fire, compel witnesses and others to testify under oath and to submit books, records and other documents.

a. This is in the discretion of the fire marshal and may be exercised anytime, including fires that involve an extensive loss, a death, arson or explosion, or suspected arson.

b. The fire marshal may allow a person to submit to a polygraph examination.

5.6(7) The fire marshal notifies the person compelled to give testimony or information.

5.6(8) The fire marshal may assist a local officer in the investigation of any fire. The fire marshal may superintend, direct or conduct the investigation of a fire and may request the participation of a consultant when:

a. Requested by state or local authority to do so.

b. A death has occurred, an extensive amount of property has been destroyed, arson is suspected or an explosion has occurred.

c. A person is identified as an arson suspect.

d. There is obvious physical evidence of arson.

e. The fire marshal deems it necessary.

5.6(9) The fire marshal, when participating in the investigation of a fire, may request the person in control of the premises to execute a consent to search.

661—5.7(17A,101A) Explosive materials. Those wishing to receive an explosive materials commercial license may obtain a copy of the required application by contacting the fire marshal's office, sheriff's office or the office of the chief of police in cities of over 10,000 people.

5.7(1) Such application is submitted to the sheriff's office or office of the chief of police. That agency reviews the application, investigates the applicant, inspects the buildings, if necessary, and completes the application, then forwards it to the fire marshal.

a. If the application is approved, the fire marshal enters approval thereon, notifies the local agency, and issues the license.

b. Explosive materials commercial license expires on December 31 of each year and may be renewed.

c. If an application is denied, the applicant may appeal under 661—Chapter 10.

5.7(2) A person wishing to purchase, possess, transport, store or detonate explosive materials shall obtain a permit to do so from the county sheriff or the chief of police.

5.7(3) When a sheriff confiscates explosive materials, the sheriff shall give notice to the state fire marshal's office as soon as reasonably possible.

661—5.8(100,101,101A) Fire drills. All public and private school officials and teachers shall conduct fire drills in all school buildings as specified in Iowa Code section 100.31 when school is in session. All doors and exits of their respective rooms and buildings shall remain unlocked during school hours or when such areas are being used by the public at other times.

661—5.9(17A,100) Fire escapes. Upon receipt of a written communication from an owner appealing the action or requirement of any fire escape inspector that sets forth such action or requirement and the objections the owner has to the action or requirement of such inspector, the provisions of 661—Chapter 10 will apply.

661—5.10(17A,22,100,692) Public inspection of fire marshal files and fire records. The fire marshal's office keeps a record on file of every reported fire in Iowa. All other important written information gathered by the fire marshal also is filed. Most of the contents of these documents are available to the public. Some of the information contained in these files, such as investigative data, intelligence data or criminal history data, as defined in Iowa Code chapter 692, is not public record. Requests for information should be addressed to the Fire Marshal Division, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

5.10(1) A person may request to examine or copy a public record by either submitting a request in person or in writing. A person who plans to make a request in person to examine public records should

first contact the office by telephone at (515)281-5821 to determine if personnel will be available to assist the person.

5.10(2) A copy will be provided on request of any public record in the possession of the fire marshal division at the expense of the person requesting the copy of the record. The fee for a copy of a record shall reflect only the cost of copying the record and the time required of staff of the department of public safety to retrieve the record, copy the record, supervise the copying of the record, and mail the record.

5.10(3) If a person wishes a copy of the record of a particular fire, it may be copied in the fire marshal's office or that person may so request by writing to the fire marshal's office setting forth the date, time and address, including county, of the fire. The fire marshal will forward a copy of the public record and may require reimbursement for the actual cost of copying and mailing the information.
[Editorial change: IAC Supplement 6/17/09]

661—5.11(17A,80,100) Information requested before inspection. Persons requesting the inspection of a building that is alleged to require repair, removal or demolition under Iowa Code section 100.13 shall provide the following information, if known: the address of the building; the name and address of the building's owner; the requester's name, address and telephone number; and a general description of the alleged deficiencies which the requester seeks remedied.

5.11(1) *Initial determination.* The fire marshal, upon receipt of the information, shall make an initial determination whether there are sufficient allegations to warrant an inspection.

a. If, in the fire marshal's opinion, the complaint fails to warrant conducting an inspection, the fire marshal shall then so advise the complainant.

b. If the fire marshal determines that an inspection is warranted, the fire marshal will so advise the county attorney, the requester and person(s) identified as the owner(s).

5.11(2) *Cause to be inspected.* The fire marshal shall then cause the inspection of the building to determine if:

a. By want of proper repair, or by reason of age and dilapidated condition, it is especially liable to fire and is so situated as to endanger other buildings, property or persons, or

b. It contains combustibles, explosives or flammable materials dangerous to the safety of any buildings, premises or persons.

5.11(3) *Final decision.* Upon completion of the inspection the fire marshal shall then decide if the building needs to be removed or repaired.

a. If the building complies with applicable laws or rules and no deficiencies are found, the fire marshal shall accordingly notify the county attorney, the owner and the requester.

b. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then notify the mayor and clerk of said city of the deficiencies and the need for repairs or removal.

c. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then identify specifically such deficiencies and prepare an order to correct or repair the deficiencies or remove or demolish the building. Such notice and order should be sent to the county attorney with a request that the notice and order be examined by the county attorney.

NOTE: An owner who receives an order from the fire marshal may appeal the order using procedures established in 661—Chapter 10.

5.11(4) *Verification of legal description.* The county attorney shall, upon receipt of the fire marshal's notice and order, verify the legal description and identification of the property owner and shall advise the fire marshal how to properly serve the order.

5.11(5) *Contents of order.* This order shall notify the owner of the building that the order becomes effective upon its receipt or issuance. The order shall also notify the owner that, within five days after the order's effective date, the owner may file a petition for review of the order in accordance with Iowa Code section 100.14.

5.11(6) *Who shall be served.* If the county attorney deems it appropriate, any occupants, lienholders or lessees shall be served with a copy of the order.

5.11(7) *Reasonable time to comply.* The order shall give the owner a reasonable time to comply with its mandate(s). The fire marshal shall determine what constitutes a reasonable time by considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish the building and other reasonable, relevant information.

5.11(8) *Reinspection.* If the owner of the building elects not to challenge the fire marshal's order, the fire marshal shall then, at the end of the period during which compliance was required, conduct another inspection of the building.

a. If the fire marshal finds that the order has been complied with, the fire marshal shall notify the county attorney, owner and requester of this fact.

b. If the fire marshal finds that the order has not been complied with, the fire marshal will notify the county attorney of noncompliance.

NOTE: An owner who receives a notice of noncompliance from the fire marshal may appeal the notice using procedures established in 661—Chapter 10.

5.11(9) *Failure to comply.* Upon receipt from the fire marshal of the owner's failure to comply, the county attorney shall:

a. Institute the procedure necessary to subject the owner to a penalty of $10 for each day the owner fails to comply, and

b. Confirm the legal description of the property, the owner's name and address, the alleged deficiencies of the building, that an inspection was conducted, that some deficiency was found, that the owner was properly served, notified and given an adequate opportunity to repair the deficiency, and that the deficiency has not been remedied and may, therefore, advise the fire marshal that the destruction is appropriate at this time.

5.11(10) *Final action taken.* The fire marshal, upon the advice of the county attorney, may repair, remove or destroy the building. Such destruction may occur by:

a. Permitting the local fire service to burn the building as a training exercise;

b. Asking for public bids on the building;

c. If significant costs are anticipated, the fire marshal may request funds from the Iowa executive council.

661—5.12(17A,80,100A) Sharing of insurance company information with the fire marshal. Insurance companies shall provide the specified information to the fire marshal as follows:

5.12(1) Whenever an insurance company has reason to believe that a fire loss insured by the company was caused by something other than an accident, said insurance company shall provide to the fire marshal, or some other agency authorized to receive such information under Iowa Code chapter 100A, all information and material possessed by said company relevant to an investigation of the fire loss or a prosecution for arson.

5.12(2) Whenever the fire marshal, or an agent or employee of the fire marshal, requests in writing that an insurance company provide information in its possession regarding a fire to the fire marshal, the insurance company shall provide all relevant information requested. Relevant information may include, but need not be limited to:

a. Insurance policy information relating to a fire loss under investigation including information on the policy application.

b. Policy premium payment records.

c. History of previous claims made by the insured.

d. Material relating to the investigation of the loss, including the statement of any person, proof of loss, and other information relevant to the investigation.

5.12(3) Unless otherwise expressly limited any request for information under this rule shall be construed to be a request for all information in the possession of an insurance company. Any information in the custody or control of any agent, employee, investigator, attorney or other person engaged by an insurance company, on a permanent or temporary basis, in the person's professional relationship to the insurance company shall be considered to be in the possession of the insurance company subject to this rule.

661—5.13(17A,80,100A) Release of information to an insurance company. An insurance company which has provided fire loss information to an authorized agency pursuant to Iowa Code section 100A.2 may request information relevant to said fire loss investigation from the fire marshal. If the insurance company has provided information to an authorized agency other than the fire marshal, the request shall include proof that information was provided. For purposes of this rule the term insurance company shall include an attorney, adjustor or investigator engaged by the company in reference to the particular fire loss involved in the request even though the attorney, adjustor or investigator is not a full-time employee of the insurance company. The attorney, adjustor or investigator shall provide the fire marshal with proof of authorization from the insurance company to act as its representative relative to the loss.

661—5.14(17A,80,100A) Forms. These rules require the use of the following forms that are available from the commissioner or the state fire marshal.

5.14(1) When an insurance company has reason to believe that a fire loss has occurred, the company shall notify the fire marshal on the form entitled "Insurance Form Number One."

5.14(2) Requests for information by the fire marshal, the fire marshal's agents or employees from an insurance company pursuant to Iowa Code section 100A.2 shall comply with the form entitled "Insurance Form Number Two."

5.14(3) Material requested on Insurance Forms Number One and Two shall carry a cover form which complies with "Insurance Form Number Three."

5.14(4) Request for information by an insurance company from the fire marshal shall comply with "Insurance Form Number Four."

661—5.15(17A,100) Waivers, variances, and exceptions. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules of the state fire marshal in situations where no other more specific procedure provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

"Rules of the state fire marshal" means any rules adopted pursuant to rule-making authority assigned to the fire marshal, including but not limited to rules adopted pursuant to Iowa Code section 100.1, 100.35, 100B.10, 100C.7, 101.1, 101.23, or 101A.5, or to implement any provision of Iowa Code chapter 100, 100A, 100B, 100C, 101, or 101A, or any other reference in an Iowa statute to rule making by the fire marshal or establishment of fire safety standards or requirements by the fire marshal.

NOTE: As of February 1, 2006, the following chapters are "rules of the state fire marshal": 661—Chapters 5, 51, 53, 205, 231, 251, 259, and 291.

"Waiver" or *"variance"* means an action by the fire marshal which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

5.15(1) Applicability of rule. The fire marshal may grant a waiver from a rule only if the fire marshal has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The fire marshal may not waive requirements created or duties imposed by statute.

5.15(2) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the fire marshal may, in the fire marshal's sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the fire marshal finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5.15(3) Filing of petition. A petition for a waiver must be submitted in writing to the fire marshal as follows:

a. *License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

b. *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. *Other.* If the petition does not relate to a license application or a pending contested case, the petition shall be submitted using a caption indicating the name of the entity or person for whom the waiver is requested and the location of property to which the proposed waiver would apply, if any.

d. *File petition.* A petition is deemed filed when it is received in the office of the state fire marshal. A petition should be sent or delivered to the Iowa State Fire Marshal, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

5.15(4) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

b. A description of and citation to the specific rule from which a waiver is requested.

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 5.15(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the department of public safety or any other agency of the state of Iowa or political subdivision and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license or certificate held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the last five years.

f. Any information known to the requester regarding actions of the fire marshal in similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

h. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

5.15(5) Additional information. Prior to issuing an order granting or denying a waiver, the fire marshal may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the fire marshal may, on the fire marshal's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the fire marshal related to the waiver request.

5.15(6) Notice. The fire marshal shall acknowledge a petition upon receipt. The fire marshal shall ensure that, within 30 days of receipt of the petition, notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, including the petitioner. In addition, the fire marshal may give notice to other persons. To accomplish this notice provision, the fire marshal may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

5.15(7) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

5.15(8) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. Fire marshal discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the fire marshal, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the fire marshal based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the fire marshal should exercise discretion to grant a waiver of a rule.

c. Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

d. Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the fire marshal shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

e. Conditions. The fire marshal may place on a waiver any condition that the fire marshal finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the fire marshal, a waiver may be renewed if the fire marshal finds that grounds for a waiver continue to exist.

g. Time for ruling. The fire marshal shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the fire marshal shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

h. When deemed denied. Failure of the fire marshal to grant or deny a petition within the required time period shall be deemed a denial of that petition by the fire marshal. However, the fire marshal shall remain responsible for issuing an order denying a waiver.

i. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

5.15(9) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the fire marshal is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

5.15(10) Summary reports. The fire marshal shall provide information regarding requests for waivers received pursuant to this rule to the agency rules administrator for inclusion in summary reports of requests for waivers as provided for in 661—subrule 10.222(10).

5.15(11) Cancellation of a waiver. A waiver issued by the fire marshal pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the fire marshal issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

5.15(12) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

5.15(13) Defense. After the fire marshal issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

5.15(14) Appeals. Decisions of the fire marshal pursuant to this rule may be appealed to the commissioner of public safety. Provision for appeals of proposed decisions in contested case proceedings shall apply, as provided in rule 661—10.327(17A).

5.15(15) Judicial review. Judicial review of the department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

5.15(16) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must either be submitted on a completed waiver request form provided by the fire marshal or substantially conform to the following form:

BEFORE THE IOWA DEPARTMENT OF PUBLIC SAFETY,
STATE FIRE MARSHAL DIVISION

Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter).	PETITION FOR WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in the answer all of the following:

- Why applying the rule would result in undue hardship to the petitioner;
- Why waiving the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the department, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the fire marshal's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the fire marshal with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature Date

This rule is intended to implement Iowa Code section 17A.22.
[Editorial change: IAC Supplement 2/11/09]

661—5.16(100) Alternate requirements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.17 to **5.34** Reserved.

661—5.35(100) Standards for automatic fire extinguishing systems. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.36 to **5.39** Reserved.

661—5.40(17A,80,100) Portable fire extinguishers—generally. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.41(17A,80,100) Halon fire extinguishing systems—generally. Rescinded IAB 7/19/06, effective 7/1/06.

661—5.42(100) Cellulose insulation. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.43 to **5.49** Reserved.

These rules are intended to implement Iowa Code chapters 100 and 100A.

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MEANS OF EXIT

661—5.50(100) General requirements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.51(100) Exits. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.52(100) Sprinklers in elevators. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.53 to **5.99** Reserved.

[Filed 11/25/55]
[Filed 12/19/56]

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LIFE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS

661—5.100(100) Exits and escapes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.101(100) Exits. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.102(100) Enclosure of vertical shafts. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.103(100) Standpipes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.104(100) Separation of occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.105(100) Dead-end corridors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.106 to **5.229** Reserved.
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661—5.230(100) High-rise buildings. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.231 to **5.249** Reserved.
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LIQUEFIED PETROLEUM GASES

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.250 to **5.274** Reserved.

LIQUEFIED NATURAL GAS

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.275 to **5.299** Reserved.

FLAMMABLE AND COMBUSTIBLE LIQUIDS CODE

661—5.300 Reserved.

661—5.301(100) Assembly occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.302 to **5.349** Reserved.

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OIL BURNING EQUIPMENT

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.350 to **5.399** Reserved.

STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND ISOLATED CONSTRUCTION PROJECTS

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.400 to **5.449** Reserved.

TRANSPORTATION AND DELIVERY OF FLAMMABLE AND COMBUSTIBLE LIQUIDS BY TANK VEHICLES

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.450 to **5.499** Reserved.

CHILD CARE CENTERS

661—5.500(100) Definitions. The following definitions apply to rules 661—5.500(100) to 661—5.509.

"Approved" is defined as being acceptable to the state fire marshal.

"Approved equipment and material" shall mean any equipment or material tested and listed by a nationally recognized testing laboratory.

"Approved standards" shall mean any standard or code prepared and adopted by a nationally recognized association.

"Attic," when used in these standards, shall mean the space between the ceiling beams of the top habitable story and the roof rafters.

"Automatic," as applied to a door, window or other protection for an opening shall mean that such door, window or other protection is so constructed and arranged that if open it will close when subjected to a predetermined temperature or rate of temperature rise.

"Automatic sprinkler system" shall mean an arrangement of piping and sprinkler designated to operate automatically by the heat of fire and to discharge water upon the fire, according to the standards of the National Fire Protection Association.

"Basement" or cellar for these regulations shall mean that part of a building where the finish floor is more than 30 inches below the finish grade at the building.

"Child occupied areas" used in this regulation for purposes of area separation, means of egress and use, as that area used for sleeping, dining, activity and educational purposes and other areas subject to occupancy by children.

"Combustible" shall mean capable of undergoing combustion.

"Combustible or hazardous storage area of room" shall mean those areas containing heating apparatus and boiler rooms, basements or attics used for the storage of combustible material, flammable liquids, workrooms such as kitchen, laundry, handicraft shops, carpenter shops, paint shops, and upholstery shops, central storerooms such as furniture, mattresses and miscellaneous storage, and similar occupancies intended to contain combustible material which will either be easily ignited, burn with an intense flame or result in the production of dense smoke and fumes.

"Existing center" is that which is already in existence at the date these rules go into effect.

"Exit" is that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment as required in these regulations to provide a protected way of travel to the exit discharge.

"Exit access" is that portion of a means of egress which leads to an entrance to an exit.

"Exit discharge" is that portion of a means of egress between the termination of an exit and a public way.

"Fire door" shall mean a door and its assembly, so constructed and assembled in place as to give protection against the passage of fire, equal to surrounding construction.

"Fire extinguisher rating" shall be determined as stated in NFPA 10, 2006 edition, Appendix G.

"Fire marshal" means the state fire marshal, any of the state fire marshal's staff, or assistant state fire inspectors, carrying authorized cards signed by the state fire marshal.

"Fire partition" shall mean a partition which subdivides a story of a building to provide an area of refuge or to restrict the spread of fire for a minimum of one hour.

"Fire-resistance rating" shall mean the time in hours or fractions thereof that materials or their assemblies will resist fire exposure as determined by fire tests conducted in compliance with approved standards.

"Fire resistive" shall mean that property of materials or assemblies which prevents or retards the passage of excessive heat, hot gases or flames under condition of use. The term "fire resistive" shall mean the same as "fire resistance."

"Fire wall" shall mean a wall of brick or reinforced concrete having adequate fire resistance and structural stability under fire conditions to accomplish the purpose of completely subdividing a building or of completely separating adjoining building to resist the spread of fire. A fire wall shall extend continuously through all stories from foundation to or above the roof.

"Floor area net" shall be the actual occupied area not including accessory unoccupied areas or thickness of walls.

"Interior finish material" shall be classified in accordance with the method of tests of surface burning characteristics of building material National Fire Protection Association Standard No. 255, Test Methods, Surface Burning—Building Materials, 1969. Classification of interior finish material shall be in accordance with tests made under conditions simulating actual installations, provided that the state fire marshal may by rule establish the classification of any material on which a rating by standard test is not available. Interior finish material shall be grouped in the following classes in accordance with their flame spread and related characteristics.

Class A. Interior finish flame spread 0-25.

Class B. Interior finish flame spread 25-75.

Class C. Interior finish flame spread 75-100.

"Mixed occupancy" shall mean when the building is used for more than one occupancy purpose.

"Panic hardware" shall cause the door latch to release when pressure of not to exceed 15 pounds is applied to the releasing devices in the direction of exit travel. Such releasing devices shall be bars or panels extending not less than two-thirds of the width of the door and placed at height not less than 30 nor more than 44 inches above the floor. Only approved panic hardware shall be used on exit doors.

"Self-closing" shall mean to be equipped with an approved device which will ensure closing after having been opened.

"Sprinklered" shall mean to be completely protected by an approved system of automatic sprinklers installed and maintained in accordance with approved standards.

"State fire marshal" shall mean the chief officer of the division of fire protection as described in Iowa Code section 100.1 or one authorized to act in the state fire marshal's absence.

"Story" shall mean that part of a building comprised between a floor and ceiling or roof next above. The first story shall be that story which is of such height above the ground that it does not come within the definition of a basement or cellar.

"Types of construction" shall be defined in National Fire Protection Association, pamphlet No. 220, published in 1985.

"Unduly endanger" shall mean beyond a normal limit bring into danger or peril.

661—5.501(100) Child care centers in mixed occupancies.

5.501(1) *"Application—mixed occupancy."* All child care centers seeking licenses under Iowa Code chapter 237A, located in mixed occupancies shall meet the requirements of the primary use and occupancy of the building as promulgated by the state fire marshal. If no such rules exist the following shall be complied to and the area used for child care shall comply as per number of children occupying the center at any given time.

5.501(2) *"Mixed occupancy."*

a. *"Not meeting codes."* In facilities not meeting nationally recognized codes for child care centers the minimum division between the child occupied area and other areas shall be a one-hour fire partition and the perimeter protected with an approved fire detection or automatic extinguishing system as directed by the fire marshal. Less than a one-hour partition may be accepted when the fire marshal approves adequate perimeter protection.

b. *"Meeting recognized codes."* Where child care centers are located in a building containing mixed occupancies, the separation requirements of a nationally recognized code are satisfied, it shall be considered as complying to the section above.

c. *"Undue danger."* Child care centers shall not be in buildings of mixed occupancies where the acts of other occupants could unduly endanger the lives of the children in the child care center.

661—5.502(100) Child care centers for seven or more children.

5.502(1) *"Application."*

a. *"Life safety requirements."* This section establishes life safety requirements for child care centers in which seven or more children receive care.

b. *"Regulations shall apply to all centers."* Rules 661—5.500(100) through 661—5.502(100) shall apply to all child day care centers. Rules 661—5.500(100) through 661—5.502(100) shall constitute the minimum requirements for day care centers for approval by the state fire marshal's office. Additional requirements may be established by other governmental agencies or governmental subdivisions.

c. *"Time for compliance."* In existing childcare centers a reasonable time shall be allowed for compliance with any part of this rule, commensurate with the magnitude of the expenditure and the disruption of services. When alternate protection is installed and accepted the center shall be considered as conforming for the purposes of these regulations.

d. *"Additions or structural alterations."* Additions or structural alterations to existing facilities must have written approval from the state fire marshal, and working plans and specifications must be submitted for review and approval.

5.502(2) *"Exit details."*

a. *"Number of exits."* Each floor occupied by children shall have not less than two approved remote means of egress. Additional exits shall be determined by the number of occupants.

b. *"Basement exits."* Where children are located below the floor of exit discharge (basement) at least one exit directly to the outside to ground level shall be provided. No center shall be located more than one story below the ground. Any stairway to the floor above shall be cut by a fire barrier containing a rated door of at least 20-minute fire protection or a minimum of 1¾-inch solid bonded wood core. They shall be equipped with a self-closing device and positive latch.

c. *"Types of exits."* Exits shall be of the following types or combinations thereof as defined by the National Fire Protection Association. At least two exits of the below types, remote from each other, shall be provided for every story or section of the building. At least one exit in every story or section shall be of type 2, 3, 4, 5, or 6 as listed below. Exterior fire escape stairs, minimum of 44 inches in width, may be accepted as a second means of exit.

(1) Horizontal exits.

(2) Doors leading directly outside the buildings (without stairs).

(3) Ramps.

(4) Stairways, or outside stairs.

(5) Rescinded IAB 2/15/06, effective 2/1/06.

(6) Smoke towers.

d. *"Direct exits."* At least one required exit from each floor shall lead directly or through an enclosed corridor, to the outside. A second or third required exit, where a more direct exit is impractical, may lead to a first floor lobby having ample and direct exit to the outside.

e. *"Exit doors shall not be locked."* Exit doors shall not be locked against egress by bolt, key locks, hooks or padlocks. A latch type lock is permissible that locks against the outside entrance.

5.502(3) *"Doors."*

a. *"Size."* Each door in a means of egress shall not be less than 30 inches wide, 6 feet in height and reasonably covering the opening. If a door has a latch and is used by more than 50 people it shall be equipped with panic hardware.

b. *"Closet doors."* Every closet door latch shall be such that children can open the door from the inside of the closet.

c. *"Emergency unlocking."* Every door lock, except exit discharge, shall be designed to permit opening of the locked door from the outside in an emergency, and the opening device shall be readily accessible to the staff.

d. *"Doors protecting vertical openings."* The doorway between the floor of exit discharge and any floor below shall be equipped with a self-closing labeled door of at least a 20-minute fire protection rating or a 1¾-inch solid bonded wood core door.

5.502(4) *"Interior finish."* Interior finish in exits in child occupied spaces in the center shall be Class A in new centers and A or B in existing centers. See Table No. 5-C following 5.105(100).

5.502(5) *"Detection and extinguishing systems when needed."* Detection and extinguishing systems shall comply to the following chart in regard to construction and number of stories.

a. *"Chart for detection and extinguishing systems—when needed."*

Number of stories

Type of Construction	Number of Children	1	2	3	4	5 or more
Fire Resistive and Protected Noncombustible	7-15	4	2	2	2	2
	16 or more	3	2	2	2	2
Protected Wood Frame and Protected Ordinary	7-15	4	2	1	NP	NP
	16 or more	3	2	1		
Heavy Timber	7-15	4	2	1	NP	NP
	16 or more	3	2	1		
Unprotected Noncombustible	7-15	4	2	1	NP	NP
	16 or more	3	2	1		
Unprotected Wood Frame and Unprotected Ordinary	7-15	4	NP	NP	NP	NP
	16 or more	2				

Note 1—Sprinkler; Note 2—Complete Automatic Detection; Note 3—Manual Alarm; Note 4—Single Station Smoke Detection; Note 5—NP Not Permitted

"EXCEPTION:" Buildings where classrooms have a direct exit door to the outside are not required to have complete automatic detection. A manual alarm or single-station detector will be satisfactory.

b. "Approved sprinkler system." Any required automatic sprinkler system shall be in accordance with approved standards for systems in light hazard occupancies, and shall be electrically interconnected with the manual fire alarm system. The main sprinkler control valve shall be electrically supervised so that at least a local alarm will sound when the valve is closed.

c. "Complete automatic detection system." Requirements for automatic fire detection systems shall meet the following standards.

(1) Automatically detect a fire.

(2) Sound alarm signal throughout the premises for evacuation purposes.

(3) Provide assurance the system is in operating condition by electric supervision.

(4) Underwriters Laboratories listed equipment to be used throughout the system.

(5) Provide a manual test switch and tested monthly and noted for inspection purposes.

(6) Installation of equipment and wiring shall be in a neat and workmanship like manner.

(7) To include smoke, or products of combustion, detection devices when required by the fire marshal.

(8) Properly located manual alarm stations.

(9) Where fire detection systems are installed to meet the requirements of this regulation, they shall be approved electrically supervised systems. Detectors shall be approved combined rate of rise and fixed temperature type detectors 135°F, or smoke, or products of combustion type, and properly installed. In spaces where high temperature is normal, devices having a higher operating point may be used. Operation of a detection or alarm shall cause an alarm which is audible throughout the center. In existing centers where "fixed temperature only detectors" are already installed, they need not be replaced until such time that a new head needs to be installed. Detector units shall be installed in every room and concealed area of the child care center.

d. "Single station detectors." Every single station detector of product of combustion other than heat shall be mounted on the ceiling or wall at a point of central location in the corridor or in child occupied areas. No detector shall be mounted less than 12 inches of ceiling level. Care shall be exercised to ensure the installation will not interfere with the operating characteristics of the detectors. When activated the detector shall provide an alarm. The detectors shall be tested monthly by the operator of the center or the operator's designee and a record kept for inspection purposes.

e. "Manual fire alarms."

(1) "Installation." Manual fire alarm stations shall be provided on each floor and so located that the alarm station is not more than 75 feet from any area within the building. Horns or bells that provide a distinctive sound different from any other bell system shall be provided that will give audible warning to all occupants of the building in case of a fire or other emergency. A test system shall be provided for the purpose of conducting fire drills and tests of the alarm system.

(2) "Approval of systems." Factory Mutual or Underwriters Laboratories, Inc., equipment and component parts shall be used in the installation of the fire alarm system. The electrical energy for the fire alarm system shall be on a separate circuit and shall be taken off the utility service to the center building ahead of the entrance disconnect.

(3) "Extension of system." Whenever the fire marshal determines it advisable, it may be required that the fire alarm system be extended or designed to provide automatic fire detection devices in unsupervised areas, boiler rooms, storerooms and shop areas.

(4) "Mounting." Each station shall be securely mounted. The bottom of each station will be not less than 4½ feet and not more than 6 feet above the floor level.

(5) "Location." Manual fire alarm boxes shall be distributed throughout the protected area so that they are unobstructed, readily accessible, and located in the normal path of exit from the area.

5.502(6) *"Fire drills."* Fire drills shall be held at least once a month and recorded. A fire emergency plan shall be written and posted in a conspicuous place.

5.502(7) *"Extinguishers."* Each child occupied area shall be protected by a Class "A" fire extinguisher 2A rating, and in areas where heating or cooking units are used there shall be a "5" lb. BC extinguisher 2B rating.

5.502(8) *"Heating equipment."*

a. *"Location."* No furnace, space heater or portable heater shall be located in child occupied areas. EXCEPTION: Approved suspended unit heaters may be used, except in means of egress and sleeping areas, provided such heaters are located high enough to be out of the reach of persons using the area and provided they are equipped with the proper safety devices. Fireplaces may be used providing the fireplace is equipped with a heat tempered glass fireplace enclosure guaranteed against breakage up to a temperature of 650°F. If, in the opinion of the fire marshal, special hazards are present, a lock on the enclosure and other safety precautions may be required.

b. *"Combustion air."* If solid partitions are used to provide the separation of the furnace room from other areas, provision for outside air shall be made to assure adequate combustion for the heating unit.

5.502(9) *"Floor coverings."* For carpet see Table No. 5-D following 5.105(100). Wall hangings and window treatments shall be flame-retardant or rendered flame-retardant.

5.502(10) *"Maintenance."*

a. *"Regular and proper maintenance."* Regular and proper maintenance of electric service, heating plants, alarm systems, sprinkler systems, fire doors and exit facilities shall be accomplished.

b. *"Storerooms."* Storerooms shall be maintained in a neat and proper manner at all times.

c. *"Excessive storage."* Excessive storage of combustible materials such as paper cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

661—5.503 to **5.509** Reserved.

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ADULT DAY SERVICES PROGRAMS

661—5.510(231D) Adult day services.

5.510(1) *Definitions.* The following definitions apply to rule 661—5.510(231D).

"Existing adult day services program" means an adult day services program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of Iowa Code Supplement chapter 231D and which has been in continuous operation in the same facility since May 31, 2004, or before and which has operated continuously since May 31, 2004, in a facility which has not undergone major renovation or remodeling since May 31, 2004.

"New adult day services program" means an adult day services program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of Iowa Code Supplement chapter 231D which has not been in continuous operation since May 31, 2004, or which operates in a facility which has undergone major renovation or remodeling since June 1, 2004.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

5.510(2) *Fire safety requirements for existing adult day services programs.* NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," is adopted by reference as the rules establishing fire safety requirements for existing adult day services programs. Any existing adult day services program shall comply with the provisions of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," by June 1, 2005.

EXCEPTION: If the fire marshal finds that a violation of any provision of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," presents an imminent threat to the safety of clients or staff, the fire marshal may require correction of the condition or conditions which are in violation as a condition of approval of the facility for use by an adult day services program.

5.510(3) *Fire safety requirements for new adult day services programs.* NFPA 101, Life Safety Code, 2003 edition, Chapter 16, "New Day Care Occupancies," is adopted by reference as the rules establishing fire safety requirements for new adult day services programs.

This rule is intended to implement Iowa Code Supplement section 231D.15.

661—5.511 to **5.606** Reserved.

[Filed 3/25/04, Notice 12/10/03—published 4/14/04, effective 6/1/04]

RESIDENTIAL FACILITIES

661—5.607(100) Scope. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.608(100) Means of escape. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.609(100) Protection of vertical openings. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.610(100) Detection, alarm, and communications. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.611(100) Hazardous areas. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.612(100) Building service. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.613(100) Evacuation plan and fire drills. Rescinded IAB 11/22/06, effective 1/1/07.

Rules 5.607(100) to 5.613(100) are intended to implement Iowa Code section 135G.4.

661—5.614 Reserved.

661—5.615(237C) Facilities in which foster care is provided to fewer than six children by agencies. Any facility, including a single-family residence, within which foster care is provided by an agency to fewer than six children shall meet each of the requirements established in this rule.

5.615(1) Battery-operated smoke detectors shall be installed in each sleeping room and on each floor of the home and shall be installed in compliance with the manufacturer's instructions.

5.615(2) Each exit and exit path shall remain clear and unobstructed at all times.

5.615(3) A five-pound 2A:10B:C fire extinguisher shall be installed in the primary caregiver's sleeping room. Additional extinguishers may be provided. Each extinguisher in the facility shall be inspected yearly by a third party in accordance with NFPA 10, Standard for Portable Fire Extinguishers, 2006 edition.

5.615(4) No combustible items shall be stored within a three-foot clearance of furnaces, hot water heaters, and electrical panels.

5.615(5) A carbon monoxide detector shall be installed on each floor of the residence. A detector shall be installed in proximity to any gas-fired appliance. All detectors shall be installed in accordance with the manufacturer's installation instructions.

5.615(6) If propane is used in the facility, a propane leak detector shall be installed in proximity to each propane-fired appliance. All detectors shall be installed in accordance with the manufacturer's installation instructions.

5.615(7) An evacuation plan shall be maintained, and fire drills shall be conducted at least once every other month.

5.615(8) If a child is sleeping in a basement room, then an egress window shall be provided in the room. An "egress window" means an existing operable window with a clear opening area of not less than 5.7 square feet, and with a minimum opening height and width of 24 inches and 20 inches, respectively.

This rule is intended to implement Iowa Code section 237.3, subsection 3.

661—5.616 to **5.619** Reserved.

661—5.620(100,135C) General requirements for small group homes (specialized licensed facilities) licensed pursuant to Iowa Code section 135C.2.

5.620(1) *Scope.* This rule applies to specialized licensed facilities licensed under the provisions of Iowa Code section 135C.2 having three to five beds and serving persons with mental retardation, chronic mental illness, developmental disabilities, or brain injuries.

5.620(2) *Exits.*

a. There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms.

b. Interior and exterior stairways shall have a minimum clear width of not less than 30 inches.

5.620(3) *Windows.* Every resident sleeping room shall have an outside window or outside door arranged and located to permit the venting of products of combustion and access to fresh air in the event of an emergency.

a. In new construction, windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches and the finished sill height shall be not more than 44 inches above the floor.

b. In existing construction the finished sill height shall be not more than 44 inches above the floor or may be accessible from a platform not more than 44 inches below the window sill.

5.620(4) *Interior finish.* Interior finish in exit shall be Class A, B or C. See Table No. 5-C, following 661—5.105(100).

5.620(5) *Doors.* Doors to resident sleeping rooms shall be a minimum of 1 3/8-inch solid core wood or equivalent.

5.620(6) *Vertical separations.* Basement stairs must be enclosed with one-hour rated partitions and 1¾-inch solid core wood doors equipped with self-closers. These doors must be kept closed unless held open by an approved electromagnetic holder, actuated by an approved smoke detection device located at the top of the stairwell and interconnected with the alarm system.

5.620(7) *Fire detection, fire alarms and sprinklers.*

a. The home shall have smoke detection installed on each occupied floor, including basements, in accordance with NFPA 72, 1999 edition, Chapter 11. Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system shall be tested by a competent person at least semiannually with date of test and name noted.

b. Homes in which exiting is restricted by special door locking arrangements that prevent residents from free egress shall be equipped with sprinkler systems meeting the requirements of National Fire Protection Association Standard Number 13D, 1996 edition.

EXCEPTION: Homes in this classification that were licensed prior to November 1, 1999, shall comply with this requirement within a reasonable period of time and, in any event, not later than November 1, 2001.

5.620(8) *Fire extinguishers.*

a. Approved fire extinguishers shall be provided on each floor, so located that a person will not have to travel more than 75 feet from any point to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, each kitchen or basement storage room.

b. Type and number of portable fire extinguishers shall be determined by the fire marshal.

5.620(9) *Mechanical, electrical and building service equipment.*

a. Air conditioning, ventilating, heating, cooking and other service equipment shall be in accordance with state regulations governing same, or nationally recognized standards such as National Fire Protection Association standards governing the type of equipment, and shall be installed in accordance with the manufacturer's specifications. All hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units and closets need not be separated with walls if all equipment is installed in accordance with the manufacturer's listed instructions.

b. Portable comfort heating devices are prohibited.

5.620(10) *Attendants, evacuation plan.*

a. Every home shall have at least one staff person on the premises at all times while residents are present. This staff person shall be at least 18 years of age and capable of performing the required duties of evacuation. No person other than the management or a person under management control shall be considered as an attendant.

b. Every facility shall formulate a plan for the protection of all persons in the event of fire and for their evacuation to areas of refuge and from the building when necessary. All employees shall be instructed and kept informed respecting their duties under the plan. This plan is to be posted where all employees may readily study it. Fire drills shall be held at least once a month. Records must be kept available for inspection.

5.620(11) *Smoking.*

a. There shall be no smoking in resident sleeping areas and smoking and no smoking policies shall be strictly adhered to.

b. Ashtrays shall be constructed of noncombustible material with self-closing tops and shall be provided in all areas where smoking is permitted.

5.620(12) *Exit illumination.* Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.620(13) *Occupancy restrictions.*

a. Occupancies not under the control of, or not necessary to, the administration of residential care facilities are prohibited therein with the exception of the residence of the owner or manager.

b. Nonambulatory residents shall be housed only on accessible floors which have direct access to grade which does not involve stairs or elevators.

5.620(14) *Maintenance.*

a. All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems and exit facilities.

b. Storerooms shall be maintained in a neat and proper manner at all times.

c. Excessive storage of combustible materials such as papers, cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

This rule is intended to implement Iowa Code section 135C.2(5)*"b."*

661—5.621 to **5.624** Reserved.

661—5.625(100,231B) Elder group homes. This rule applies to elder group homes certified by the Iowa department of elder affairs.

5.625(1) *Definitions.* The following definitions apply to rule 661—5.625(100,231B):

"Elder" means a person 60 years of age or older.

"Elder group home" means a single family residence that is the residence of a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity and which is certified as an elder group home by the Iowa department of elder affairs.

5.625(2) *Exits.* There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms. Interior and exterior exit stairways shall have a minimum clear width of not less than 30 inches.

5.625(3) *Windows.* Each resident sleeping room shall have an outside window or outside door arranged and located to provide ventilation, access to fresh air, and an emergency escape route. New or replacement windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(4) *Interior finish.* Interior finish in resident occupied areas shall be Class A or B in accordance with Table 5-C, 661 IAC 5.105(100).

5.625(5) *Doors.* Door to resident sleeping rooms shall be a minimum of one and three-eighths inches solid core wood or equivalent.

5.625(6) *Fire detection.* An elder group home shall have smoke detectors installed on each floor, including the basement, and in each sleeping room, in accordance with National Fire Protection Association # 74, Standard for Household Fire Warning Equipment, 1989 edition, and 661 IAC 5.807(100). Smoke detectors shall be interconnected so that activation of any detector will activate detectors throughout the home.

5.625(7) *Fire extinguishers.* Fire extinguishers shall be provided on each floor and shall be located so that a person will not have to travel any more than 75 feet from any point in the home to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, the kitchen. Type, distribution, inspection, maintenance, and recharging of extinguishers shall conform to NFPA 10, Standard for Portable Fire Extinguishers, 2006 edition.

5.625(8) *Smoking.* There shall be no smoking in resident sleeping rooms. Smoking may be permitted in designated areas only. If an indoor area within an elder group home is designated as a smoking area, that area shall be equipped with ashtrays constructed of noncombustible material and with self-closing tops.

5.625(9) *Exit illumination.* Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.625(10) *Maintenance.* All fire and life safety equipment or devices shall be U.L. or independent testing laboratory approved, installed according to manufacturer specifications, and regularly and properly maintained at all times in accordance with nationally recognized standards. This includes, but is not limited to, fire extinguishing equipment, alarm systems, doors and their appurtenances, and exit facilities. Flammable and combustible materials shall be properly stored in original, properly labeled containers or approved safety containers. Storerooms shall be maintained in a neat and proper manner at all times. Excessive storage of combustible materials is not permitted.

5.625(11) *Equipment.* Electrical, heating, and ventilating equipment shall be installed and maintained in accordance with manufacturer's instructions and nationally recognized standards. Portable space heaters are not permitted.

5.625(12) *Emergency procedures.* Every home shall formulate a plan for the protection of occupants in the event of a fire or other emergency. The plan shall take into consideration areas of refuge within the building as well as evacuation from it. The written plan must be provided to each resident and explained to them at the time they move into the facility and at least annually thereafter.

5.625(13) *Compressed gases.* If oxygen or other compressed gases are required by residents for respiratory purposes, the applicable standards for use, containers, equipment, maintenance and storage of compressed gases, as set forth in National Fire Protection Association # 99, 1993 edition, shall be adhered to.

5.625(14) *Basements.* Interior basement stairways, if enclosed, must have walls and ceilings constructed of five-eighths inch gypsum board or material providing equivalent fire protection. Basements must be separated from the first floor by a self-closing one and three-eighths inch solid wood core door or equivalent. If a basement is used by residents, it must have a door leading to the outside or an operational window having a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(15) *Construction.* Unprotected wood frame structures of more than two stories in height, excluding basement, shall not be permitted for use as elder group homes.

EXCEPTION: Unprotected wood frame structures protected throughout by an approved automatic sprinkler system may be used as elder group homes.

This rule is intended to implement Iowa Code chapter 100 and section 231B.2.

661—5.626(231C) Assisted living housing.

5.626(1) *Definitions.* The following definitions apply to rule 661—5.626(231C):

"Assisted living facility" means a facility that houses a program that is certified or seeking certification pursuant to the provisions of Iowa Code Supplement section 231C.3 or that has been identified by the department of inspections and appeals as a facility housing a program which requires certification pursuant to Iowa Code Supplement section 231C.3 and is not currently certified.

"Existing assisted living facility" means an assisted living facility which has been in continual operation since May 31, 2004, or before.

"New assisted living facility" means an assisted living facility which begins operation on or after June 1, 2004.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

5.626(2) *New assisted living facilities.* NFPA 101, Life Safety Code, 2003 edition, Chapter 32, "New Residential Board and Care Occupancies," is hereby adopted by reference as the rules governing new assisted living facilities.

5.626(3) *Existing assisted living facilities.* NFPA 101, Life Safety Code, 2003 edition, Chapter 33, "Existing Residential Board and Care Occupancies," is hereby adopted by reference as the rules governing existing assisted living facilities.

5.626(4) *Alternative requirements.* In lieu of complying with the requirements established in subrule 5.626(2) or 5.626(3), an assisted living facility may alternatively comply with the requirements established in this subrule, if it meets the respective qualifications stated for the alternative requirement.

a. An assisted living facility that was initially approved by the fire marshal on the basis of compliance with the requirements of the 2000 edition of the Life Safety Code or that is located within or adjacent to a licensed health care facility required to comply with applicable provisions of the 2000 edition of the Life Safety Code may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition. If the facility was initially approved on the basis of compliance with Chapter 32, "New Residential Board and Care Occupancies," the facility shall continue to comply with the provisions of that chapter. A facility that was initially approved by the fire marshal on the basis of compliance with Chapter 33, "Existing Residential Board and Care Occupancies," may continue to comply with that chapter as long as it is in continuous operation and does not undergo major renovation

or remodeling. A facility that was initially approved on the basis of compliance with Chapter 33 and whose operation is not continuous or that undergoes major renovation or remodeling shall comply with Chapter 32.

b. An assisted living facility that was certified prior to July 1, 1997, and that has continuously operated under that certification since July 1, 1997, may comply with the requirements of NFPA 101, Life Safety Code, 1994 edition, Chapter 23, "Existing Residential Board and Care Occupancies."

c. An assisted living facility that was certified on or after July 1, 1997, and before June 1, 2004, and that has continuously operated under that certification since before June 1, 2004, may comply with the requirements of NFPA 101, Life Safety Code, 1994 edition, Chapter 22, "New Residential Board and Care Occupancies."

5.626(5) *Evacuation capability.* For any provision of subrules 5.626(1) through 5.626(4) which is contingent upon evacuation capability, facilities may:

a. Comply with requirements for an evacuation capability rating of "impractical."

b. Comply with requirements which are contingent upon evacuation ratings of "slow" or "prompt," provided that the residents and staff of the facility have undergone evacuation rating evaluations performed by a health care professional and that all residents and staff are rated capable of "slow" or "prompt" evacuation, respectively. The evacuation capability ratings shall be updated each time a new resident arrives at the facility, a new staff person is assigned to the facility, or the physical condition or capacity for mobility of a resident or staff member changes significantly. Evacuation capability ratings shall be performed at the expense of the facility and any records supporting the ratings shall be made available to a fire inspector or personnel of the department of inspections and appeals upon request.

This rule is intended to implement Iowa Code Supplement section 231C.4.

661—5.627 to **5.649** Reserved.

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FIRE SAFETY RULES FOR SCHOOL AND COLLEGE BUILDINGS

661—5.650(100) General requirements and definitions. Rescinded IAB 11/22/06, effective 1/1/07.

EXISTING SCHOOL BUILDINGS

661—5.651(100) Application. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.652(100) Exits and occupancy load. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.653(100) Corridors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.654(100) Doors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.655(100) Windows. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.656(100) Stairway enclosures and floor cutoffs. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.657(100) Interior finishes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.658(100) Construction. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.659(100) Fire alarm systems. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.660(100) Electrical wiring. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.661(100) Heating equipment and flammable and combustible liquids. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.662(100) Gas piping. Rescinded IAB 12/1/99, effective 2/1/00.

661—5.663(100) Fire extinguishers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.664(100) Basement, underground and windowless classrooms. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.665(100) Fire hazard safeguards. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.666(100) Automatic sprinklers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.667(100) Open plan buildings. Rescinded IAB 11/22/06, effective 1/1/07.

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661—5.668 to **5.674** Reserved.

NEW SCHOOL BUILDINGS

661—5.675(100) New school buildings. Rescinded IAB 11/22/06, effective 1/1/07.

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661—5.676 to **5.699** Reserved.

NEW COLLEGE BUILDINGS

661—5.700 to **5.714** Rescinded IAB 12/1/99, effective 2/1/00. See 661—5.775(100).

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661—5.715 to **5.748** Reserved.

EXISTING COLLEGE BUILDINGS

661—5.749(100) Application. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.750(100) Exits. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.751(100) Corridors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.752(100) Doors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.753(100) Windows. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.754(100) Stairway enclosures and floor cutoffs. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.755(100) Interior finishes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.756(100) Construction. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.757(100) Fire alarm systems. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.758(100) Electrical wiring. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.759(100) Heating equipment and flammable and combustible liquids. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.760(100) Gas piping. Rescinded IAB 2/15/06, effective 2/1/06.

661—5.761(100) Fire extinguishers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.762(100) Basements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.763(100) Fire hazard safeguards. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.764(100) Automatic sprinklers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.765(100) Open plan buildings. Rescinded IAB 11/22/06, effective 1/1/07.

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661—5.766 to **5.774** Reserved.

NEW COLLEGE BUILDINGS

661—5.775(100) New college buildings. Rescinded IAB 11/22/06, effective 1/1/07.

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661—5.776 to **5.799** Reserved.

FIRE SAFETY RULES FOR RESIDENTIAL OCCUPANCIES

661—5.800(100) General provisions. Rescinded IAB 11/22/06, effective 1/1/07.

NEW RESIDENTIAL OCCUPANCIES

661—5.801(100) General requirements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.802(100) Exit facilities in new residential occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.803(100) General safety requirements. Rescinded IAB 11/22/06, effective 1/1/07.

EXISTING RESIDENTIAL OCCUPANCIES

661—5.804(100) Existing residential occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.805(100) Exit facilities. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.806(100) General provisions. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.807(100) Smoke detectors definition. Rescinded IAB 8/27/08, effective 10/1/08.

661—5.808(100) General requirements. Rescinded IAB 8/27/08, effective 10/1/08.

661—5.809(100) Smoke detectors—notice and certification of installation. Rescinded IAB 8/27/08, effective 10/1/08.

661—5.810(100) Smoke detectors—new and existing construction. Rescinded IAB 8/27/08, effective 10/1/08.

OCCUPANCY CLASSIFICATIONS PER TABLE 8-A

General Occupation Description	Current Occupancy Designation	Complete Occupancy Description
Assembly	A-1	Any assembly building with a stage and occupant load of 1,000 or more in building.
	A-2	Any building or portion of a building having an assembly room with an occupant load of less than 1,000 and a stage.
	A-2.1	Any building or portion of a building having an assembly room with an occupant load of 300 or more without a stage, including such buildings used for educational purposes and not classed as a Group E or Group B, Division 2 Occupancy.
	A-3	Any building or portion of building having an assembly room with an occupant load of 300 or more without a stage, including such buildings used for educational purposes and not classed as a Group E or Group B, Division 2 Occupancy.
	A-4	Stadiums, reviewing stands and amusement park structures not included within other Group A Occupancies.

Business, including offices, factories, mercantile and storage	B-1	Gasoline service stations, storage garages where no repair work is done except exchange of parts and maintenance requiring no open flame, welding or the use of highly flammable liquids.
	B-2	Drinking and dining establishments having an occupant load of less than 50, wholesale and retail stores, office buildings, printing plants, municipal police and fire stations, factories and workshops using material not highly flammable or combustible, storage and sales rooms for combustible goods, paint stores without bulk handling. Buildings or portions of buildings having rooms used for educational purposes, beyond the 12th grade, with less than 50 occupants in any room.
	B-3	Aircraft hangers where no repair work is done except change of parts and maintenance requiring no open flame, welding or use of highly flammable liquids. Open parking garages, heliports.
	B-4	Ice plants, power plants, pumping plants, cold storage, creameries. Factories and workshops using noncombustible and nonexplosive materials. Storage and sales rooms for noncombustible and nonexplosive materials.
Educational	E-1	Any building used for educational purposes through 12th grade by 50 or more persons for more than twelve hours per week or four hours in any one day.
	E-2	Any building used for educational purposes through 12th grade by less than 50 persons for more than twelve hours per week or four hours in one day.
	E-3	Any building used for day-care purposes for more than six children.
Hazardous	H-1	Storage, handling, use or sale of hazardous and highly flammable or explosive materials other than Class I, II, or III-A liquids.
	H-2	Storage and handling of Class I, II and III-A liquids, dry cleaning plants using flammable liquids; paint stores with bulk handling; paint shops and spray painting rooms and shops. The storage or sale of hazardous materials or chemicals or Class I, II and III-A liquids in amounts that do not exceed those set forth in Table No. 9-A is permitted in buildings or portions thereof without classifying such buildings as a Group H Occupancy, provided such chemicals, hazardous materials or liquids are stored and handled in compliance with the provisions of the Fire Code.
	H-3	Woodworking establishments, planing mills, box factories, buffing rooms for tire rebuilding plants and picking rooms; shops, factories or warehouses where loose combustible fibers or dust are manufactured, processed, generated or stored; and pin-refinishing rooms.
	H-4	Repair garages.
	H-5	Aircraft repair hangers.
Institutional	I-1	Nurseries for full-time care of children under the age of six (each accommodating more than five persons). Hospitals, sanitariums, nursing homes with nonambulatory patients and similar buildings (each accommodating more than five persons).

	I-2	Nursing homes for ambulatory patients, homes for children six years of age or over (each accommodating more than five persons).
	I-3	Mental hospitals, mental sanitariums, jails, prisons, reformatories and buildings where personal liberties of inmates are similarly restrained.
		EXCEPTION: Group I Occupancies shall not include buildings used only for private residential purposes for a family group.
Miscellaneous 11 structures	M-1	Private garages, carports.
	M-2	Fences over six feet high, tanks and towers.
Residential 12	R-1	Hotels and apartment houses. Convents and monasteries (more than 10 people).
	R-3	Lodging houses (five guests or rooms).

TABLE 8-B: ALLOWABLE FLOOR AREA
(Per single story)
AND MAXIMUM HEIGHT OF BUILDINGS

TYPES OF CONSTRUCTION								
I	II			III		IV	V	
F.R.	F.R.	ONE-HOUR	N	ONE-HOUR	N	H.T.	ONE-HOUR	N
BASIC ALLOWABLE FLOOR AREA FOR BUILDINGS ONE STORY IN HEIGHT (In Square Feet)								
Unlimited	29,900	13,500	9,100	13,500	9,100	13,500	10,500	6,000
MAXIMUM HEIGHT IN FEET								
Unlimited	160	65	55	65	55	65	50	40
MAXIMUM HEIGHT IN STORIES								
Unlimited	12	4	2	4	2	4	3	2

See Notes 1. - 6.
N — No Requirements for Fire Resistance
F.R. — Fire Resistive
H.T. — Heavy Timber

NOTE 1: Separation on two sides. Where public space, streets, or yards more than twenty feet in width extend along and adjoin the sides of the building, floor areas may be increased at a rate of 1¼ percent for each foot by which the minimum width exceeds twenty feet but the increase shall not exceed 50 percent.

NOTE 2: Separation on three sides. Where public space, streets or yards more than twenty feet in width extend along and enjoin three sides of the building, floor areas may be increased at a rate of 2½ percent for each foot by which the minimum width exceeds twenty feet, but the increase shall not exceed 100 percent.

NOTE 3: Separation on all sides. Where public space, streets or yards more than twenty feet in width extend on all sides of a building and enjoin the entire perimeter, floor areas may be increased at a rate

of 5 percent for each foot by which the minimum width exceeds twenty feet. Such increases shall not exceed 100 percent.

NOTE 4: Areas of buildings over one story. The total combined floor area for multistory buildings may be twice that permitted by Table 8-B for one-story buildings, and the floor area of any single story shall not exceed that permitted for a one-story building.

NOTE 5: Automatic sprinkler system. The areas specified in Table 8-B may be tripled in one-story buildings and doubled in buildings of more than one story if the building is provided with an approved automatic sprinkler system throughout. The area increases permitted for installing an approved automatic sprinkler system may be compounded with that specified in Notes 1, 2, and 3.

NOTE 6: The area increases permitted in Note 5 shall not apply when automatic sprinkler systems are installed under the following provisions:

a. An increase in allowable number of stories.
b. Substitution for one-hour fire-resistive construction.
c. Atriums.

TABLE 8-C—REQUIRED SEPARATION
IN BUILDINGS OF MIXED OCCUPANCY
(In Hours)

	A-1	A-2	A-2.1	A-3	A-4	B-1	B-2	B-3	B-4	E	H-1	H-2	H-3	H-4,5	I	M[2]	R-1	R-3
I	3	3	3	3	3	4	2	4	4	1	NP[3]	4	4	4	—	1	1	1
R-1	1	1	1	1	1	3[1]	1	1	1	1	4	3	3	3	1	1	—	N
R-3	1	1	1	1	1	1	N	N	N	1	4	3	3	3	1	1	N	—

[1]The three-hour separation may be reduced to one hour where the Group B, Division 1 Occupancy, is limited to the storage of passenger motor vehicles having a capacity of not more than nine persons per vehicle and provided no repair or fueling is done and the area does not exceed 3,000 square feet in a building.

[2]In the one-hour occupancy separation between a Group R, Division 3 and M Occupancy, the separation may be limited to the installation of materials approved for one-hour fire-resistive construction on the garage side and a self-closing, tight fitting solid wood door in lieu of a one-hour fire assembly. Fire dampers shall not be required in ducts piercing this separation for ducts constructed of not less than No. 26 gauge galvanized steel.

[3]Not permitted.

661—5.811 to **5.819** Reserved.

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BED AND BREAKFAST INNS

661—5.820(100,137C) Bed and breakfast inns.

5.820(1) *Appliances.* Heating, cooking and gas and electrical equipment and appliances must conform with nationally recognized codes and standards and be installed and maintained in accordance with manufacturer's recommendations. If the building has an operable solid fuel fireplace, all components must be cleaned and maintained in accordance with NFPA 211, 2000 edition.

5.820(2) *Smoke detectors.* Each bed and breakfast inn shall have an operable smoke detector in each guest room, at the top of each stairwell, and at intervals not to exceed 30 feet in each exit corridor. Detectors shall be installed and maintained in accordance with NFPA 72, 1999 edition.

a. Existing facilities. In bed and breakfast inns which begin operation or are constructed or remodeled prior to February 1, 2002, required smoke detectors may be battery operated.

b. New facilities. Each bed and breakfast inn which begins operation or is constructed or remodeled on or after February 1, 2002, shall be equipped with a system of interconnected smoke detectors with detectors at the top of each stairwell and at intervals not to exceed 30 feet in each exit corridor. These smoke detectors shall receive primary power from the building's electrical wiring and shall include battery backup. Each guest room shall be equipped with a smoke detector which may be a single station detector that complies with subrule 5.807(6).

5.820(3) *Emergency lighting.* Each bed and breakfast inn must be equipped with approved emergency lighting so located and directed in a manner that will illuminate the routes of travel from each guest-occupied room to the outside of the building.

5.820(4) *Windows.* Each bed and breakfast inn guest sleeping room must have at least one outside window that is openable without the use of tools or special knowledge. The window must be large enough that, when open and without breaking glass, it will permit the emergency egress of guests.

5.820(5) *Exits.* Each story that has one or more guest sleeping rooms must have two means of exit that are remote from each other and so arranged and constructed as to minimize any possibility that both may be blocked by any one fire or other emergency.

5.820(6) *Exit door markings.* Exit doors must be marked in accordance with NFPA 101, Life Safety Code, 2000 edition, Section 7.10.

5.820(7) *Fire extinguishers.* Fire extinguishers must be installed and maintained in accordance with National Fire Protection Association Standard Number 10, 1998 edition.

5.820(8) *Smoking prohibited.* Smoking is not permitted in any sleeping room, and rooms shall be posted with plainly visible signs so stating.

5.820(9) *Additional prohibitions.* Candles, lamps with power sources other than electricity or solid fuel fireplaces shall not be used in guest sleeping rooms.

5.820(10) *Directions.* Each bed and breakfast inn shall have clearly displayed in each guest bedroom printed directions and a diagram for emergency evacuation procedures. These directions must include the primary route to the outside and how to use the emergency egress window in the event the primary route cannot be traversed.

This rule is intended to implement Iowa Code section 137C.35.

661—5.821 to **5.849** Reserved.

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EXPLOSIVE MATERIALS

661—5.850(101A) Rules generally. Rescinded IAB 10/12/05, effective 1/1/06.

661—5.851(101A) Inventory. Inventory shall be of such that it shows amount of explosive material on hand, quantities dispensed and to whom, and quantity on hand at the end of each calendar working day. Anytime a shortage appears it shall be reported immediately to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal form 4712 (Department of Treasury, Internal Revenue Service) to be implemented, a copy of which shall be sent to the Iowa Department of Public Safety, attention of state fire marshal.

This rule is intended to implement Iowa Code section 101A.5.

661—5.852 to **5.864** Reserved.

661—5.865(101A,252J) Grounds for suspension, revocation, or denial of commercial explosives licenses. The department may refuse to issue a commercial license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

1. Finding that the applicant or licensee is not of good moral character and sound judgment.
2. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.
3. Finding that the applicant or licensee falsified information in the current or any previous license application.
4. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A or these rules.
5. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code Supplement chapter 252J.

An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked other than because of receipt of a certificate of noncompliance from the child support recovery unit may appeal that action pursuant to 661—Chapter 10. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit shall be subject to the provisions of rule 661—5.866(252J) and procedures specified in 661—Chapter 10 for contesting department actions shall not apply in these cases.

This rule is intended to implement Iowa Code section 101A.2 and Iowa Code Supplement chapter 252J.

661—5.866(252J) Child support collection procedures. The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code Supplement chapter 252J:

5.866(1) The notice required by Iowa Code Supplement section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee, identification card holder, or applicant may accept service personally or through authorized counsel.

5.866(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service upon the licensee or applicant.

5.866(3) Licensees and applicants for licenses shall keep the department informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court

orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

5.866(4) All departmental fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code Supplement chapter 252J.

5.866(5) In the event a licensee or applicant files a timely district court action following service of a department notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension or denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code chapter 252J.

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661—5.867 to **5.899** Reserved.

HOSPITALS AND LICENSED HEALTH CARE FACILITIES
[Prior to 4/2/03, see rules 661—5.550(100) to 661—5.603(100)]

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◊ Two or more ARCs

1 Tables published in 6/8/83 IAB

2 Effective date of 661—5.620(100,135C), introductory paragraph, and subrule 5.620(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.

3 Effective date of amendments to 5.800 to 5.810 and 5.820 delayed 70 days by the Administrative Rules Review Committee at its meeting held April 6, 2001. These amendments were published in the March 21, 2001, Iowa Administrative Bulletin as ARC 0566B. [See Notice ARC 9970A, IAB 7/12/00.] At its meeting held February 8, 2002, the Committee voted to lift the delay, effective February 9, 2002.At its meeting held June 5, 2001, the Committee voted to delay the effective date until adjournment of the 2002 Session of the General Assembly.

4 Editor's Note:
Effective date of 5.300, 5.301(6), 5.301(7), 5.302, 5.304(2)*"c"*(2), 5.304(3), 5.304(4), 5.305, 5.350 and 5.351 delayed by the Administrative Rules Review Committee 70 days.
Subrule 5.305(3) which was delayed 70 days from November 8, 1979, is renumbered and amended as 5.305(2) to be effective January 17, 1980.
Effective date of 5.400 and 5.450 to 5.452 delayed by the Administrative Rules Review Committee 70 days. These amendments published in IAC 10/3/79, ARC 0596.

5 Effective date of 661—5.620(100,135C), introductory paragraph, and subrule 5.620(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.

CHAPTER 11
IDENTIFICATION SECTION OF THE DIVISION OF CRIMINAL INVESTIGATION

[Rules 11.1 to 11.7 appeared as 4.3 prior to 6/27/79]
[Prior to 4/20/88, see Public Safety Department[680] Ch 11]

661—11.1(17A,690,692) Identification section. The identification section maintains information necessary to identify persons with criminal histories. It collects, files and disseminates criminal history data to authorized criminal justice agencies and the public upon request and updates criminal history records as a continual process.

661—11.2(17A,690,692) Definitions.

"Authorized agency" means a division or office of the state of Iowa designated by a state to report, receive, or disseminate information under Iowa state law, administrative rule or Public Law 103-209.

"Criminal identification records" shall mean either of the following records, the forms for which are provided by the department to law enforcement agencies:

1. Department of public safety arrest fingerprint cards.
2. State of Iowa final disposition reports.

"Dependent adult abuse registry" means the official registry kept by the department of human services, established pursuant to Iowa Code chapter 235B.

"Employee" means a person who provides services to a qualified entity and is compensated for those services.

"Fee" means any cost associated with conducting a state or national criminal history record check.

"Felony" and *"misdemeanor"* shall have the same meaning and classifications as described in Iowa Code sections 701.7 and 701.8.

"Fitness determination" means an analysis of criminal history information to determine whether or not it disqualifies an individual from holding a particular position either as an employee or a volunteer.

"National record check" means a criminal history record check from the FBI that is fingerprint-based and is transmitted through the state central repository.

"Nonlaw enforcement agency" means an agency authorized by law to receive criminal history data from the department which is not a "criminal justice agency" as defined in Iowa Code section 692.1, subsection 10, or which is not an institution which trains law enforcement officers for certification under Iowa Code chapter 80B.

"Qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services. This definition also applies to organizations which provide care to the elderly or the disabled.

"Taking of fingerprints" shall mean the obtaining of a fully rolled set of inked fingerprint impressions having suitable quality for fingerprint classification and identification.

"Volunteer" means a person who provides services to a qualified entity without compensation.

"Working day" means any day except any of the following:

1. Saturday.
2. Sunday.
3. State holiday.
4. Federal holiday during which the administrative office of the submitting agency is closed.
5. Any day during which the administrative office of the agency is closed or relocated due to weather or road conditions or any condition related to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

This rule implements Iowa Code chapters 690 and 692.

661—11.3(690,692) Release of information. Records maintained by the identification section are public records and are released to criminal justice agencies and the public as authorized by statute. Only the department of public safety may release criminal history information maintained by the department to non-criminal justice agencies or persons.

661—11.4(690,692) Right of review. Any person who has a criminal history record on file with the division of criminal investigation has the right to review and obtain a copy of the record. This right may be exercised by an attorney acting on behalf of the person with the criminal history record with written authorization and fingerprint identification of the person with the criminal history record. A copy of a criminal history record provided pursuant to this rule is subject to the fee provided in rule 661—11.15(692).

661—11.5(690,692) Review of record. Any individual or that individual's attorney, acting with written authorization from the individual, may review or obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division or by submitting a request on a form provided by the department of public safety. A copy of this request form may be obtained by writing to Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by telephoning the identification section at (515)725-6066 or by sending a request by electronic mail to cchinfo@dps.state.ia.us. The request form may also be downloaded from the division's Web site at http://www.state.ia.us/government/dps/dci/. The completed request form must be notarized, if submitted by mail, and accompanied by a set of the fingerprints of the individual whose criminal history record is being requested, along with submission of the fee established in rule 661—11.15(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.
[Editorial change: IAC Supplement 6/17/09]

661—11.6(17A,690,692) Inaccuracies in criminal history. If an individual believes inaccuracies exist in the individual's criminal history, notice may be filed with the division outlining the alleged inaccuracies accompanied by any available supporting data. In all instances where a notice is so filed, the division contacts the arresting agencies, court of record and institutions to verify record accuracy. Any necessary changes shall be made to the individual's record. Any agency previously receiving a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who has so filed a notice of correction within 20 days of said filing. If, after notice is filed and the division makes its final report, the individual is still of the opinion that inaccuracies exist within the records, an appeal of the final decision of the division to the Polk county district court may be made.

661—11.7(17A,690,692) Fingerprint files and crime reports. This section also maintains all fingerprint files and has personnel for the entry of crime reports to the criminal system.

661—11.8(690) Taking of fingerprints. The taking of fingerprints shall be in compliance with Iowa Code sections 232.148(2), 690.2 and 690.4. Fingerprints taken pursuant to these sections shall be submitted to the identification section of the division of criminal investigation, within two working days and to the Federal Bureau of Investigation.

661—11.9(17A,690,692) Arresting agency portion of final disposition form. The sheriff of each county and the chief of police of each city shall complete the arresting agency portion of the final disposition form with the arrest information on all persons whose fingerprints are taken in accordance with the rules or Iowa Code section 690.2, and thereafter forward the form to the appropriate county attorney or to the juvenile court officer who received the referral if the case remains in juvenile court.

661—11.10(690,692) Final disposition form. The county attorney of each county or juvenile court officer who received the referral shall complete a final disposition report and submit it to the division of criminal investigation within 30 days when a preliminary information or citation is dismissed without new charges being filed, or when a case is ignored by a grand jury. When an indictment is returned or a county attorney's information filed, the final disposition form shall be forwarded by the county attorney to the clerk of the court having jurisdiction. The clerk of court shall forward a copy to the division of criminal investigation within 30 days after judgment. If a juvenile is processed through juvenile court, the juvenile court officer shall forward the disposition form to the division of criminal investigation.

661—11.11(692) Destruction of fingerprints. Rescinded IAB 11/22/95, effective 1/1/96.

661—11.12(692) Release of information to the public. The department may release criminal history information to any person, or public or private agency, upon written application. Non-criminal justice agencies may not receive information regarding arrests older than 18 months that do not have dispositions or deferred judgments where the department has received official notice of successful completion of probation, unless a waiver has been given to the requestor from the person who is the subject of the criminal history information and is presented to the department at the time the request for the information is made.

Each record released to a non-criminal justice agency shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT."

661—11.13(692) Redissemination of criminal history information by youth service agencies. Rescinded IAB 7/3/96, effective 7/1/96.

661—11.14(692) Scope of record checks for non-criminal justice agencies and individuals. Record checks made for non-criminal justice agencies and individuals pursuant to these rules will be based upon name, including maiden name and aliases, if any, and birth date. This information is not sufficient to effect a precise identification of a subject. Persons may have the same name and birth date. Persons may use several names. The records of the department are based upon reports from other agencies. The department, therefore, cannot warrant the completeness or accuracy of the information provided. Agencies and individuals receiving criminal history information are therefore advised to verify all information received from the department to the extent possible (e.g., by contacting the reported arresting agency or court).

661—11.15(692) Fees. All individuals, their attorneys, and other non-criminal justice agencies applying for receipt of criminal history information may be assessed a fee. The department may accept cash, money orders, or checks. Other arrangements may be made, such as a prepaid retainer or credit card. The fee for receipt of criminal history information from the department shall be not more than $13 for each surname for which information is requested and not more than $15 per surname for fax service. The fee shall be prominently posted at the headquarters of the division of criminal investigation. Each alias or maiden name submitted shall be considered a separate name for purposes of computing this fee. Employers must pay the cost of the criminal history fee of a potential employee.

661—11.16(692) Subpoenas and civil process. Rescinded IAB 7/3/96, effective 7/1/96.

661—11.17(17A,22,692) Requests for criminal history data.

11.17(1) *Requests for criminal history data.* Persons or agencies requesting criminal history data should direct requests in writing using forms or methods approved by the commissioner of public safety. Requests for forms to use in requesting criminal history information may be addressed by mail to the Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail via the Internet to cchinfo@dps.state.ia.us.

The commissioner may authorize other methods of requesting criminal history information besides mail. These other methods may include fax transmission, electronic mail, or computer access. This authorization by the commissioner of public safety shall be based on the ability to efficiently and accurately receive and disseminate criminal history information.

11.17(2) *Public complaints.* Public complaints concerning the operation of criminal history or intelligence data systems should be directed in writing to the commissioner of public safety. Complaints should be specific in spelling out the time, date and place of the alleged violation and any action requested of the commissioner.

11.17(3) *Approval of agreements.* All agreements, arrangements and systems for the transmission and exchange of criminal history data required to be approved by the commissioner shall be submitted in writing at least 30 days before their proposed effective date.

This rule is intended to implement Iowa Code section 692.19.

[Editorial change: IAC Supplement 6/17/09]

661—11.18(690) Administrative sanctions. The commissioner of public safety shall deny or restrict access to criminal history records maintained by the identification section of the division of criminal investigation to any agency which fails to comply with the requirements of Iowa Code chapters 690 and 692 for submission of fingerprints and disposition reports to the department of public safety. The commissioner shall notify the affected agency in writing prior to denying or restricting access, giving details of the requirements and the nature of the failure to comply.

Any agency which has received notification from the commissioner that their access to criminal history records is to be denied or restricted may protest this action. Protests must be filed with the administrative services division within 30 days of the date of the notification from the commissioner in accordance with rule 661—10.101(17A).

This rule is intended to implement Iowa Code section 690.5.

661—11.19(232) Juvenile fingerprints and criminal histories.

11.19(1) *Authority to fingerprint.* A law enforcement agency may fingerprint and photograph any juvenile who has been taken into custody and charged with the commission of an offense which would be a serious misdemeanor or above if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

11.19(2) *Fingerprints of juveniles waived to adult court.* If jurisdiction over a juvenile suspect has been transferred from juvenile court to adult court, then fingerprints of that suspect taken pursuant to Iowa Code section 232.148 and transmitted to the division of criminal investigation shall be handled by the division in the same manner as fingerprints of adult suspects are handled and are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

11.19(3) *Fingerprints entered into Automated Fingerprint Identification System (AFIS).* Fingerprints of juveniles shall be entered into the AFIS maintained by the department of public safety.

11.19(4) *Juvenile criminal histories.*

a. A fingerprint card received for a juvenile suspect shall be used to establish a criminal history record for the suspect.

b. Criminal histories of juveniles over whom jurisdiction has been transferred from juvenile court to adult court shall be handled in the same manner as criminal histories of adults.

c. Criminal histories of juveniles who remain under the jurisdiction of the juvenile court shall be maintained only if the juvenile is adjudicated delinquent based upon an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult. The criminal history record established in response to receiving a fingerprint card shall be expunged if the delinquency petition is dismissed. Juvenile court judges shall order that juveniles be fingerprinted and the prints submitted to the division of criminal investigation if the juvenile has been adjudicated delinquent for an offense of serious misdemeanor or above if committed by an adult.

d. Criminal history records of juveniles over whom jurisdiction has not been transferred from juvenile to adult court shall be expunged when the subject reaches the age of 21 unless the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21. If the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21, the criminal history record shall be maintained in the same manner as adult criminal history records.

11.19(5) *Tracking criminal history records.* The division of criminal investigation shall establish an internal procedure for tracking criminal history records expunged from the files of the division for audit purposes only.

This rule is intended to implement Iowa Code section 232.148 as amended by 1999 Iowa Acts, House File 403.

661—11.20(135C) Release of dependent adult abuse records. Effective July 1, 1997, the department of public safety, division of criminal investigation, may release to health care facilities licensed under Iowa Code chapter 135C dependent adult abuse registry information received from the department of human services. The department of public safety and the department of human services shall enter into a 28E agreement to carry out this rule.

661—11.21(692) Criminal history checks for qualified entities.

11.21(1) The department of public safety may process requests for national criminal history record checks for a qualified entity.

11.21(2) All qualified entities requesting criminal history record checks shall be required to pay any applicable state and federal fees associated with non-criminal justice record checks. The qualified entity is responsible for such fees whether the qualified entity requests or receives the information directly or through an agency authorized to make fitness determinations as provided in subrule 11.21(3).

11.21(3) Any public entity which has been duly authorized by statute or administrative rule to conduct fitness determinations of volunteers or employees of a qualified entity may receive state and national criminal history checks in order to do so.

11.21(4) A school district considering an applicant for a teaching position is a qualified entity pursuant to 2007 Iowa Acts, Senate File 601, section 102. A school district may submit a request for a national criminal history check of an applicant for employment as a teacher. The request shall be submitted on a form designated by the division of criminal investigation and shall be accompanied by completed fingerprint cards for the applicant and the applicable fee. The district may contact the division of criminal investigation by telephone at (515)725-6066 or by electronic mail at cchinfo@dps.state.ia.us, prior to submitting the request, to obtain instructions on the submission or may consult the Web site of the division for this information.

These rules are intended to implement Iowa Code chapter 692.

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CHAPTER 20
GOVERNOR'S TRAFFIC SAFETY BUREAU

[Prior to 4/20/88, see Planning and Programming[630] Ch 12]

661—20.1(23USC402,ExecOrd23) Authority. Title 23 U.S.C. section 402 requires each state to have a highway safety program sponsored by the U.S. Secretary of Transportation and for which the governor of the state shall be responsible.

20.1(1) The governor has designated the commissioner of the department of public safety as governor's highway safety representative for Iowa and established the department of public safety as the state highway safety agency in Governor's Executive Order Number Twenty-Three, signed June 9, 1986, and published in the Iowa Administrative Bulletin on July 2, 1986.

20.1(2) The governor's traffic safety bureau shall administer the state highway safety program in accordance with the provisions of Title 23 U.S.C. and Governor's Executive Order Number Twenty-Three.

661—20.2(23USC402,ExecOrd23) Purpose. The purpose of the highway safety program is to provide a coordinated federal, state and local effort to reduce traffic-related deaths, injuries, and property damage crashes.

The following eight highway safety priority areas have been established by the federal government to provide a guide to program involvement and reimbursement: alcohol; police traffic services; emergency medical services; traffic records; occupant restraints; engineering; motorcycles; and pedestrians/bicycles.

661—20.3(23USC402,ExecOrd23) Responsibilities.

20.3(1) The governor's traffic safety bureau shall develop and prepare the state's highway safety plan based on evaluation of highway crashes and traffic safety problems within the state.

20.3(2) The governor's traffic safety bureau shall encourage and assist local units of government in improving their traffic safety programs.

20.3(3) The governor's traffic safety bureau shall serve as a reviewing authority for federal and state traffic safety programs.

20.3(4) The governor's traffic safety bureau shall monitor safety program activity and expenditures of funds by state and local agencies as authorized by Title 23 U.S.C. 402.

20.3(5) The governor's traffic safety bureau shall coordinate the state highway safety plan with other state agencies.

20.3(6) Application for funding.

a. Proposals for funding highway safety programs may be submitted at any time by any city, county, or state agency, or nonprofit organization or any other eligible organization or individual.

b. Applications must be received on or before March 1 to be considered for funding in the next federal fiscal year beginning October 1.

c. Initial proposals should include project title, statement of the highway safety problem to be addressed supported by three years of crash data, what is being proposed to solve the problem, how it will be evaluated, a proposed budget, and a letter of intent accepting responsibility for the proposed project from the responsible authority of the organization making application.

d. Only written requests containing the listed elements will be considered for funding.

e. Assistance in developing and submitting proposals for highway safety funding may be obtained by contacting the Director, Governor's Traffic Safety Bureau, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail via the Internet at gtsbinfo@safe.ia.gov.

EXCEPTION: Applications for funding of programs pursuant to the authority of 23 U.S.C. 153 must be received by the governor's traffic safety bureau on or before June 1 to be considered for the following federal fiscal year.

[Editorial change: IAC Supplement 6/17/09]

661—20.4(23USC402,ExecOrd23) Funding criteria.

20.4(1) Allocation of federally appropriated funds administered by the governor's traffic safety bureau pursuant to Title 23 U.S.C. as amended through September 1, 1993, shall be based on: (1) federally mandated projects; and (2) high fatality and personal injury crash causations and locations.

The following criteria will be used to rank Iowa's counties according to the severity of their highway safety problems:

a. Fatal crashes by county.
b. Personal injury crashes by county.
c. Serious personal injury crashes by county.
d. Alcohol-related fatal crashes by county.
e. Alcohol-related personal injury crashes by county.
f. Vehicle miles of travel by county.
g. Serious traffic offenses by county.
h. Fatal and injury crashes involving motorcycles by county.
i. Fatal and injury crashes involving pedestrians and bicycles by county.

Eligibility of counties, and cities within those counties, for the limited federal funds available will be determined according to county rankings on the nine listed criteria.

20.4(2) At least 40 percent of all federal funds apportioned to the state of Iowa pursuant to Title 23 U.S.C., Section 402, for any fiscal year shall be expended by political subdivisions of the state to carry out local highway safety programs authorized by the governor's representative for highway safety.

661—20.5(23USC402,ExecOrd23) Program requirements.

20.5(1) All approved programs funded by the governor's traffic safety bureau must be administered in compliance with the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual, 1993.

20.5(2) Highway safety contract procedures and reporting forms and their explanations are contained in the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual, 1993.

20.5(3) Single copies of the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual may be obtained on request from the Director, Governor's Traffic Safety Bureau, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.
[Editorial change: IAC Supplement 6/17/09]

These rules are intended to implement Title 23 U.S.C., Section 402, as amended through September 1, 1993, and Governor's Executive Order Number Twenty-Three, signed June 9, 1986.

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CHAPTER 28
MARIJUANA ERADICATION PROCEDURES

661—28.1(80) Reports of marijuana. Persons wishing to report marijuana growing in Iowa, whether cultivated or uncultivated, may contact any local law enforcement agency within the state of Iowa or the Division of Narcotics Enforcement, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Reports may be made to the division of narcotics enforcement by telephone through the toll-free Marijuana Hotline at 1-800-532-0052.
[Editorial change: IAC Supplement 6/17/09]

661—28.2(80) Cultivated marijuana. Upon receipt of information pertaining to marijuana cultivation or harvesting, the department of public safety, division of narcotics enforcement, shall investigate. If the information is valid and cultivation or harvesting of marijuana is confirmed, the division of narcotics enforcement shall initiate a criminal investigation, which may lead to the subsequent filing of criminal charges.

661—28.3(80) Uncultivated marijuana.

28.3(1) Upon receipt of information pertaining to wild uncultivated marijuana, the department of public safety, division of narcotics enforcement, shall notify the county sheriff of the report. If the property on which uncultivated marijuana is reported lies within a municipality with a police department, the chief of police shall also be notified. After the sheriff has been notified, the department of public safety, division of narcotics enforcement, shall notify, by regular mail, the owner of the land where uncultivated marijuana has been reported and shall request that the land owner voluntarily remove the marijuana. The county sheriff and the local policy chief, if any, shall be sent copies of the notice to the landowner, also by regular mail.

28.3(2) Notification to a landowner of information regarding uncultivated marijuana, as provided in subrule 28.3(1), shall be provided on a completed form "Notice of Marijuana Complaint."

Notification to a landowner of information regarding uncultivated marijuana growing on the landowner's property, as provided in this subrule, is intended to obtain voluntary cooperation in the eradication of marijuana.

28.3(3) The department shall provide information and training to law enforcement agencies regarding the identification and removal of marijuana and assistance to the Iowa State University Agriculture and Home Economics Extension Service in developing programs concerning the identification and removal of marijuana.

661—28.4(80) Scope and limitation. Nothing in this chapter shall be construed to be a restriction or limitation upon the nature or scope of the authority of any member of the department of public safety or of any other public officer as otherwise provided by law.

These rules are intended to implement Iowa Code section 80.9.

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CHAPTER 35
COMPLAINTS AGAINST EMPLOYEES
[Prior to 11/8/06, see 661—Ch 9]

661—35.1(80) Definitions. The following definitions apply to rules 661—35.1(80) through 661—35.3(80):

"Complaint" means an allegation by any person of a breach of rules or orders, a violation of the law, or other misconduct by an employee of the department.

"Department" means the Iowa department of public safety.

"Employee" means any employee of the department.

661—35.2(80) Filing a complaint.

35.2(1) Any person may file a complaint against an employee or employees by:

a. Mailing a complaint in writing to the professional standards bureau, at the following address:

Professional Standards Bureau
Iowa Department of Public Safety
State Public Safety Headquarters Building
215 East 7th Street
Des Moines, Iowa 50319

Complaints in writing may be mailed or submitted to any office of the department.

b. Calling the professional standards bureau at (515)725-6270, or by calling any office of the department.

c. Completing the commendation/complaint form on line on the Web site of the department.

NOTE: The complaint form may be found at the following location: www.dps.state.ia.us/commis/psb/complaint.shtml.

35.2(2) The complainant should describe as specifically and completely as possible the nature of the complaint and the details of any incident or incidents which give rise to the complaint.

35.2(3) Each complaint received will be recorded and investigated.

35.2(4) The complainant need not be identified. Anonymous complaints will be accepted and investigated as thoroughly as possible.

[Editorial change: IAC Supplement 6/17/09]

661—35.3(80) Notification to complainant. The professional standards bureau shall provide any identified complainant with a written receipt of the complaint and may provide additional information regarding the complaint and its disposition as permitted by law.

These rules are intended to implement Iowa Code chapter 80.

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CHAPTER 81
CRIMINAL INTELLIGENCE INFORMATION

[Prior to 11/8/06, see 661—8.201(692) to 8.207(692)]

661—81.1(692) Definitions. The following definitions apply to rules 661—81.1(692) through 661—81.5(692).

"Criminal intelligence file" means information stored in a criminal intelligence system that is compiled in an effort to anticipate, prevent, or monitor possible criminal activity on:

1. An individual who, based upon reasonable grounds, is believed to be involved in the actual or attempted planning, organization, financing, promotion, or commission of criminal acts or is believed to be involved in criminal activities with known or suspected criminal offenders.

2. A group, organization or business which, based on reasonable grounds, is believed to be involved in the actual or attempted planning, organization, financing, promotion, or commission of criminal acts, or of being illegally operated, controlled, financed, promoted, or infiltrated by known or suspected criminal offenders.

3. An incident in which sufficient articulable facts give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that a definable criminal activity or enterprise is, has been, or may be committed.

"Criminal intelligence file" does not include surveillance data as defined in Iowa Code section 692.1.

"Criminal intelligence system" means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information.

"Need to know" is established if criminal intelligence information will assist a recipient in anticipating, investigating, monitoring, or preventing possible criminal activity or if criminal intelligence information is pertinent to protecting a person or property from a threat of imminent serious harm.

"Noncriminal identifying information" means information about the characteristics and associations of an identifiable person suspected of being involved in criminal activity.

"Reasonable grounds" means information that establishes sufficient articulable facts that give a trained law enforcement or criminal investigative agency officer, investigator, or employee a reasonable basis to believe that a definable criminal activity or enterprise is, has been, or may be committed.

"Right to know" is established when a recipient of criminal intelligence information is legally permitted to receive intelligence data or an intelligence assessment.

"Surveillance data" means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person. Noncriminal identifying information does not constitute surveillance data.

"Threat of imminent serious harm" means a credible impending threat to the safety of a person or property. A threat of imminent serious harm justifies the dissemination of intelligence data or an intelligence assessment for the purpose of protecting a person or property from the threat.

661—81.2(692) Iowa law enforcement intelligence network (LEIN) information system.

81.2(1) *LEIN information system.* The Iowa law enforcement intelligence network (LEIN) information system is the statewide interjurisdictional intelligence system maintained and operated by the intelligence bureau of the department of public safety, for the regular interagency exchange of criminal intelligence files. Criminal intelligence files contained in the LEIN information system may be disseminated or redisseminated by the intelligence bureau of the department of public safety, consistent with Iowa Code chapter 692.

81.2(2) *Direct computer access.* The commissioner of public safety may authorize a peace officer, criminal justice agency, or state or federal regulatory agency to access the LEIN information system directly via a remote computer terminal, provided that the authorized individual or agency follows

approved procedures regarding receipt, maintenance, dissemination, submission and security of information, and related training. Authorization may be provided in writing or electronically.

81.2(3) *Termination of authorization for direct computer access.* The commissioner of public safety may, at any time for good cause, terminate authorization for direct, remote computer access to the LEIN information system which has been previously approved. An individual or agency whose authorization to directly access the LEIN information system via remote computer has been terminated may appeal the termination in accordance with procedures for contested cases established in 661—Chapter 10.

81.2(4) *Reinstatement of authorization for direct computer access.* Any user whose authorization for direct, remote computer access to the LEIN information system has been terminated may apply for the authorization for access to be reinstated, provided that the problem which led to the termination has been corrected.

81.2(5) *Applications for direct computer access.* To apply for direct, remote computer access to the LEIN information system or to obtain further information about the LEIN information system, a person shall contact the Intelligence Bureau, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail via the Internet at intinfo@dps.state.ia.us.

81.2(6) *Entry of information—restrictions.* Information about the political, religious, racial, or social views, associations, activities or sexual orientation of any individual shall not be entered into the LEIN information system unless such information constitutes noncriminal identifying information or is relevant to an investigation of criminal conduct or activity involving an identifiable individual.

81.2(7) *Entry of information—conformance with applicable law.* No information that is deemed unreliable because it has been obtained in violation of any applicable federal, state, or local law or ordinance, or these rules, may be entered into the LEIN information system.

81.2(8) *Dissemination.* Intelligence data from the LEIN information system may be disseminated only to peace officers, criminal justice agencies, or state or federal regulatory agencies. Intelligence data from the LEIN information system may be disseminated only when there is a right to know and a need to know in the performance of a law enforcement activity. Intelligence data from the LEIN information system shall not be disseminated to any user whose authorization to access the LEIN information system has been terminated and has not been reinstated.

EXCEPTION: Intelligence assessments may be disseminated to any agency or organization for an official purpose or to a person in order to protect a person or property from the threat of imminent serious harm as defined in rule 661—81.1(692).

81.2(9) *Redissemination of intelligence data.* An agency, organization, or person receiving intelligence data from the department pursuant to Iowa Code chapter 692 may redisseminate the intelligence data only if authorized by the agency or peace officer who originally provided the data and if the data is for an official purpose in connection with the prescribed duties of the recipient. If the agency, organization, or person receiving the information is not a peace officer, criminal or juvenile justice agency, or state or federal regulatory agency, redissemination is allowed only if such redissemination is for an official purpose and if the information is redisseminated in order to protect a person or property from the threat of imminent serious harm. The department may also place restrictions on the redissemination by the agency, organization, or person receiving the intelligence data. Any agency, organization, or person who redisseminates intelligence data pursuant to Iowa Code chapter 692 must maintain a list of the agencies, organizations, and persons receiving the intelligence data and the purpose of the redissemination. Intelligence data must be maintained separately from and should not be included in any form in any investigative or prosecutorial files.

81.2(10) *Redissemination of intelligence assessment.* An agency, organization, or person receiving an intelligence assessment from the department pursuant to Iowa Code chapter 692 may redisseminate the intelligence assessment only if authorized by the department and only if the redissemination is for an official purpose in connection with the prescribed duties of the recipient. If the agency, organization, or person receiving the intelligence assessment is not a peace officer, criminal or juvenile justice agency, or state or federal regulatory agency, redissemination is allowed only if such redissemination is to protect a person or property from the threat of imminent serious harm. The department may

also place restrictions on the redissemination by the agency, organization, or person receiving the intelligence assessment. Any agency, organization, or person who redisseminates an intelligence assessment pursuant to Iowa Code chapter 692 must maintain a list of the agencies, organizations, and persons receiving the intelligence assessment and the purpose of the redissemination. An agency, organization, or person who redisseminates information without proper authorization may be prohibited from receiving further intelligence assessments.
[Editorial change: IAC Supplement 6/17/09]

661—81.3(692) Criminal intelligence file security. The intelligence bureau of the department of public safety shall adopt administrative, technical, and physical safeguards, including audit trails, to ensure against unauthorized access and against intentional or unintentional damage to the LEIN information system. These safeguards shall include, but are not limited to, the following:

81.3(1) Records indicating who has been given the information, the reason for release of information, and the date of any dissemination shall be maintained until the information has been purged.

81.3(2) Criminal intelligence files shall be labeled to indicate security level and identities of submitting agencies and submitting individual.

81.3(3) Where appropriate, effective and technologically advanced computer software and hardware designs shall be implemented to prevent unauthorized access.

81.3(4) Any access to criminal intelligence files and computing facilities in which the files are stored shall be restricted to authorized personnel.

81.3(5) Criminal intelligence files shall be stored in such a manner that the files cannot be modified, destroyed, accessed, purged, or overlaid in any fashion by unauthorized personnel.

81.3(6) Computer systems on which criminal intelligence files are stored shall be programmed to detect, reject, and record any unauthorized attempt to access, modify, or destroy criminal intelligence files or to otherwise penetrate the security safeguards on such a system.

81.3(7) Access to any information required to gain authorized access to criminal intelligence files, including access codes and passwords, shall be restricted only to personnel authorized to access these files. The intelligence bureau shall ensure that criminal intelligence files remain confidential when specific agreements are entered into with individuals or organizations that provide computer or programming support to the agency.

81.3(8) Procedures shall be adopted to protect criminal intelligence files from unauthorized access, theft, sabotage, fire, flood, wind, and natural or other disasters.

81.3(9) Procedures shall be adopted which establish the right of the intelligence bureau to screen and, if appropriate, reject for employment any personnel who would, if hired, have access to criminal intelligence files.

81.3(10) Procedures shall be established which allow the removal or transfer, based on good cause, of any existing employees from positions in which they have access to criminal intelligence files.

81.3(11) Any compromise, or suspected compromise, of information that would allow unauthorized access into criminal intelligence files shall be reported without delay and, in any event, by the end of the next business day, to a supervisor within the intelligence bureau of the department of public safety.

81.3(12) Any compromise, or suspected compromise, of information contained in criminal intelligence files shall be reported without delay and, in any event, by the end of the next business day, to a supervisor within the intelligence bureau of the department of public safety.

661—81.4(692) Review of criminal intelligence files—purging.

81.4(1) The intelligence bureau of the department of public safety shall regularly review the information in criminal intelligence files for reclassification or purging. Decisions to retain, reclassify, or purge criminal intelligence files shall:

a. Ensure that the information is current, accurate and relevant to the needs of the agency.

b. Safeguard individual privacy interests protected by federal and state laws.

c. Ensure that security classifications remain appropriate.

81.4(2) Information that is misleading, unreliable, or no longer useful shall be purged or reclassified when necessary, without delay and, in any event, within one business day of the discovery that the information is misleading, unreliable, or no longer useful. Any person or agency to which the criminal intelligence file was disseminated shall be notified of the reclassification or purge.

81.4(3) All information shall be reviewed within a five-year period of its submission to ensure compliance with subrule 81.4(1).

81.4(4) All information retained as a result of a review shall reflect the name of the reviewer, date of review, and an explanation of the decision to retain.

81.4(5) Information that is not retained in a criminal intelligence file after a review shall be deleted from the LEIN information system.

661—81.5(692) Subpoenas and court orders. Any agency or individual shall notify the department of public safety in writing without delay and, in any event, by the end of the next business day of the receipt of any subpoena, court order, request for production, or other legal process demanding the production of a criminal intelligence file, so that the department has an opportunity to make a timely resistance.

These rules are intended to implement Iowa Code chapter 692.

[Filed 10/19/06, Notice 9/13/06—published 11/8/06, effective 1/1/07]
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CHAPTER 89
MISSING PERSONS
[Prior to 11/22/06, see 661—Ch 19]

661—89.1 to **89.99** Reserved.

DIVISION I
MISSING PERSON INFORMATION CLEARINGHOUSE

661—89.100(694) Missing person information clearinghouse. The missing person information clearinghouse is established in the division of criminal investigation. The clearinghouse provides a program for compiling, coordinating, and disseminating information, in order to locate missing persons through public awareness and cooperation, and to educate law enforcement officers and the general public about the issues related to missing persons.

661—89.101(694) Administration of missing person information clearinghouse. The division of criminal investigation administers the missing person information clearinghouse, and all questions, comments, or requests for, or submission of, information should be directed to the clearinghouse at the division of criminal investigation. Inquiries by mail should be addressed to: Missing Person Information Clearinghouse, Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Inquiries by electronic mail should be addressed to mpicinfo@dps.state.ia.us.
[Editorial change: IAC Supplement 6/17/09]

661—89.102(694) Definitions. The following definitions apply to rules 661—89.100(694) through 661—89.107(694).

"Approved" means having met the criteria set forth by the department of public safety.

"Clearinghouse" means the missing person information clearinghouse in the division of criminal investigation, Iowa department of public safety.

"Commissioner" means the commissioner of the Iowa department of public safety or the commissioner's authorized designee.

"Department" means the Iowa department of public safety.

"Missing person" means an individual having temporary or permanent residence in Iowa, or who is believed to be in Iowa, whose location has not been determined, who has been reported as missing to a law enforcement agency, and who:

1. Is physically or mentally disabled.
2. Is missing under circumstances indicating that the missing person may be in danger.
3. Is missing under circumstances indicating that the missing person's disappearance was not voluntary.
4. Is under the age of 21.

"Missing person report" means a report filed by a law enforcement agency or a private individual with the clearinghouse on a missing person report form.

"Missing person report form" means a form designated by the department of public safety for use by private citizens and law enforcement agencies to report missing person information to the missing person information clearinghouse. Law enforcement agencies may use forms other than the form designated by the department of public safety to submit missing person information to the clearinghouse, provided that all of the information requested on the designated form is provided.

"Prevention and education materials" means those materials that are designed to aid in the prevention of child abduction and to address risks of the exploitation of missing children and that are used in conjunction with a prevention and education program.

"Prevention and education programs" means those programs which have as their primary purpose the prevention of child abduction and of the exploitation of missing children.

"Programs and materials registry" or *"registry"* means a list of prevention and education materials and programs approved by the department.

661—89.103(694) Program information.

89.103(1) A toll-free telephone line (1-800-346-5507) is available 24 hours a day, seven days a week, to collect and disseminate information concerning missing persons in Iowa.

89.103(2) Current information on Iowa missing persons, including photographs when available, is available on the Web site of the clearinghouse.

89.103(3) After filing a complaint of a missing person with a law enforcement agency, the person filing the complaint may submit information to the clearinghouse on a missing person report form, which may be obtained from the clearinghouse or any law enforcement agency.

89.103(4) After a missing person complaint has been filed with a law enforcement agency, any person may submit information on a missing person report form to the clearinghouse.

661—89.104(694) Prevention and education programs and materials.

89.104(1) The clearinghouse shall maintain a registry of approved prevention and education programs and materials regarding missing and runaway children.

89.104(2) Any person or group wishing to submit prevention and education programs and materials for approval and inclusion in the registry may contact the clearinghouse in order to request information on submitting prevention and education programs and materials for approval.

89.104(3) The clearinghouse shall consider prevention and education programs and materials submitted for approval only upon receipt by the clearinghouse of all specified materials. The person or group submitting prevention and education programs or materials to the clearinghouse shall be notified of approval or rejection of the programs or materials on the registry. No prevention and education programs or materials shall be represented as having been approved by the clearinghouse or the department unless they have been approved and placed on the registry.

89.104(4) The following criteria shall govern approval of education and prevention materials and programs by the department:

a. A prevention or education program must contain all elements deemed necessary to adequately cover the subject matter.

b. Prevention and education programs and materials shall not contain any elements determined to be offensive or pornographic or which sensationalize the problem of missing persons.

c. Prevention and education programs and materials shall meet standards established by the department.

d. Prevention and education programs and materials which have been approved by the National Center for Missing and Exploited Children are deemed to be approved by the department.

89.104(5) Modifications to approved programs or materials shall be submitted to the clearinghouse for review and approval and shall not be represented as approved by the clearinghouse until such approval has been received.

89.104(6) Prevention or education programs or materials may be rejected for inclusion in the registry of approved prevention and education programs and materials if it is determined that materials utilized or content of the program is other than that which was submitted to the clearinghouse for approval, or if it is determined, based on current knowledge, that information provided in prevention and education programs and materials that have been approved previously is outdated or misleading.

89.104(7) Prevention or education programs or materials for which approval has been withdrawn by the clearinghouse shall be removed from the registry. The person or group that submitted the withdrawn program or material for consideration and approval shall be notified, if practicable.

89.104(8) If prevention or education programs or materials submitted to the clearinghouse are rejected for inclusion in the registry, or if the programs or materials previously approved are removed from the registry, the person or group that submitted the programs or materials to the clearinghouse may appeal the rejection or removal to the commissioner within 30 days of the date on which the clearinghouse notified the person or group of the rejection or withdrawal. A proceeding arising

from this rule shall be a contested case and shall be subject to rules 661—10.301(17A) through 661—10.332(17A).

89.104(9) Any individual or group may contact the clearinghouse regarding prevention and education programs and materials to ascertain if a specific program or material is on the registry.

89.104(10) Any individual may file a complaint with the clearinghouse regarding prevention and education programs and materials on the registry. Complaints shall be directed to the clearinghouse in writing.

661—89.105(694) Release of information. Prevention and education materials and program information filed with the clearinghouse for review are open records. Information received by the department that pertains to a missing person, other than criminal investigative data, shall be open records unless deemed confidential pursuant to Iowa Code chapter 22, 692 or 694, or other provision of law.

661—89.106(694) Dissemination.

89.106(1) The clearinghouse shall distribute missing person information that contains the names, photographs, descriptions, and information related to the events surrounding the disappearance of missing persons through publication on the Missing Person Information Clearinghouse Web site. The law enforcement agency or person to contact if a missing person is located and the names of all located missing persons will be included in the information shown on the Web site.

NOTE: The Web site of the missing person information clearinghouse is http://www.iowaonline.state.ia.us/mpic/.

89.106(2) Each week the clearinghouse shall produce, update, and publish public service announcements on the clearinghouse Web site. A media outlet may request to receive the weekly public service announcement by electronic mail by subscribing to the electronic mail notification service available through the department Web site.

661—89.107(694) Training. The department shall develop training programs for law enforcement personnel and the general public.

89.107(1) Training for local law enforcement personnel shall include missing person reporting and legal procedures, tracking of missing persons, unidentified bodies, and criteria and procedures for AMBER alerts.

89.107(2) Training for the general public shall include information to assist in the prevention of child exploitation and kidnapping.

These rules are intended to implement Iowa Code section 694.10.

661—89.108 to **89.199** Reserved.

DIVISION II
AMBER ALERT PROGRAM

661—89.200(694) AMBER alert program. The AMBER alert program is a cooperative effort of the department of public safety, the department of transportation, the lottery authority, the Iowa association of broadcasters, the Iowa state association of sheriffs and deputies, local law enforcement agencies, and the national weather service.

661—89.201(694) Criteria. An AMBER alert shall be issued by Iowa state patrol communications upon receipt of a request from a law enforcement agency, provided that the following criteria for issuance of an AMBER alert are met:

1. Law enforcement has confirmed that a person has been abducted, and an entry has been made into the Iowa On-line Articles and Warrants (I.O.W.A.) System identifying the person as missing.
2. The person who has been abducted is under the age of 18.

3. Law enforcement believes the circumstances surrounding the abduction indicate that the child is in danger of serious bodily injury or death.

4. There is enough descriptive information about the child, abductor, or suspect's vehicle to believe that an immediate broadcast alert will help.

The criteria should be interpreted broadly so as to protect the safety of the abducted child and to maintain the integrity of the AMBER alert program and criteria.

661—89.202(694) Activation procedures.

89.202(1) An Iowa AMBER alert shall be issued by Iowa state patrol communications upon receipt of a request from a participating law enforcement agency, provided that the criteria established in rule 661—89.201(694) are met.

89.202(2) In order to initiate an Iowa AMBER alert, a law enforcement agency shall submit by facsimile transmission a completed copy of the "State of Iowa AMBER Alert Notification Plan Facsimile Transmission Packet" to the Des Moines station of Iowa state patrol communications. If transmission to the Des Moines station is not feasible, transmission may be made to the Cedar Rapids station of Iowa state patrol communications.

89.202(3) Upon receipt by Iowa state patrol communications of a completed facsimile transmission packet and if the AMBER alert criteria established in rule 661—89.201(694) are met, an AMBER alert shall be transmitted via the Emergency Alert System (EAS) to Iowa broadcasters.

89.202(4) After initiation of an AMBER alert, additional information may be submitted by the participating law enforcement agency by facsimile transmission, electronic mail, or telephone.

89.202(5) After initiation of an AMBER alert, available information shall be posted on the Iowa AMBER alert Web site.

NOTE: The Web site of the Iowa AMBER alert program is at www.iowaamberalert.org.

89.202(6) The communications officer of the Iowa state patrol may direct the issuance of an Iowa AMBER alert, upon receiving a request to do so from another state in which an AMBER alert has been issued, provided that there is evidence that the abductor may be traveling with the abducted child to or through Iowa.

89.202(7) An Iowa AMBER alert shall terminate if the child who was abducted is located or if five hours have elapsed since the initiation of the alert. An alert may be renewed.

89.202(8) If an Iowa AMBER alert is requested and if the circumstances indicate that a person is missing, the information shall be transmitted promptly to the Iowa missing person information clearinghouse.

661—89.203(694) Alternative alert if criteria are not satisfied. If an AMBER alert has been requested and the criteria established in rule 661—89.201(694) are not satisfied, the department may issue a missing person alert or a missing child alert.

These rules are intended to implement Iowa Code chapter 694.

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CHAPTER 121
BAIL ENFORCEMENT, PRIVATE INVESTIGATION, AND PRIVATE SECURITY BUSINESSES

[Prior to 4/20/88, see Public Safety Department [680] Ch 2]
[Prior to 11/23/05, see 661—Ch 2]

661—121.1(80A) Licensing. The administrative services division shall administer the bail enforcement, private investigation and private security statute. Any questions, comments, information, requests for information, or application for a license or an identification card should be directed to the Program Services Bureau, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or, with the exception of applications, by electronic mail via the Internet to piinfo@dps.state.ia.us.
[Editorial change: IAC Supplement 6/17/09]

661—121.2(80A) Definitions. As used in this chapter unless the context otherwise requires:

"Aggravated misdemeanor" means an offense so defined in the Iowa Code or an offense committed in another jurisdiction with a penalty of imprisonment for two years or more.

"Applicant" means any person applying to the commissioner for a license or a permanent identification card.

"Background investigation" means the actions taken by the department to verify that the applicant for a license or employee identification card meets the requirements. Such actions include, but are not limited to, inquiries to the Iowa on-line warrants and articles (IOWA) criminal justice information system for outstanding arrest warrants, active protection orders, sex offender registry records and Iowa criminal history records. A background investigation shall also include the submission of fingerprints of the applicant to the FBI for a nationwide criminal history record check.

"Bail enforcement agent" means a person engaged in the bail enforcement business, including licensees and persons engaged in the bail enforcement business whose principal place of business is in a state other than Iowa.

"Bail enforcement business" means the business of taking or attempting to take into custody the principal on a bail bond issued or a deposit filed in relation to a criminal proceeding to ensure the presence of the defendant at trial, but does not include such actions that are undertaken by a peace officer or law enforcement officer in the course of the officer's official duties.

"Chief law enforcement officer" means the county sheriff, or the sheriff's designee, in the county where the defendant is located, or the chief of police, or the chief's designee, when the defendant is located within the city limits of a city or town which has a police force.

"Commissioner" means the commissioner of the department of public safety or the commissioner's authorized designee.

"Conviction resulting from domestic abuse" means a conviction at any level in any jurisdiction if the conviction has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Applicable convictions may include, but are not limited to, crimes of assault, domestic assault, domestic abuse assault, battery, disorderly conduct and other crimes meeting this definition.

"Defendant" means the principal on a bail bond issued or deposit filed in relation to a criminal proceeding in order to ensure the presence of the defendant at trial.

"Department" means the department of public safety.

"Duplicate license" means a license that is issued to substitute for a license that has been lost or destroyed, except that a "duplicate license" shall not mean a "replacement license" as defined herein.

"Felony" means an offense defined as a felony by the jurisdiction in which the offense was committed.

"Licensee" means a person licensed under this chapter.

"Moral turpitude" is an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals. Examples of moral turpitude may include, but are not limited to, the following:

1. Any act or pattern of conduct involving dishonesty, fraud, or deception;
2. Any act of conducting a bail enforcement, private investigative or private security business in violation of Iowa Code chapter 80A, whether in Iowa or another jurisdiction, or a determination from another jurisdiction that the individual or entity has violated the bail enforcement, private investigative, or private security laws, rules, or regulations of that jurisdiction;
3. Any act or pattern of conduct of harassment or stalking;
4. Any criminal act of sexual misconduct;
5. Any illegal act of selling, delivery, possession with intent to deliver, or manufacturing drugs;
6. Conviction resulting from domestic abuse.

"Peace officer" means any such individual as designated by Iowa Code section 801.4, subsection 11.

"Person" means an individual, partnership, corporation, or other business entity.

"Private investigation business" means the business of making, for hire or reward, an investigation for the purpose of obtaining information on any of the following matters:

1. Crimes or wrongs which are committed or threatened.
2. The habits, conduct, movements, whereabouts, associations, transactions, reputation, or character of a person.
3. The credibility of witnesses or other persons.
4. The location or recovery of lost or stolen property.
5. The cause or origin of or responsibility for fires, accidents, or injuries to property.
6. The truth or falsity of a statement or representation.
7. The detection of deception.
8. The securing of evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases.
9. The locating of owners or heirs of unclaimed funds.

"Private investigative agency" means a person engaged in a private investigation business.

"Private security agency" means a person engaged in a private security business.

"Private security business" means a business of furnishing, for hire or reward, guards, watch personnel, armored car personnel, patrol personnel, or other persons to protect persons or property, to prevent the unlawful taking of goods and merchandise, or to prevent the misappropriation or concealment of goods, merchandise, money, securities, or other valuable documents or papers, and includes an individual who for hire patrols, watches, or guards a residential, industrial, or business property or district.

"Proof of financial responsibility" means proof of the ability of a licensee to respond in damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of ownership and operation of a bail enforcement business, private security business or a private investigation business.

"Replacement license" means a license that is issued to substitute for a license that has been lost or destroyed as a result of damage from flooding, storms or other conditions which form a basis for issuance of a disaster emergency proclamation by the governor pursuant to Iowa Code section 29C.6.

"Reserve peace officer" means a volunteer, nonregular, sworn member of a law enforcement agency who serves under the direction of regular peace officers with or without compensation, has regular police powers while functioning as a law enforcement agency's representative, and participates on a regular basis in the law enforcement agency's activities including crime prevention and control, preservation of the peace, and enforcement of law.

"Uniform" means a manner of dress which is of a particular style and distinctive appearance as distinguished from ordinary clothing customarily used and worn by the general public and which clearly identifies the person as an employee of a licensed agency.

661—121.3(80A) Persons exempt. This chapter does not apply to the following:

121.3(1) An officer or employee of the United States, or a state, or a political subdivision of the United States or of a state while the officer or employee is engaged in the performance of official duties or an employee of a contractor or subcontractor with a federal agency while performing duties pursuant to a contract with the federal agency.

121.3(2) A peace officer engaged in the private security business or the private investigation business with the knowledge and consent of the chief executive officer of the peace officer's law enforcement agency.

121.3(3) A person employed full- or part-time exclusively by one employer in connection with the affairs of the employer.

121.3(4) An attorney licensed to practice in Iowa, while performing duties as an attorney.

121.3(5) A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons.

121.3(6) A person exclusively employed in making investigations and adjustments for insurance companies. This exemption does not apply to persons who contract with a third party, such as an attorney or a broker, to conduct investigations on behalf of insurance companies. However, this exemption does apply to independent contractors who contract directly with insurance companies and exclusively conduct insurance investigative work.

121.3(7) A person who is the legal owner of personal property which has been sold under a security agreement, or a conditional sales agreement, or a secured party under the terms of a security interest while the person is performing acts relating to the repossession of the property.

121.3(8) A person engaged in the process of verifying the credentials of physicians and allied health professionals applying for hospital staff privileges.

121.3(9) A person engaged in the business of retrieval and dissemination of public record information.

121.3(10) A person engaged in the business of process service in either a criminal or civil action, where the determination of the whereabouts of the person is only incidental to the service of process.

121.3(11) The business of repossession or recovery of property, including debt collection, where the determination of the whereabouts of the person is only incidental to the repossession or collection.

121.3(12) A person engaged in the business of genealogical research.

121.3(13) A person who sells, installs, maintains, repairs or monitors burglar alarm systems at protected premises or premises to be protected.

121.3(14) Iowa Code sections 80A.2, 80A.4(1)*"b,"* and 80A.4(3) address the ability of peace officers to operate as private investigators and private security guards. The department interprets these three references, when read in concert, to mean the following:

a. An individual peace officer may conduct private investigation business or private security business with permission of the officer's chief executive, without securing either a state license or identification card.

b. Two or more peace officers may form a partnership to conduct private investigation business or private security business without securing either a state license or identification card. The partnership, association, or business may employ other peace officers to conduct investigation or security functions; however, the chief executive of each partner, association member, owner, or employee must give permission to engage in the business.

c. A partnership owned and operated by peace officers may not employ nonpeace officers to perform investigation or security functions.

d. An agency licensed by the department may not have any peace officers involved in the ownership or management of the agency.

e. An agency licensed by the department may not employ a peace officer to do investigative or security functions.

f. No corporation in the private security or private investigation business is exempt from the license or identification card requirement or limitations on the employment of peace officers.

121.3(15) A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

121.3(16) A person engaged exclusively in the business of providing courier service and who does not wear the uniform or use a marked motor vehicle of a licensed private security agency.

661—121.4(80A) Licenses. Each person who engages in the operation of a bail enforcement, private investigation, or private security business in this state shall be licensed prior to such activity. Each business requires a separate license. For a license to be valid, the business shall have at least one current valid licensee who is a director, officer, partner or person who is involved in the business in Iowa.

121.4(1) *Application for licenses—generally.* Anyone who wishes to be considered for a bail enforcement, private investigative or private security license should contact the program services bureau as indicated in rule 661—121.1(80A) and request application information.

121.4(2) *Jurisdiction.* Any private investigative, private security, or bail enforcement business shall be licensed in Iowa if it is conducting business in Iowa. The department will consider the following factors when determining jurisdiction:

a. Whether the private investigative, private security, or bail enforcement business has an office or place of business in Iowa, is organized in Iowa, or conducts business in Iowa.

b. Whether services are provided to a client who resides in Iowa, is organized in Iowa, has an office or place of business in Iowa, provided that some of the services are conducted in Iowa.

c. Types of activities that are viewed as demonstrating jurisdiction in Iowa include, but are not limited to, the following:

(1) A private investigation business conducts an investigation that occurs entirely or partially in Iowa.

(2) A private investigation business investigates a criminal, civil, or administrative case that originates or is filed in Iowa.

(3) A private security business conducts security at any location in Iowa.

(4) A bail enforcement business takes into custody, or attempts to take into custody, a defendant in an Iowa criminal case.

(5) A business provides bodyguard service to a person who resides in or regularly does business in Iowa.

(6) A business provides armored car service to a client who resides in or does business in Iowa, if part of the services are conducted in Iowa.

d. Types of activities that are not, by themselves, viewed as demonstrating jurisdiction in Iowa include, but are not limited to, the following:

(1) A non-Iowa-based private investigation business works on a criminal, civil, or administrative case that originates and is filed in another state, but that contains some investigative elements in Iowa.

(2) A non-Iowa-based business provides bodyguard service to a client who does not reside in Iowa and only occasionally does business in Iowa.

(3) A bail enforcement business takes into custody, or attempts to take into custody, a defendant in a criminal case filed in another state.

e. The fact that a business uses the Internet to retrieve public record information from Iowa databases does not, absent other factors, establish jurisdiction in Iowa.

121.4(3) *Forms.* An applicant for a license or identification card shall execute forms provided by the department. These forms must be submitted to the commissioner and will not be processed unless complete. The forms used in the administration of this chapter are as follows:

a. Application for Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License, Form #PD1.

b. Identification Card Application for: Private Investigator/Private Security Guard/Bail Enforcement Agent, Form #PD2.

c. Application for License Renewal, Form #PD3.

d. FBI Fingerprint Card, Form #FD–258.

e. Limited Liability Company, Form #PD5.

f. License Surety Bond, Form #PD6.

g. Corporate Information, Form #PD7.

h. Identification Card, Form #PD8.

121.4(4) *Application requirements.* An applicant for a license as a bail enforcement agency, private investigative agency or private security agency must submit the following to complete the application process:

a. A completed Application for Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License (Form #PD1) for each individual.

With respect to an applicant who is a corporation, Form #PD1 must be completed by each officer or director who is actively involved in the licensed business in Iowa.

With respect to an applicant who is a partnership or association, Form #PD1 must be completed by each partner or association member.

b. Two completed Fingerprint Cards (Form #FD–258) and the associated processing fees for each individual identified in paragraph *"a"* of this subrule.

c. A completed surety bond form (Form #PD6) issued by a surety company authorized to do business in this state.

d. If the applicant is a corporation, a completed Corporate Information form (Form #PD7).

e. Two 1″ × 1″ color photographs of the head and shoulders of each individual identified in paragraph *"a"* of this subrule, taken not more than one year prior to application.

f. A fee of $100 for each agency license requested, plus $10 for each application form for an employee identification card (Form #PD2) requested pursuant to this subrule.

g. Proof of financial responsibility.

h. Pictures, photocopies or physical descriptions of all uniforms, hats, badges, and insignia to be used by the private security agency.

121.4(5) *Abandonment of applications.* If an applicant for an agency license fails to complete the application within six months after it has been filed, the application shall be deemed abandoned. Any application submitted subsequent to the abandonment of a former application shall be treated as a new application, and must be filed in accordance with subrule 121.4(4).

121.4(6) *Proof of financial responsibility.* Proof of financial responsibility shall be given by filing a certificate of insurance from a licensed insurance company demonstrating coverage for general liability, completed operations and personal injury. Personal injury insurance shall include coverage for the following groups of offenses:

a. False arrest, detention, or imprisonment, or malicious prosecution.

b. Libel, slander, defamation or violation of rights of privacy.

c. Wrongful entry or eviction or other invasion of rights of private occupancy.

The certificate shall provide that the insurance shall not be modified or canceled unless 30 days' prior notice is given to the department. Licensees shall have no more than 30 days following any specified expiration dates to comply with insurance requirements. The license shall be automatically revoked if the licensee has not complied with the certificate of insurance requirement within the 30 days.

EXCEPTION: Current licensees who have provided proof of financial responsibility by filing an irrevocable letter of credit as of May 1, 2003, shall be allowed to continue using that means of providing proof of financial responsibility as long as their license remains continuously valid or until such proof is replaced by liability insurance. Licensees who provide proof of financial responsibility pursuant to this exception shall continue to meet the applicable requirements established in subrule 121.4(5) prior to May 1, 2003.

121.4(7) *Mandatory examinee.* Rescinded IAB 5/25/05, effective 5/1/05.

121.4(8) *Application for examination.* Rescinded IAB 5/25/05, effective 5/1/05.

121.4(9) *Time and place of examination.* Rescinded IAB 5/25/05, effective 5/1/05.

121.4(10) *Reexaminations.* Rescinded IAB 5/25/05, effective 5/1/05.

661—121.5(80A) License requirements. In order to be considered for a license, the applicant must undergo a background investigation by the department and must meet the following standards:

121.5(1) Be at least 18 years old;

121.5(2) Not be a peace officer (except a reserve peace officer);

121.5(3) Never have been convicted of a felony or aggravated misdemeanor;

121.5(4) Not be an abuser of alcohol or a controlled substance;

121.5(5) Not have a history of repeated acts of violence;

121.5(6) Be of good moral character. Consideration of whether an applicant is of good moral character includes but is not limited to:

a. Any of the applicant's references indicating the applicant is not of good moral character;

b. The sheriff of the county of residence or business or the police chief of the city of residence or business so indicating in writing;

c. The applicant's failing to discharge just obligations;

d. The applicant's writing a check on an account with knowledge that there are insufficient funds to cover it;

e. The applicant's failing to pay employees wages legally due the employees;

f. The applicant's knowingly obstructing justice or interfering in the lawful duties of a peace officer or with any official investigation;

g. Unless rendered confidential by law, the applicant's failing to report:

(1) A serious crime, or

(2) The location of any stolen property;

h. The applicant's committing an act which involves moral turpitude, whether or not a criminal conviction occurred.

i. The applicant's being subject to any court order that restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, and includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child, or explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury;

j. The applicant's being a registered sex offender in any jurisdiction;

k. The applicant's being the subject of any arrest warrant, mittimus or other court order for detention in any jurisdiction.

121.5(7) Not been convicted of any crime defined in Iowa Code section 708.3, 708.4, 708.5, 708.6, 708.8, or 708.9, or a like offense in another jurisdiction;

121.5(8) Not been convicted by any court of illegally using, carrying, or possessing a dangerous weapon;

121.5(9) Not have a history of mental illness or instability.

661—121.6(80A) Identification cards. Each person employed by and engaged in the business of a licensed bail enforcement, private investigative or private security agency must obtain an employee identification card from the department and must meet the standards established in rule 661—121.5(80A). However, applicants for employee identification cards are not required to comply with surety bond or proof of financial responsibility requirements as those requirements have already been met by the licensed agency. For purposes of this rule, an employee who is required to obtain an identification card from the department is an agent or employee of a licensed agency who is engaged in the activities of the business which render it subject to the regulation of Iowa Code chapter 80A. Employees who are engaged exclusively in the unregulated activities of a licensed agency are considered exempt from this standard. Such exempt activities include clerical work, dispatching, building maintenance, vehicle maintenance, payroll and other financial processing, selling and taking tickets, parking cars and other activities that do not provide direct security services and that are generally conducted away from a contracted job site.

121.6(1) To obtain an employee identification card, the licensed agency shall submit:

a. A completed Identification Card Application for: Private Investigator/Private Security Guard/Bail Enforcement Agent, Form #PD2;

b. Two 1″ × 1″ color photographs of the head and shoulders of the applicant; and

c. Two completed fingerprint cards (Form #FD–258), with the associated processing fees.

121.6(2) Reserved.

661—121.7(80A) License and background investigation fees.

121.7(1) A fee of $100 shall accompany each application for a bail enforcement, private investigative or private security license. If the application is approved, the money shall be applied to the license fee, but if the application is disapproved, the deposited application fee shall be refunded to the applicant. Application fees shall not be refunded for abandoned applications described in subrule 121.4(5) or for canceled, suspended or revoked licenses.

121.7(2) A nonrefundable fee to cover the cost of processing fingerprint cards through the FBI must be submitted with each new or renewal application and with each application subsequent to a license cancellation or revocation. If fingerprints are rejected as unreadable the first time they are submitted, they may be resubmitted once for no additional fee. If fingerprints are submitted twice and both submissions are rejected as unreadable, subsequent submissions shall require additional processing fees, which shall be included with the submissions. Information regarding fees may be obtained by contacting the department as provided in rule 661—121.1(80A).

661—121.8(80A) Display of license. Immediately upon receipt of the license issued by the department, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the licensee's principal place of business within the state, so that all persons visiting such place may readily see it. If there is more than one place of business, then there shall be a photocopy of the original license posted in every such place of business. The licensee shall notify the commissioner of each location where a copy of the license is posted. If the licensee has no office in the state of Iowa, the licensee shall post the license at the principal place of business and notify the commissioner of the address where such license is posted. Such license shall at all reasonable times be subject to inspection by the commissioner. It shall be unlawful for any person holding such license to post such license or to permit such license to be posted upon premises other than those authorized therein. Every license, and each copy thereof, shall be surrendered to the department within seven days after written notice to the holder that such license has been revoked. Failure to comply with any of the provisions of this rule is sufficient cause for revocation of the license.

661—121.9(80A) Duplicate license. The commissioner shall issue a duplicate license upon the payment of $5 and upon receiving a written statement that the original license has been lost, destroyed, stolen or otherwise rendered useless, and that if the original license is recovered, the original or the duplicate will be returned immediately to the department.

661—121.10(80A) License renewal. Each applicant for a license renewal must execute Form #PD3 provided by the department. This renewal form and two completed FBI Fingerprint Cards (Form #FD–258) shall be submitted to the commissioner not less than 30 days prior to expiration of the applicant's current license and shall not be processed unless complete. In order for the application to be complete, the applicant must satisfy the requirements of rules 661—121.4(80A), 661—121.5(80A), and 661—121.7(80A) and, for renewals of private investigation licenses, 661—121.22(80A).

In the event the department has not processed a complete renewal application prior to the lapse of the license, the renewal shall be deemed temporarily granted until the department issues a new license or denies the renewal.

In no event will a renewal license be granted if the application for renewal is received by the department after the expiration date of the existing license.

If the former licensee wishes to continue the bail enforcement, private investigative or private security business, all of the requirements for an initial application must be met.

661—121.11(80A) Employee identification cards.

121.11(1) The employee identification card issued by the commissioner shall include the employee's name and color photograph, agency name and number, type of business, date of issuance and identification card number.

The identification card shall be evidence that the holder is duly authorized to work for the licensed agency. The holder shall have this card in the holder's possession at all times when acting within the scope of employment. Failure to do so may result in suspension or revocation of the identification card or the agency license. This identification card shall remain the department's property. When any person to whom a card is issued terminates the person's position for any reason, the card must be surrendered to the commissioner within seven days. In the event of loss, destruction, or theft of this card, the licensee shall within five days of such discovery send to the commissioner a written report that describes the circumstances surrounding the loss, destruction, or theft. If the agency license has been terminated or revoked, the agency must return the license and all identification cards to the commissioner within seven days. The penalty for any knowing or willful misconduct in the use of the identification card may be revocation of the identification card or the agency license or both, depending on the nature and degree of the misconduct.

The fee for each application form (Form #PD2) for an original, temporary, or replacement employee identification card is $10. The fee is refundable for blank, unused forms returned to the department.

A nonrefundable fee to cover the cost of processing fingerprint cards through the FBI shall be submitted with each new application for an employee identification card. If fingerprints are rejected as unreadable the first time they are submitted, they may be resubmitted once for no additional fee. If fingerprints are submitted twice and both submissions are rejected as unreadable, subsequent submissions shall require additional processing fees, which shall be included with the submissions.

121.11(2) Temporary identification cards. The Identification Card Application for: Private Investigator/Private Security Guard/Bail Enforcement Agent, Form #PD2, shall contain a temporary identification card that shall be valid for 14 calendar days from the date of issuance. This temporary identification card shall be issued to new employees of a licensee so that the requirement that employees have in their possession a valid identification card may be met while the application for a permanent identification card is being processed. The application for an employee identification card must be received by the department in sufficient time to allow four business days for processing. Any application for an employee identification card received by the department without the specified minimum time for processing or after the temporary identification card has expired will be returned to the licensed agency. A new Form #PD2 must then be resubmitted under the requirements of rule 661—121.6(80A).

121.11(3) Replacement of identification cards. The commissioner shall issue a duplicate employee identification card upon the submission of a complete new application (Form #PD2), with associated fees as required in rule 661—121.6(80A) and upon receipt of a written statement that the original employee identification card has been lost, destroyed, stolen or otherwise rendered useless. If the original employee identification card is recovered, it shall be returned immediately to the department.

121.11(4) Display of identification cards. When an employee of a licensed agency is acting within the scope of employment and is requested to produce identification, the employee shall promptly display the employee identification card and allow the requester to reasonably examine the identification card and write down any information contained thereon. Failure to comply may result in revocation of the identification card or license. The employee may refuse to comply with the request to produce identification if, and only if, displaying the employee identification card would put the employee or another person in danger, or would jeopardize an assignment or investigation.

661—121.12(80A) Badges, uniforms, insignia, patches and hats. No badges, uniforms, insignia, patches, or hats will be approved for private investigative or bail enforcement agents. No holder of a license or identification card while performing the duties of a private security guard shall wear any

uniform, or wear, display, or likewise use any badge, insignia, patch, shield, or the like, without prior written approval of the commissioner. Any person wearing an approved uniform shall carry a valid identification card issued by the department.

The commissioner will not approve any item subject to this rule if in the commissioner's opinion it would cause a person to confuse the operation of the licensed business with that of a law enforcement agency. The commissioner may consider the appearance of the badge, uniform, insignia, patch or hat of the requesting agency, as well as the appearance of badges, uniforms, insignias, patches or hats of law enforcement agencies in or near the area in which the requesting agency performs services. The commissioner may also consider any other information when making a decision regarding the approval of any item subject to this rule.

Badges, insignia and patches will be approved only for private security as a part of an approved uniform. No badge, insignia, patch or hat will be approved which contains the word or words "police," "officer," "policeman," or "enforcement," or the Great Seal of the State of Iowa. The words "security" and "officer" may be used when they appear as the single term "security officer."

661—121.13(80A) Advertisement, cards, letterhead and the like. No holder of a license or identification card shall use, display, cause to be printed or distributed in any fraudulent, false, or misleading manner, cards, letterheads, circulars, brochures, or any other advertising material or advertisement in which any name or indicia of the license status of the licensee is set forth in any manner other than the name under which the licensee is duly licensed.

Such holder of a license or identification card shall not publish or cause to be published any advertisement, letterhead, circular or statement or phrase of any sort which suggests that the holder is a peace officer.

Any violation of this rule may result in suspension or revocation of the identification card or the license, and possible referral for criminal prosecution.

661—121.14(80A) Misleading statements. No holder of a license or identification card may make any statement which indicates or tends to indicate the individual is a peace officer.

661—121.15(80A) Reports. Any private investigative agency licensee who provides services to any client in this state shall make and offer to the client a typed or legibly written ink report containing the findings and complete details of the investigation, a copy of which shall be retained by the licensee for three years and made available to the commissioner for examination at any reasonable time upon a complaint from the client for whom the report was prepared. In the event a client does not desire a written report, the licensee will note the time and date on the file copy of the report that the client stated no desire for a written report or refused the offer. A private security agency need not submit a written report unless the client so requests one.

Descriptive reports, chronological reports, and cover letters to the client shall be personally signed by the licensee or the licensee's designee. The licensee's file copy will reflect the names of all participating employees and a description of the work performed by each one.

661—121.16(80A) Denial, cancellation, suspension, or revocation of a license or identification card.

121.16(1) *Actions by the commissioner.* The commissioner may deny, suspend, cancel or revoke a license or identification card(s) for any of the following reasons:

a. Failure to comply with all of the provisions of Iowa Code chapter 80A and Iowa Administrative Code, 661—Chapter 121.

b. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, as provided for in Iowa Code chapter 252J.

c. Receipt by the department of written notice that the licensed agency is no longer conducting business and is abandoning the remaining term of the license.

121.16(2) *Voluntary suspension.* The commissioner may allow an agency to place its license in voluntary suspension and may reinstate the license when all requirements are met. The license shall expire at the time of renewal unless all requirements are met.

121.16(3) *Surrender of license and identification card(s).* Every license, and each copy thereof, and all employee identification cards shall be surrendered to the department within seven days after written notice to the holder that such license has been canceled, abandoned, suspended or revoked.

121.16(4) *Surrender of identification card(s).* An employee identification card shall be surrendered to the department within seven days after written notice to the licensee that such employee identification card has been canceled or revoked.

121.16(5) *Temporary denial or suspension.* An agency license or employee identification card shall be temporarily denied or suspended until the outcome of any pending action is known if the result of that action would disqualify the applicant, licensee or employee.

661—121.17(80A) Licensee's duty regarding employees. The licensee shall be held responsible for ascertaining that all the licensee's employees meet the requirements of the bail enforcement, private investigation and private security statute and rules.

The licensee shall report to the commissioner any violations of the statute and rules, and inconsistencies thereof, and take immediate steps to be in compliance with such statute and rules.

The licensee is responsible for ensuring that each employee who is required to obtain an identification card from the department has a valid temporary or permanent identification card in the employee's possession prior to the employee's commencing work.

Failure to meet these requirements may result in suspension or revocation of the license or identification card(s).

661—121.18(80A) Campus weapon requirements. In addition to the requirements of the statutes, nothing in rule 661—4.3(17A,724) shall preclude the sheriff from requiring additional firearm training. However, if the sheriff so requires additional training, the sheriff shall make such training reasonably available to the applicant.

661—121.19(80A) Professional permit to carry weapons. Each person seeking a professional permit to carry weapons must meet the requirements of the Iowa Code and Iowa Administrative Code, 661—Chapter 4.

661—121.20(80A) Appeals. Any action of the department that the applicant or employee considers adverse may be appealed through the process delineated in Iowa Administrative Code, 661—Chapter 10.

661—121.21(252J) Child support collection procedures. The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

121.21(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant, identification card holder, or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee, identification card holder, or applicant may accept service personally or through authorized counsel.

121.21(2) The effective date of revocation or suspension of a license or identification card, or denial of the issuance or renewal of a license or identification card, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee, identification card holder, or applicant.

121.21(3) Licensees, identification card holders, and applicants for licenses or identification cards shall keep the department informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code

section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

121.21(4) All departmental fees for applications, license or identification card renewal or reinstatement must be paid by the licensee, identification card holder, or applicant before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license or identification card, or has suspended or revoked a license or identification card pursuant to Iowa Code chapter 252J.

121.21(5) In the event a licensee, identification card holder, or applicant files a timely district court action following service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9, the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension or denial of the issuance or renewal of a license or identification card, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

661—121.22(80A) Continuing education requirements. The continuing education rules that follow rest upon the premise that the increasing complexity of the private investigation business makes it essential that private investigators who have been granted licenses to practice continue their education; the public interest requires that private investigators keep themselves continually up to date on developments affecting their practice; and formal programs of continuing education provide private investigators the opportunity to continually update themselves on the expanding body of knowledge required to practice the private investigation profession. Compliance with the continuing education requirements of the department shall be as follows:

Each person who is the holder of a license to operate a private investigative agency is required to comply with the continuing education requirements as a condition precedent to renewal of the person's license.

Each person who is the holder of an identification card to operate as a private investigator is required to comply with the continuing education requirements as a condition precedent to renewal of the employer's agency license.

121.22(1) *Cost of continuing education.* All costs of complying with the continuing education requirements of the department are the responsibility of the licensee who seeks to operate a private investigative agency in this state.

121.22(2) *Basic requirement.* A licensee seeking to renew the licensee's private investigative agency license shall, during the two-year period preceding the agency license expiration date, complete a minimum of 12 hours of acceptable continuing education. Employees of licensees shall, during the two-year period preceding the agency license expiration date, complete a minimum of 12 hours of acceptable continuing education. An employee who has worked for a licensed agency for less than 90 days at the time of the agency license expiration date shall be exempt from the continuing education requirement of this chapter, provided that during the preceding two years the employee has not been employed as a private investigator for a licensed agency or agencies in this state for a combined total of more than 180 days.

a. Applicants who are residents of another state, who are licensed to operate a private investigation agency in their state of residency, and who are actively engaged in the practice in their state of residence, shall not be required to meet the basic continuing education requirement if their state of residence requires similar continuing education to maintain their private investigative agency license.

b. The commissioner shall have the authority to make exceptions for reasons of individual hardship including health (certified by a medical doctor), military service, foreign residency, or other good cause.

c. Applicants for new licenses who have held a private investigative agency license in Iowa within the past two years shall complete a minimum of 12 hours of acceptable continuing education during the two-year period preceding the date of application.

121.22(3) *Measurement standards.* The following standards will be used to measure the hours of credit to be given for acceptable continuing education programs completed by individual licensees:

a. Credit will be given for whole hours only, with a minimum of 50 minutes constituting one hour. For example, 100 minutes of continuous instruction would count for two hours; however, more than 50 minutes but less than 100 minutes of continuous instruction would count for only one hour.

b. Only class hours or the equivalent, and not student hours devoted to preparation, may be counted.

c. Service as lecturer or discussion leader of continuing education programs may be counted to the extent that it contributes to the applicant's professional competence.

121.22(4) *Programs which qualify.* The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the professional competence of an individual licensed to practice in this state. It will be left to the individual license holder to determine the course of study to be pursued. Thus, each licensee may study subjects related to the licensee's particular practice.

a. Continuing education programs will qualify only if:

(1) An outline of the program is prepared in advance and preserved.

(2) The program is at least one hour (50-minute period) in length.

(3) The program is conducted by a qualified instructor, discussion leader, or lecturer. A qualified instructor, discussion leader, or lecturer is anyone whose background, training, education or experience makes it appropriate for that person to lead a discussion on the subject matter of the particular program.

(4) A record of attendance is maintained.

b. The following programs are deemed to qualify provided all other requirements of this rule are met:

(1) Professional development programs of recognized national and state private investigation organizations.

(2) Technical sessions at meetings of recognized national private investigation organizations and their chapters.

(3) University or college courses.

1. Each semester hour credit shall equal 10 hours toward the requirement.
2. Each quarter hour credit shall equal 6 hours toward the requirement.
3. Each classroom hour of noncredit courses will equal 1 qualifying hour.

(4) Formal organized in-firm and interfirm educational programs.

(5) Programs in other recognized organizations (accounting, industrial, legal and others).

(6) Other organized educational programs on technical and other related subjects.

c. The following general subject matters are acceptable as long as they contribute to the professional competence of the individual investigator.

(1) Accounting and auditing.

(2) Management.

(3) Computer science.

(4) Communications arts.

(5) Law.

(6) Functional fields of the business, including but not limited to the following:

1. Accident investigation.
2. Background investigation.
3. Business taxes.
4. Criminal investigation.
5. Court testimony.
6. Employee theft.
7. Process service.
8. Personnel law.
9. Product liability.
10. Public records availability/access.

11. Report writing.
12. Substance abuse in the workplace.
13. Surveillance techniques.
14. Wage and hour law.
15. Workers' compensation law.

Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to the licensee's professional competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the licensee.

d. Formal correspondence and formal individual study programs contributing directly to the professional competence of an individual which require registration and provide evidence of satisfactory completion will be considered for credit. The amount of credit to be allowed for correspondence and formal individual study programs is to be recommended by the program sponsor and shall not exceed 50 percent of the continuing education requirement.

e. Practical training, also known as field training or on-the-job training, qualifies if it meets the criteria of paragraphs *"a"* through *"c"* of this subrule, is accompanied by classroom training in the same topic area, and counts for no more time than the classroom training.

f. The right is specifically reserved to the commissioner to approve or disapprove credit for continuing education claimed under these rules.

121.22(5) *Controls and reporting.*

a. Applicants for license renewal must provide a signed statement, on forms provided by the department, setting forth the continuing education in which the licensee and the licensee's employees have participated in such manner and at such times as prescribed by the commissioner. This information may include:

(1) School, firm or organization conducting the course.
(2) Location of course.
(3) Title of course and description of content.
(4) Principal instructor.
(5) Dates attended.
(6) Hours claimed.

b. The commissioner may require sponsors of courses to furnish attendance lists or any other information the commissioner deems essential for administration of these continuing education rules.

c. The commissioner will verify on a test basis information submitted by licensees. If an application for license renewal is not approved, the applicant will be so notified and may be granted a period of time by the commissioner in which to correct the deficiencies noted.

d. Primary responsibility for documenting the requirements rests with the licensee and evidence to support fulfillment of those requirements must be retained for a period of three years subsequent to submission of the report claiming the credit. Satisfaction of the requirements, including retention of attendance records and written course outlines, may be accomplished as follows:

(1) For courses taken for scholastic credit in accredited universities and colleges or high school districts, evidence of satisfactory completion of the course will be sufficient. For noncredit courses taken, a statement of the hours of attendance, signed by the instructor, must be obtained by the permit holder.

(2) For correspondence and formal independent study courses, written evidence of completion must be obtained by the licensee.

(3) In all other instances, the licensee must maintain a record of the information listed in subrule 121.22(4) and a copy of the course outline prepared by the course sponsor.

121.22(6) *Compliance.*

a. *Renewals.* If a licensee fails to comply with continuing education requirements prior to the expiration of the license, the department may grant a temporary 30-day license. If the licensee does not complete the continuing education requirements within the 30-day period, the license renewal shall be denied. If the former licensee then wishes to continue the private investigation business, all of the requirements for an initial application must be met. This includes continuing education requirements if the new application is submitted within two years of the date on which the last license became invalid.

b. *New applications for previously licensed persons.* If an applicant for a private investigative agency license has been licensed in Iowa within the past two years, continuing education requirements must be met. Failure to comply shall result in the denial of the license until such time as the requirements are met.

c. *Employees.* If any employee of a licensee fails to comply with continuing education requirements, the employee's identification card shall be revoked and the licensee shall surrender the identification card to the department. An employee may reapply for an identification card as if it were an initial application when continuing education requirements have been met.

661—121.23(80A) Reciprocity.

121.23(1) *Eligibility.* A temporary permit to conduct business in Iowa may be issued to a private investigative or private security agency licensed in another state provided that the requirements and qualifications in the licensing state are similar to those in Iowa and that the licensing state allows similar privileges by reciprocity. A temporary permit may be issued for a period not to exceed 90 days and is not renewable. Employees of an agency granted a temporary permit must comply with Iowa employee requirements in rules 661—121.6(80A) and 661—121.11(80A).

121.23(2) *Requirements.* In order to be considered for a temporary permit, the applicant must undergo a background investigation by the department and shall submit the following:

a. Proof of a current valid bail enforcement, private investigative or private security license in another state. Such license shall be of the same license type as the temporary permit requested from Iowa.

b. A completed Application for Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License (Form #PD1).

c. Two completed FBI Fingerprint Cards (Form #FD–258), with the associated processing fees.

d. Proof of surety bond issued by a surety company authorized to do business in this state.

e. Proof of insurance.

f. If the applicant is a corporation, articles of incorporation and an Iowa certificate of authority issued by the Iowa secretary of state.

g. Two 1″ × 1″ color photographs of the head and shoulders of the applicant, taken not more than one year prior to application.

h. A fee of $100 for each temporary permit requested.

i. An application, with associated fees, for an employee identification card (Form #PD2) for the temporary permit holder.

121.23(3) *Employee identification cards.* The temporary permit holder shall submit an application for an employee identification card for each employee as required in rule 661—121.6(80A).

661—121.24(80A) Replacement license. The commissioner shall issue a replacement license upon receiving a written statement that the original license has been lost, destroyed, stolen or otherwise rendered useless by damage from flooding, storms or other conditions which form a basis for issuance of a disaster emergency proclamation by the governor pursuant to Iowa Code section 29C.6. If the original license is recovered, the original or the replacement will be returned immediately to the department. No fee shall be charged for the issuance of a replacement license.

These rules are intended to implement Iowa Code chapter 80A.

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CHAPTER 156
DNA DATABASE

661—156.1(81GA,HF619) Establishment of DNA database. There is established a DNA database within the division of criminal investigation criminalistics laboratory.

These rules govern the administration of the DNA database and the collection, submission, analysis, identification, storage, disposition, and expungement of DNA records gathered for the DNA database. These rules do not apply to the collection and handling of DNA samples gathered as evidence in the course of criminal investigations.

661—156.2(81GA,HF619) Definitions. The following definitions apply to rules 661—156.1(81GA,HF619) through 661—156.10(81GA,HF619):

"Administrator" means the administrator of the division of criminal investigation criminalistics laboratory.

"Commissioner" means the commissioner of public safety.

"Database" means the DNA database located in the division of criminal investigation criminalistics laboratory.

"Department" means the Iowa department of public safety.

"Director" means the director of the division of criminal investigation.

"Division" means the division of criminal investigation (DCI).

"DNA" means deoxyribonucleic acid.

"Expungement" means the removal of information from the DNA database, effectively severing any ability to link a DNA profile and an individual.

"Laboratory" means the division of criminal investigation criminalistics laboratory.

661—156.3(81GA,HF619) Administration of DNA database. The DNA database shall be under the direct supervision of a supervising criminalist employed by the laboratory and designated by the administrator.

661—156.4(81GA,HF619) Collection of DNA samples. Samples of DNA shall be collected from any person required to submit a sample pursuant to the provisions of 2005 Iowa Acts, House File 619.

156.4(1) The sample shall be collected by the agency to which custody or responsibility for supervision has been assigned by the court issuing the sentencing order.

156.4(2) Each DNA sample shall be collected as soon as practical after an agency assumes custody or supervision of the person required to submit the DNA sample and shall be submitted to the laboratory in accordance with rule 661—156.5(81GA,HF619).

156.4(3) Each DNA sample shall be collected using a DNA collection kit provided by the laboratory, following the instructions provided for the kit by the laboratory.

EXCEPTION: A DNA sample may be collected without the use of a DNA collection kit provided by the laboratory. If a sample is collected without the use of a kit, the person submitting the sample shall include a signed and dated statement describing the collection procedure.

661—156.5(81GA,HF619) Submission of DNA samples.

156.5(1) All samples collected for inclusion in the DNA database should be submitted to the following address:

Iowa DCI Criminalistics Laboratory
2240 S. Ankeny Boulevard
Ankeny, Iowa 50023-9093

EXCEPTION: Each sample submitted in a package with a preprinted mailing address or with a mailing label with a preprinted address, when such package or label has been provided by the Division of Criminal Investigation Criminalistics Laboratory, shall be mailed to the preprinted address. Any other sample shall be mailed in accordance with instructions provided by the Division of Criminal Investigation Criminalistics Laboratory.

156.5(2) Each sample submitted shall be accompanied by a completed DNA sample donor identification form included in the DNA collection kit provided by the laboratory. If the sample is submitted without the donor identification form, the sample shall be accompanied by a statement signed and dated by the person submitting it, with at least the following information identifying the subject of the DNA sample: full name, date of birth, and a clear fingerprint. Additional identifying information, such as the social security number of the person providing the sample or identifying numbers assigned by state agencies, shall be provided if available.
[Editorial change: IAC Supplement 6/17/09]

661—156.6(81GA,HF619) Analysis of DNA samples. Samples of DNA submitted to the laboratory shall be analyzed by laboratory personnel and the results of the analysis entered into the database in accordance with the provisions of "Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories," published by the DNA Advisory Board to the Federal Bureau of Investigation, April 1999.

EXCEPTION: Analysis of DNA samples may be conducted by other laboratories under contract with the department, with the approval of the administrator. Any other laboratory conducting analysis of DNA samples for inclusion in the database shall comply with the requirements and procedures to which the division of criminal investigation criminalistics laboratory is subject under this rule.

661—156.7(81GA,HF619) Identification of DNA samples. Each sample of DNA submitted for inclusion in the database shall be identified by a unique number that will reference the full name of the person whose sample is submitted, the person's date of birth, and a clear fingerprint taken from the person.

661—156.8(81GA,HF619) Storage of DNA samples. Samples of DNA submitted for inclusion in the database shall be stored under normal office conditions.

661—156.9(81GA,HF619) Disposition of DNA samples. Any DNA sample submitted to the laboratory for inclusion in the database shall be retained for at least 30 days after the sample has been analyzed and the results of the analysis entered into the database. Samples may be destroyed 30 days after entry into the database.

661—156.10(81GA,HF619) Expungement of DNA samples.

156.10(1) A person whose DNA record has been included in the database may request expungement of the DNA record from the database based upon the reversal on appeal or dismissal of the case of the person's conviction, adjudication, or civil commitment that caused the submission of the DNA sample. The request shall be in writing and shall include a certified copy of the final court order reversing the conviction, adjudication, or civil commitment; a certified copy of the dismissal; and any other information necessary to ascertain the validity of the request. The request shall clearly state that it is a request to expunge a record from the DNA database and shall state the specific basis for the request.

A request to expunge the DNA record shall be addressed as follows:

Administrator
Iowa DCI Criminalistics Laboratory
2240 S. Ankeny Boulevard
Ankeny, Iowa 50023-9093

156.10(2) Action on expungement request.

a. The division, upon receipt of a written request that validates reversal on appeal of a person's conviction, adjudication, or commitment, and subsequent dismissal of the case, or upon receipt of a written request by a person who voluntarily submitted a DNA sample pursuant to 2005 Iowa Acts, House File 619, section 3, subsection 3, paragraph *"b,"* shall expunge all of the DNA records and identifiable information of the person in the database. The person or the person's representative shall be notified upon completion of such action.

b. If the division determines that the person is otherwise obligated to submit a DNA sample, the DNA record shall not be expunged.

c. If the division denies an expungement request, the division shall notify the person requesting the expungement of the decision not to expunge the DNA record and the reason supporting the decision. A person whose request to expunge a DNA record from the database is denied may appeal that decision to the commissioner within 30 days of the date of the letter communicating the denial. Appeals shall be treated as requests for contested case proceedings, and such proceedings shall be subject to the provisions of rules 661—10.301(17A) through 661—10.332(17A), except that such requests shall be addressed as follows:

Commissioner, Iowa Department of Public Safety
State Public Safety Headquarters Building
215 East 7th Street
Des Moines, Iowa 50319

156.10(3) A DNA record shall not be expunged pursuant to this rule if expungement or destruction of the DNA record would destroy evidence related to another person.

[Editorial change: IAC Supplement 6/17/09]

These rules are intended to implement 2005 Iowa Acts, House File 619, division I.

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CHAPTER 275
CERTIFICATION OF AUTOMATIC FIRE EXTINGUISHING SYSTEM CONTRACTORS

661—275.1(100C) Establishment of program. There is established within the fire marshal division a fire extinguishing system contractors certification program. The program is established pursuant to Iowa Code chapter 100C.

275.1(1) *Certification required.* No person shall act as a fire extinguishing system contractor without being currently certified as a fire extinguishing system contractor by the fire marshal, except as provided in subrule 275.1(3).

275.1(2) *Endorsement.* The certification of each contractor shall carry an endorsement for one or more of the following:

a. Automatic sprinkler system layout;

b. Special hazards suppression systems;

c. Installation of preengineered dry chemical or wet agent fire suppression systems;

d. Installation of preengineered water-based fire suppression systems in one- and two-family dwellings;

e. Testing and inspection of water-based systems; or

f. Any combination thereof.

Any person acting as a fire extinguishing system contractor shall do so only in relation to systems covered by the endorsements on the contractor's certification.

275.1(3) *Length of certification.* Certification shall normally be for one year and shall expire on March 31 each year. A certification which is effective on a date other than April 1 shall be effective on the date on which the certification is issued and shall expire on the following March 31.

a. Certification between July 1, 2006, and October 1, 2006. A contractor may operate without certification between July 1, 2006, and September 30, 2006, as follows:

(1) Prior to August 15, 2006, the contractor may operate as a contractor only if the contractor intends to apply for certification by August 15, 2006; a contractor operating under this subparagraph may perform contracting work only within the scope of certification for which the contractor intends to apply.

(2) On or after August 15, 2006, and before October 1, 2006, the contractor may operate as a contractor subject to this chapter only if the contractor has applied for certification under this chapter. A contractor operating under this subparagraph may perform contracting work only within the scope of certification for which the contractor has applied.

b. Any certification for which application is made by August 15, 2006, and accepted, shall be effective retroactive to July 1, 2006, and appropriate fees shall be collected pursuant to rule 661—275.5(100C).

275.1(4) *Inquiries.* Inquires regarding the fire extinguishing system contractors certification program may be addressed to:

Fire Extinguishing System Contractors Certification Program
Fire Marshal Division
Iowa Department of Public Safety
State Public Safety Headquarters Building
215 East 7th Street
Des Moines, Iowa 50319

Inquiries may be addressed by electronic mail to fesccp@dps.state.ia.us, by telephone to (515)725-6145, or by facsimile to (515)725-6172.

[Editorial change: IAC Supplement 6/17/09]

661—275.2(100C) Definitions. The following definitions apply to rules 661—275.1(100C) through 661—275.7(100C):

"Automatic fire extinguishing system" means a system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire and

includes automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, and halogenated extinguishing systems, or other equivalent fire extinguishing technologies recognized by the fire extinguishing system contractors advisory board.

"Automatic sprinkler system" means an integrated fire protection sprinkler system usually activated by heat from a fire designed in accordance with fire protection engineering standards and includes a suitable water supply. The portion of the system above the ground is a network of specially sized or hydraulically designed piping installed in a structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern.

"Carbon dioxide extinguishing system" means a system supplying carbon dioxide from a pressurized vessel through fixed pipes and nozzles and includes a manual or automatic actuating mechanism.

"Clean agent" means an electrically nonconducting, volatile, or gaseous fire extinguishant that does not leave a residue upon evaporation.

"Deluge system" means a sprinkler system employing open sprinklers attached to a piping system connected to a water supply through a valve that is opened by the operation of a detection system installed in the same area as the sprinklers.

"Dry chemical" means a powder composed of very small particles, usually sodium bicarbonate-, potassium bicarbonate-, or ammonium phosphate-based, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption (caking), and the proper flow capabilities.

"Dry pipe sprinkler system" means an extinguishing system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, which allows the water to flow into the piping system and out the opened sprinklers.

"Fire extinguishing system contractor" or *"contractor"* means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state.

"Foam extinguishing system" means a special system discharging foam made from concentrates, either mechanically or chemically, over the area to be protected.

"Halogenated extinguishing system" means a fire extinguishing system using one or more atoms of an element from the halogen chemical series of fluorine, chlorine, bromine, and iodine.

"Layout" means drawings, calculations and component specifications to achieve the specified system design installation. "Layout" does not include design.

"Listed" means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

"Maintenance inspection" means periodic inspection and certification completed by a fire extinguishing system contractor. For purposes of this chapter, "maintenance inspection" does not include an inspection completed by a local building official, fire inspector, or insurance inspector, when acting in an official capacity.

"Preengineered dry chemical or wet agent fire suppression system" means any system having predetermined flow rates, nozzle pressures and limited quantities of either agent. These systems have specific pipe sizes, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and number and types of nozzles prescribed by a nationally recognized testing laboratory. The hazards against which these systems protect are specifically limited by the testing laboratory as to the type and size based upon actual fire tests. Limitations on hazards that can be protected against by these systems are contained in the manufacturer's installation manual, which is referenced as part of the listing.

"Preengineered water-based system" means a packaged, water-based sprinkler system including all components connected to a water supply and designed to be installed according to pretested limitations.

"Responsible managing employee" means an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor who is designated as a responsible managing employee for a fire extinguishing system contractor and who meets the requirements for a responsible managing employee established in rule 661—275.3(100C).

"Special hazards suppression system" means a fire extinguishing system utilizing fire detection and control methods to release an extinguishing agent, other than water connected to a dedicated fire protection water supply.

"Wet agent" or *"wet chemical"* means an aqueous solution of organic or inorganic salts or a combination thereof that forms an extinguishing agent.

661—275.3(100C) Responsible managing employee. Each fire extinguishing system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees. A contractor may designate more than one responsible managing employee in order to satisfy the requirements for more than one endorsement as provided in subrule 275.1(2). If more than one responsible managing employee is designated, the contractor shall indicate for which responsible managing employee each designated alternate managing employee serves as an alternate.

275.3(1) The responsible managing employee or employees shall be designated in the application for certification; and, if a responsible managing employee is no longer acting in that role, the contractor shall so notify the fire marshal, in writing, within 30 calendar days, on a form designated by the fire marshal.

275.3(2) If a responsible managing employee is no longer acting in that role and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee shall become the responsible managing employee and the contractor shall so notify the fire marshal, in writing, within 30 calendar days of the date on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the fire marshal shall indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

275.3(3) If a responsible managing employee designated by a fire extinguishing system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor shall designate a new responsible managing employee and shall notify the fire marshal, in writing, of the designation within six months of the date on which the former responsible managing employee ceased to act in that capacity, on a form designated by the fire marshal. If the fire marshal has not been notified of the appointment of a new responsible managing employee within six months of the date on which a responsible managing employee ceased serving in that capacity, the fire marshal shall suspend the certification of the fire extinguishing system contractor.

275.3(4) A responsible managing employee or an alternate responsible managing employee shall meet one of the following requirements:

a. Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design.

b. Current certification by the National Institute for Certification in Engineering Technologies at level III or above in fire protection technology, for automatic sprinkler system layout, special hazards suppression systems, or both.

(1) Prior to April 1, 2008, a fire extinguishing system contractor may receive provisional certification if the person designated as the contractor's responsible managing employee has initiated procedures for obtaining certification by the National Institute for Certification in Engineering Technologies at level III in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both, and has satisfactorily completed testing which is offered by a third party and has been approved by the fire marshal, for competency in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both. The contractor shall provide the fire marshal with notification and documentation of the satisfactory completion of required

third-party testing within 30 days after the date on which the contractor's provisional certification was initially issued.

After one year of provisional certification of the contractor, the responsible managing employee shall have current certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both. Documentation that this requirement has been met shall be provided by the contractor to the fire marshal within 30 days after the one-year anniversary of the effective date of the initial provisional certification.

Provisional certification shall not be recognized on or after April 1, 2009.

(2) Reserved.

c. A contractor may install preengineered dry chemical or wet agent fire suppression systems, if the responsible managing employee meets the requirements specified in subparagraph (1). Until April 1, 2009, a contractor may install preengineered dry chemical or wet agent fire suppression systems, if the responsible managing employee meets the requirements specified in subparagraph (2), and the contractor has received provisional certification prior to April 1, 2008.

(1) Certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology, for special hazards suppression systems; certification by the National Association of Fire Equipment Distributors in preengineered kitchen fire suppression systems or preengineered industrial fire suppression systems; or satisfactory completion of an applicable training or testing program which has been approved by the fire marshal.

(2) On or prior to April 1, 2008, a contractor may receive provisional certification with endorsement for installation of preengineered dry chemical or wet agent systems if the responsible managing employee has completed training required by a manufacturer of at least one system which the contractor installs or maintains. A contractor who is applying for provisional certification on or after April 1, 2007, shall provide documentation to the fire marshal of such training. A contractor who has received provisional certification prior to April 1, 2007, shall, by April 1, 2007, provide documentation of either training required by a manufacturer of at least one system which the contractor installs or maintains or of the training described in subparagraph (1). If satisfactory documentation is provided of the training required in subparagraph (1), the provisional status of the certification shall be removed at no cost to the contractor.

Provisional certification shall not be recognized on or after April 1, 2009.

d. A contractor may install preengineered water-based systems in one- or two-family dwellings if the responsible managing employee meets the following requirements:

(1) Satisfactory completion of any training required by the manufacturer for the installation of any system the contractor installs; and

(2) Satisfactory completion of an applicable training or testing program which has been approved by the fire marshal.

Until April 1, 2008, a contractor may receive provisional certification if the responsible managing employee has satisfactorily completed training required by the manufacturer for the installation of each system which the contractor installs. The provisional certification shall not be recognized on or after April 1, 2009.

e. A contractor may inspect and test water-based fire extinguishing systems if the responsible managing employee has current certification from the National Institute for Certification in Engineering Technologies at level III in fire protection technology, inspection and testing of water-based systems.

(1) Prior to April 1, 2008, a contractor may receive provisional certification with an endorsement for inspection and testing of water-based fire extinguishing systems if the responsible managing employee has initiated procedures for obtaining certification from the National Institute for Certification in Engineering Technologies at level III in fire protection technology, inspection and testing of water-based systems. After one year of provisional certification with an endorsement for inspection and testing of water-based fire extinguishing systems, the responsible managing employee shall have certification from the National Institute for Certification in Engineering Technologies at level II in fire protection technology, inspection and testing of water-based systems.

Provisional certification shall not be recognized on or after April 1, 2009.

(2) Reserved.

275.3(5) In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the fire marshal, such approval is required prior to acceptance of the training or testing to meet certification requirements. Approval by the fire marshal of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the fire marshal. Any individual, firm or organization seeking to obtain such approval may apply to the fire marshal. An application form for approval of a testing or training program may be obtained by contacting the fire extinguishing system contractors certification program as specified in subrule 275.1(4).

275.3(6) Work performed by a contractor subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee.

275.3(7) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing a fire extinguishing system or portable fire extinguisher set forth in any rule of the fire marshal or local fire ordinance or standard adopted by reference therein.

661—275.4(100C) Certification requirements. A fire extinguishing system contractor shall meet all of the following requirements in order to receive certification from the fire marshal and shall continue to meet all requirements throughout the period of certification. The contractor shall notify the fire marshal, in writing, on a form designated by the fire marshal, within 30 calendar days if the contractor fails to meet any requirement for certification.

275.4(1) The contractor shall designate one or more responsible managing employees as provided in rule 661—275.3(100C).

275.4(2) The contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic fire extinguishing systems in the following amounts: $500,000 per person, $1,000,000 per occurrence, and $1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of a fire extinguishing system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

275.4(3) The contractor shall maintain current registration as a contractor with the labor services division of the Iowa workforce development department in compliance with Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code.

EXCEPTION: A contractor shall not be required to maintain registration with the labor services division of the Iowa workforce development department if the contractor does not meet the definition of "contractor" for purposes of Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code.

275.4(4) The contractor shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the contractor is performing work.

661—275.5(100C) Application and fees.

275.5(1) *Application.* Any contractor seeking certification as a fire extinguishing system contractor shall submit a completed application form to the fire marshal. The application shall be filed no later than 30 days prior to the date on which certification is required or on which an existing certification expires. An application form may be obtained from the fire marshal or from the Web site of the fire extinguishing

system contractors certification program. The application form shall be submitted with all required attachments and the required application fee established in subrule 275.5(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The Web site for the fire extinguishing system contractors certification program is: http://www.dps.state.ia.us/fm/fesccp/index.shtml.

275.5(2) *Certification fee.* The certification fee shall be $500 per year. If an application is denied, all except $100 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the certification fee shall be made if the certification is revoked or if the denial of the certification is based on the applicant's knowingly including false or misleading information on the application.

If an application for certification provides for more than one responsible managing employee pursuant to rule 661—275.3(100C), there shall be an additional fee of $50 for each responsible managing employee beyond the first. If an application for certification provides for more than one endorsement as provided in subrule 275.1(2), there shall be an additional fee of $50 for each endorsement beyond the first.

EXCEPTION: If a certification is effective after April 1 and no later than June 30, the certification fee shall be $500. The certification fee for a certification which becomes effective between July 1 and September 30 shall be $400. The certification fee for a certification which becomes effective between October 1 and December 31 shall be $300. The certification fee for a certification which becomes effective between January 1 and March 31 shall be $200. If an application for certification provides for more than one responsible managing employee pursuant to rule 661—275.3(100C), there shall be an additional fee of $50 for each responsible managing employee beyond the first. If an application for certification provides for more than one endorsement as provided in subrule 275.1(2), there shall be an additional fee of $50 for each endorsement beyond the first.

275.5(3) *Payment.* The certification fee shall be submitted by draft, check, or money order in the applicable amount payable to the Fire Extinguishing System Contractors Certification Program. If the application is denied, the certification fee less $100 shall be returned to the applicant, except as provided in subrule 275.5(2).

275.5(4) *Amended certification fee.* The fee for issuance of an amended certification is $100. The fee shall be submitted with the request for an amended certification. A contractor shall request and the fire marshal shall issue an amended certificate for any of the items listed in paragraphs *"a," "b,"* and *"c"*:

a. A change in the designation of a responsible managing employee;

b. A change in insurance coverage; or

c. A change in any other material information included in or with the initial or renewal application.

A change in the address of the business is a material change. However, if the request for an amended certificate is solely a change of business address, the address of the business to which the certificate being amended was sent is in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6, and the relocation occurs as a result of flooding or storm damage or other conditions which form a basis for the issuance of the disaster emergency proclamation, the fee shall not apply, although an amended certificate shall be issued.

d. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the fire marshal but shall not require issuance of an amended certification or payment of the amended certification fee.

275.5(5) *Attachments.* Required attachments to the application for certification include, but are not limited to, the following:

a. Documentation verifying that the contractor has in force the insurance coverage required by subrule 275.4(2). The documentation shall include an acknowledgment that the contractor's insurance coverage extends to any work performed by the contractor within the scope of certification pursuant to this chapter. The documentation may consist of a letter from the insurance carrier or a copy of the insurance certificate with an endorsement showing the required information.

b. Documentation verifying that the person designated as the responsible managing employee and any persons designated as alternate responsible managing employees have met the applicable certification requirements.

661—275.6(100C) Complaints. Complaints regarding the performance of any certified contractor, failure of a certified contractor to meet any of the requirements established in Iowa Code chapter 100C or this chapter or any other provision of law, or operation as a fire extinguishing system contractor without certification may be filed with the fire marshal. Complaints should be addressed as follows:

Fire Extinguishing System Contractors Certification Program
Fire Marshal Division
Iowa Department of Public Safety
State Public Safety Headquarters Building
215 East 7th Street
Des Moines, Iowa 50319

Complaints may be submitted by electronic mail to fesccp@dps.state.ia.us or by facsimile to (515)725-6172.

Complaints should be as specific as possible and shall clearly identify the contractor against whom the complaint is filed. A form which may be used to file complaints is available on the Web site of the fire extinguishing system contractors certification program. Complaints may be filed without using the complaint form provided, but shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

NOTE: The Web site for the fire extinguishing system contractors certification program is: http://www.dps.state.ia.us/fm/fesccp/index.shtml.

[Editorial change: IAC Supplement 6/17/09]

661—275.7(100C) Denial, suspension, or revocation of certification; civil penalties; and appeals. The fire marshal may deny, suspend or revoke the certification of a contractor, or assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as a fire extinguishing system contractor is violated.

275.7(1) *Denial.* The fire marshal may deny an application for certification:

a. If the applicant makes a false statement on the application form or in any other submission of information required for certification. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for certification established in this chapter.

c. If the applicant is currently barred for cause from acting as a fire extinguishing system contractor in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as a fire extinguishing system contractor and if the basis of that action reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have been previously barred for cause from operating as a fire extinguishing system contractor in another jurisdiction and is no longer barred from doing so, the fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a certified contractor. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

e. If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to the likelihood that the applicant would operate with integrity as a certified contractor. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

275.7(2) *Suspension.* A suspension of a certification may be imposed by the fire marshal for any violation of these rules or Iowa Code chapter 100C or for a failure to meet any legal requirement to operate as a fire extinguishing system contractor in this state. Failure to provide any notice to the fire marshal as provided in these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the certification even after the period of the suspension.

275.7(3) *Revocation.* A revocation is a termination of a certification. A certification may be revoked by the fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire extinguishing system incorrectly installed by a certified contractor or when information comes to the attention of the fire marshal which, if known to the fire marshal when the application was being considered, would have resulted in denial of the certification.

A new application for certification from a contractor whose certification had previously been revoked shall not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The fire marshal may specify in the revocation order a longer period than one year before a new application for certification may be considered. When a new application for certification from a contractor whose certification was previously revoked is being considered, the applicant may be denied certification based upon the same information which was the basis for revocation even after any such period established by the fire marshal has expired.

275.7(4) *Civil penalties.* The fire marshal may impose a civil penalty of up to $500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

275.7(5) *Suspension or revocation for nonpayment of child support.* The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the certified contractor by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the contractor may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of certification of a contractor, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the contractor.

c. Contractors shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the contractor before a certificate will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a certification or has suspended or revoked a certification pursuant to Iowa Code chapter 252J.

e. In the event a contractor files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension of the certification, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule 275.7(5) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a certification program, such as the one established in this chapter, and provide that

actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

275.7(6) *Appeals.* Any denial, suspension, or revocation of a certification, or any civil penalty imposed upon a certified contractor under this rule, other than one imposed pursuant to subrule 275.7(5), may be appealed by the contractor within 14 days of receipt of the notice. Appeals of actions taken by the fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

These rules are intended to implement Iowa Code chapter 100C.

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CHAPTER 291
VOLUNTEER EMERGENCY SERVICES PROVIDER DEATH BENEFITS

[Prior to 1/5/05, see 661—Ch 59]

661—291.1(100B) Volunteer emergency services provider death benefit program. There is established within the fire marshal division a volunteer emergency services provider death benefit program with responsibility for administering the payment of death benefits to beneficiaries of volunteer emergency services providers who die in the line of duty, as provided in Iowa Code section 100B.11.

Information about the program may be obtained by mail from the Volunteer Emergency Services Provider Death Benefit Program, Fire Marshal Division, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by telephone at (515)725-6145, or by electronic mail at fminfo@dps.state.ia.us.

[Editorial change: IAC Supplement 6/17/09]

661—291.2(100B) Eligibility. The beneficiary of a volunteer emergency services provider who is killed in the line of duty is eligible for a lump-sum payment of $100,000 from the volunteer emergency services provider death benefit program, provided that application is made to the program in accordance with requirements established in this chapter and all eligibility criteria are satisfied.

291.2(1) *Application.* Application forms for the volunteer emergency services provider death benefit program may be obtained on request from the fire marshal division. The fire marshal may accept a legible copy of a completed application for the federal Public Safety Officers' Benefits Program as an application for payment of benefits from the volunteer emergency services provider death benefit program. Completed application forms shall be mailed or delivered to the Volunteer Emergency Services Provider Death Benefit Program, Fire Marshal Division, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. A completed application form shall be accompanied by a letter from the chief or other responsible supervisory official of the department in which the volunteer emergency services provider was serving at the time of the line-of-duty death, certifying that the death of the volunteer was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer. Any evidence or proof available to the chief or responsible supervisory official to support the claim shall accompany the letter.

291.2(2) *Definitions.* The following definitions apply to the volunteer emergency services provider death benefit program.

"Beneficiary" means the surviving spouse of the volunteer emergency services provider who died in the line of duty. If there is no surviving spouse, and there is a surviving child or surviving children of the volunteer emergency services provider, then "beneficiary" means the surviving child of the member. If there is more than one surviving child, the children are cobeneficiaries who shall share equally in the lump-sum payment of the death benefit. If there is no surviving spouse or child of the volunteer emergency services provider, "beneficiary" means the surviving father or mother of the volunteer emergency services provider if either or both survives at the time of the line-of-duty death of the volunteer emergency services provider. If both the mother and father of the volunteer emergency services provider survive at the time of the line-of-duty death of the volunteer emergency services provider, then the father and mother are cobeneficiaries who shall share equally in the lump-sum payment. If there is no surviving spouse, child, or parent at the time of the line-of-duty death of the volunteer emergency services provider, then "beneficiary" means the estate of the deceased volunteer emergency services provider.

"Line-of-duty death" means the death of a volunteer emergency services provider which was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer. The death is not a line-of-duty death if any of the following apply:

1. The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the volunteer emergency services provider's death.

However, if the death was the direct and proximate result of a heart attack or stroke, the volunteer emergency services provider shall be presumed to have died as a result of a traumatic personal injury if the provider engaged in a nonroutine stressful or strenuous physical activity within the scope of the provider's duties and the death resulted while engaging in that activity, while still on duty after engaging in that activity, or not later than 24 hours after engaging in that activity, and the presumption is not overcome by competent medical evidence to the contrary. For purposes of this paragraph, "nonroutine stressful or strenuous physical activity" includes, but is not limited to, nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, emergency response, and training exercise activities. "Nonroutine stressful or strenuous physical activity" does not include activities of a clerical, administrative, or nonmanual nature.

2. The death was caused by the intentional misconduct of the volunteer emergency services provider or by such provider's intent to cause the provider's own death.

3. The volunteer emergency services provider was voluntarily intoxicated at the time of death.

4. The volunteer emergency services provider was performing the provider's duties in a grossly negligent manner at the time of death.

5. A beneficiary who would otherwise be entitled to a benefit under this chapter was, through the beneficiary's actions, a substantial contributing factor to the volunteer emergency services provider's death.

[Editorial change: IAC Supplement 6/17/09]

661—291.3(100B) Determination. After receiving an application for benefits from the volunteer emergency services provider death benefit program, the fire marshal shall make a determination as to whether or not the application meets the requirements for payment of benefits. The fire marshal may require the beneficiary or the chief or responsible supervisory official who has certified that the death is a line-of-duty death to submit any additional information that the fire marshal deems material to making the determination. If the determination is that the requirements for payment of benefits have been met, the fire marshal shall so notify the beneficiary or cobeneficiaries and shall request that the department of revenue issue a warrant payable to the beneficiary in the amount of the lump-sum payment provided or, if there are cobeneficiaries, that the department of revenue issue warrants in equal shares of the lump-sum amount payable to each of the cobeneficiaries.

291.3(1) *Denial and notification.* If the fire marshal determines that the eligibility criteria have not been met, the fire marshal shall notify in writing the beneficiary or cobeneficiaries and the chief or responsible supervisory official who certified that the death occurred in the line of duty of the determination and of the reason or reasons for the denial.

291.3(2) *Appeals.* If an application for payment from the volunteer emergency services provider program is denied, the beneficiary or any cobeneficiary may appeal that decision to the commissioner of public safety by filing an appeal in writing to the commissioner of public safety within 30 days of the date of the denial of the application by the fire marshal. Appeals shall be processed in accordance with contested case procedures specified in 661—Chapter 10.

These rules are intended to implement Iowa Code section 100B.11 as amended by 2004 Iowa Acts, chapter 1063.

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CHAPTER 372
MANUFACTURED OR MOBILE HOME RETAILERS, MANUFACTURERS, AND DISTRIBUTORS

661—372.1(103A) Definitions. The definitions in 2006 Iowa Acts, Senate File 2394, section 1, are made part of this chapter. In addition, the following words and phrases when used in this chapter shall have these meanings respectively ascribed to them, except when the context otherwise requires.

"Bureau" means the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

"Certificate of title" means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms "title certificate," "title only," and "title" are synonymous with the term "certificate of title."

"Commissioner" means the building code commissioner.

"Department" means the Iowa department of public safety.

"Manufacturer's certificate of origin" means a certification signed by the manufacturer or importer that the manufactured or mobile home described has been transferred to the person or retailer named and that the transfer is the first transfer of the manufactured or mobile home in ordinary trade and commerce. The description shall include the make, model year, vehicle identification number, and other information which may be required by statute or rule. The terms "manufacturer's statement," "importer's statement or certificate," "MSO" and "MCO" are synonymous with the term "manufacturer's certificate of origin."

"Model year" means the year of original manufacture or the year certified by the manufacturer.

[Editorial change: IAC Supplement 6/17/09]

661—372.2(103A) Criteria for obtaining a manufactured or mobile home retailer's license.

372.2(1) *Licensing information.* Information concerning license requirements may be obtained from the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

372.2(2) *Application.* A manufactured or mobile home retailer shall file a completed application form at least 30 days prior to the expiration of a current license or, if the application is for an initial license, 30 days prior to the date on which the retailer anticipates doing business. A retailer may not operate without a current license.

372.2(3) *Expiration.* Each license expires on January 1 of the calendar year following the year in which the license is issued, except that a license issued in December of any year shall cover the following calendar year.

372.2(4) *Fees.* The license fee established by statute is $100 annually or for any portion of a year, except that a license issued in December of any year is valid for the following calendar year and any retailer with a license valid for a particular calendar year may continue to operate under that license until the end of January of the following calendar year.

372.2(5) *Surety bond.* The applicant shall obtain a surety bond in the amount of $50,000. The original bond shall be filed with the department. The bond shall provide for a 30-day notice to the bureau, prior to cancellation. The bureau shall notify the bonding company of any violations of Iowa Code chapter 103A or these rules by the license holder. The bureau shall notify the retailer by mail or personal service that the retailer's license shall be revoked the same date the bond is canceled unless the bond is reinstated or a new bond is filed.

372.2(6) *Place of business.* The applicant shall maintain a place of business at a designated location. A manufactured or mobile home may be used as an office if the home's taxes are current. The place of business shall include telephone service and an office area in which are kept the business records, manufacturer's certificates of origin, certificates of title or other evidence of ownership of each manufactured or mobile home offered for sale.

372.2(7) *Separate place of business.* A separate retailer's license shall be obtained for each county in which the applicant maintains a place of business.
[Editorial change: IAC Supplement 6/17/09]

661—372.3(103A) Operation under distinct name. A manufactured or mobile home retailer shall not represent or advertise the business under any name other than the name that appears on the retailer's license.

661—372.4(103A) Supplemental statements. A manufactured or mobile home retailer shall file with the commissioner a written statement upon change of name or change of location of the retailer's place of business. The written statement shall be filed within ten days of the change with a fee of $100 in payment for a new license reflecting the change.

661—372.5(103A) Denial, suspension, or revocation—civil penalties.

372.5(1) The commissioner may deny the issuance or renewal of a license if the applicant has committed any violation of any provision of law applicable to the operation of a business required to be licensed pursuant to this chapter.

372.5(2) The commissioner may suspend or revoke a license for any violation of this chapter or of any other provision of law applicable to the operation of a business required to be licensed pursuant to this chapter.

372.5(3) The commissioner may impose a civil penalty for any violation of this chapter or of Iowa Code chapter 103A relating to the manufacture of a manufactured or mobile home. A civil penalty may be imposed in addition to a denial of the issuance or renewal of a license, a suspension of a license, or a revocation of a license. A civil penalty shall not be imposed in lieu of a denial of the issuance or renewal of a license or of a revocation of a license. A civil penalty shall not exceed $1,000 for each offense. Each violation involving a separate manufactured or mobile home, or a separate failure or refusal to allow an act to be performed or to perform an act as required by this chapter or Iowa Code chapter 103A, constitutes a separate offense. However, the maximum amount of civil penalties which may be assessed for any series of violations occurring within one year from the date of the first violation shall not exceed $1 million.

372.5(4) Suspension or revocation for nonpayment of child support. The following procedures shall apply to actions taken by the building code commissioner on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of certification of a licensee, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee.

c. Licensees shall keep the building code commissioner informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the building code commissioner with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the building code commissioner has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

e. In the event a licensee files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the building code commissioner shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of

revocation or suspension of the certification, the building code commissioner shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule 372.5(4) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensure program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

372.5(5) Appeals. Any denial, suspension, or revocation of a certification, or any civil penalty imposed upon a licensee under this rule, other than one imposed pursuant to subrule 372.5(4), may be appealed by the licensee within 14 days of receipt of the notice. Appeals of actions taken by the building code commissioner under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

661—372.6(103A,321) Sale or transfer of manufactured or mobile homes. The following criteria apply to the sale or transfer of manufactured or mobile homes.

372.6(1) *Retailer sales.*

a. A manufactured home, which was manufactured on or after June 15, 1976, and which is owned by a retailer, shall not be offered for sale unless the retailer has a properly assigned manufacturer's certificate of origin or a certificate of title, a seal from the United States Department of Housing and Urban Development properly attached, a data plate attached by the manufacturer, and a manufacturer's installation manual for the home, if the manual is available to the retailer. A retailer shall not sell a manufactured or mobile home owned by the retailer without delivering to the transferee a manufacturer's certificate of origin or a certificate of title duly assigned to the transferee.

b. A used manufactured or mobile home with an Iowa title assigned to the retailer shall not be reassigned by the retailer. After acquiring the used home, the retailer shall obtain a new certificate of title as required by law.

372.6(2) *Transfers.* A manufactured or mobile home not owned by a retailer may be offered for sale and sold by a retailer under the following conditions:

a. The manufactured or mobile home owner and retailer shall enter into a written listing agreement, signed by the owner or by one owner of a manufactured or mobile home owned jointly by more than one person, and signed by the retailer, which shall be dated and include the following provisions:

(1) The make, model year, and vehicle identification number.

(2) The period of time that the agreement shall remain in force.

(3) The commission or other remuneration that the retailer is entitled to receive.

(4) The price for which the manufactured or mobile home shall be sold.

(5) The name and address of the secured party, if the manufactured or mobile home is subject to a security interest.

(6) Any additional terms to which the owner(s) and retailer agree.

b. If current taxes have not been paid, the taxes and penalties shall be paid from the proceeds of the sale.

c. The retailer shall inform a prospective purchaser of a manufactured or mobile home that the home is not owned by the retailer and, if requested by a prospective purchaser, provide the name and address of the owner(s).

d. An offer to purchase a manufactured or mobile home shall be in writing.

e. The retailer shall make a written disclosure to the purchaser of the description of the manufactured or mobile home; the name and address of the owner; if the home is subject to a security interest, the name and address of the secured party; and, if the current taxes have not been paid, the amount of taxes and penalties due. The disclosure statement shall be signed and dated by the transferee.

The disclosure statement shall be in duplicate. The original shall be given to the transferee and the duplicate retained by the retailer, at the retailer's principal place of business, for a period of three years.

f. The documents required pursuant to this subrule shall be made available to the commissioner or any designee of the commissioner for inspection upon request.

661—372.7(103A) Right of inspection. The commissioner or any designee of the commissioner shall have the authority to inspect manufactured or mobile homes, business records, manufacturer's certificates of origin, certificates of title or other evidence of ownership of each manufactured or mobile home offered for sale.

661—372.8(103A) Criteria for obtaining a manufactured or mobile home manufacturer's or distributor's license. Information concerning license requirements may be obtained from the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

372.8(1) *Application.* A manufactured or mobile home manufacturer or distributor shall file a completed application form at least 30 days prior to the expiration of a current license, or if the application is for an initial license, 30 days prior to the date on which the manufacturer or distributor anticipates doing business. A manufacturer or distributor may not operate without a current license.

372.8(2) *Expiration.* Each license expires on January 1 of the calendar year following the year in which it is issued, except that a license issued in December of any year shall cover the following calendar year.

372.8(3) *Fees.* The license fee established by statute is $100 annually or for any portion of a year, except that a license issued in December of any year is valid for the following calendar year and any manufacturer or distributor with a license valid for a particular calendar year may continue to operate under that license until the end of January of the following calendar year.

372.8(4) *Notification.* Manufactured or mobile home manufacturers and distributors shall, within ten days of the fact, notify the bureau in writing of:

a. Any change in the name, method of doing business or location of the place of business as shown on the license and shall include a fee of $100 in payment of a new license reflecting the change. However, a change in the location of the place of business when the original location is in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6 and when the relocation results from flooding, storm damage, or other conditions which form a basis for issuance of the disaster emergency proclamation shall not require the issuance of a new license. In these circumstances, an amended license shall be furnished to the licensee at no charge to the licensee.

b. Issuance of a contract with a person in this state to sell new manufactured or mobile homes at retail.

c. Any change in the trade names of manufactured or mobile homes being manufactured for delivery in this state.

372.8(5) *Required acts.* Manufactured or mobile home manufacturers and distributors shall furnish sample manufacturer's certificates of origin to the commissioner for each make of manufactured or mobile home assembled by the manufacturer for delivery in this state.

[Editorial change: IAC Supplement 6/17/09]

661—372.9(17A,103A) Waivers. Applications for waivers of the provisions of the rules in this chapter may be submitted and shall be considered under the procedures and criteria established in rule 661—10.222(17A), except for the following:

1. Petitions for waivers shall be addressed to:
Building Code Commissioner
Fire Marshal Division
Iowa Department of Public Safety
State Public Safety Headquarters Building
215 East 7th Street
Des Moines, Iowa 50319

2. Consideration of and determinations regarding requests for waivers of any provision of this chapter shall be the responsibility of the building code commissioner. Any reference to "department" in rule 661—10.222(17A) shall be replaced, for purposes of this rule, with "building code commissioner." [Editorial change: IAC Supplement 6/17/09]

These rules are intended to implement Iowa Code chapter 103A as amended by 2006 Iowa Acts, Senate File 2394.

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CHAPTER 400
PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—GOVERNANCE AND ADMINISTRATION

[Prior to 10/27/04, see 581—Ch 24]

661—400.1(97A) Establishment of system. The Iowa department of public safety peace officers' retirement, accident, and disability system is established by Iowa Code chapter 97A. The administrative rules governing the system are found in this chapter and in 661—Chapters 401, 402, 403, and 404.

661—400.2(97A) Definitions. The following definitions apply to 661—Chapters 400 through 404.

"Active member," "actively engaged member" or *"member in service"* means a currently employed peace officer of the Iowa department of public safety who is not reemployed pursuant to Iowa Code section 97A.3, subsection 3.

"Board" means the board of trustees of the peace officers' retirement system.

"Commissioner" means the commissioner of the Iowa department of public safety who also serves as the chairperson of the board of trustees.

"Department" means the Iowa department of public safety.

"Line-of-duty death" means the death of a member in service which was the direct and proximate result of a traumatic personal injury incurred in the line of duty. Line-of-duty death does not include the death of a member which resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the member's death. Line-of-duty death does not include the death of a member if the death results in eligibility for payment of a line-of-duty death benefit pursuant to Iowa Code section 100B.11 and 661—Chapter 291.

"Medical board" means a board of three physicians appointed by the board of trustees pursuant to Iowa Code section 97A.5, subsection 8.

"Peace officers' retirement system," also referred to as *"the system,"* means the Iowa department of public safety peace officers' retirement, accident, and disability system.

"Retired member" means a person formerly employed as a peace officer of the Iowa department of public safety who is currently receiving or has received pension benefits from the system.

"Secretary" means an employee of the administrative services division of the Iowa department of public safety designated by the division director to provide staff support to the board.

"Temporary" means no more than 12 consecutive months in duration.

"Temporary incapacity" means a condition in which a member in service becomes unable to perform assigned duties as a natural and proximate result of an injury, disease, or exposure incurred or aggravated while in the actual performance of duty at some definite time and place.

661—400.3(97A) Governance. The system is governed by a board of trustees, appointed and elected as provided in Iowa Code section 97A.5, subsection 1. The board of trustees shall have five members, including the commissioner of public safety, who shall serve as chairperson of the board, the treasurer of state, an actively engaged member of the system, a retired member of the system, and a person appointed by the governor.

400.3(1) *Terms of office.* Terms of office of members of the board of trustees are as follows:

a. The commissioner of public safety shall serve a term that is concurrent with appointment as commissioner of public safety.

b. The treasurer of state shall serve a term that is concurrent with the term of treasurer of state.

c. The actively engaged member of the system shall serve a two-year term commencing on July 1 of an odd-numbered year and terminating on June 30 of the next odd-numbered year.

d. The retired member of the system shall serve a two-year term commencing on July 1 of an even-numbered year and terminating on June 30 of the next even-numbered year.

e. The member appointed by the governor shall serve a two-year term commencing on May 1 of the year of appointment and terminating on April 30 in the year of expiration.

400.3(2) *Election of board members.*

a. The actively engaged member shall be elected by secret ballot of the actively engaged members of the system. The retired member shall be elected by secret ballot of the retired members of the system. The actively engaged member shall be elected in odd-numbered years, and the retired member shall be elected in even-numbered years.

b. At least 90 days prior to the start of the term of office for the actively engaged member or the retired member, the secretary shall distribute by regular mail a write-in nomination ballot to each member of the system who is eligible to vote. The deadline for return of the ballots shall be established by the secretary at no less than 30 days nor more than 35 days after the date of distribution of the ballots and shall be printed on each ballot. In order to record a nomination, a member shall return the nomination ballot with a postmark or by personal delivery prior to the deadline specified on the ballot, filled in with the name of the member whom the member casting the ballot wishes to nominate.

c. The secretary shall contact each of the nominees who receive the three highest numbers of nominations to determine if each nominee is willing to serve if elected. For each nominee contacted who is unwilling to serve, the secretary shall contact the next nominee in descending order of nominations until three nominees willing to serve are identified.

d. The names of those three eligible members willing to serve if elected who receive the highest number of write-in nominations shall be placed on an election ballot.

e. The secretary shall distribute by regular mail election ballots to the members of the system who are eligible to vote. The deadline for return of the ballots shall be established by the secretary at no less than 30 days nor more than 35 days after the date of distribution of the ballots and shall be printed on each ballot. Any eligible member who receives a ballot and wishes to vote shall return the ballot to the secretary with a postmark or by personal delivery prior to the deadline printed on the ballot with a choice of one of the three candidates listed indicated. The candidate who receives the highest number of votes shall serve as the actively engaged member or the retired member of the system on the board of trustees.

f. In the event that two of the three candidates tie with the highest number of votes, a new election ballot with the names of the two candidates who tied shall be distributed by regular mail by the secretary to all members who are eligible to vote. The deadline for return of the ballots shall be established by the secretary at no less than 30 days nor more than 35 days after the date of distribution of the ballots and shall be printed on each ballot. Any eligible member who wishes to vote shall return the ballot to the secretary prior to the deadline with the member's preference indicated. The candidate who receives the highest number of votes shall serve as the actively engaged member or the retired member on the board of trustees.

g. In the event that all three candidates receive the same number of votes in the initial election balloting or that the two remaining candidates receive the same number of votes in an election held to break a tie between two candidates, the selection of the board member shall be determined by drawing of lots under the supervision of the commissioner of public safety, acting as chairperson of the board of trustees.

400.3(3) *Vacancies.* A vacancy in a position held by an elected member shall be filled in the same manner as the original election, and the newly elected member shall serve for the balance of the original term for the position filled.

661—400.4(97A) Meetings of board of trustees. The board of trustees shall meet at least quarterly, or upon the call of the chairperson. A quorum of the board shall consist of three members, and three concurring votes shall be necessary for a decision by the board. For purposes of a quorum or for voting, a member may participate in person, by audio conference or by videoconference.

661—400.5(97A) Administrative support. The department provides administrative support to the system, through the administrative services division. The secretary shall be an employee of the department. Employees of the system shall be under the administrative supervision of the director of the administrative services division. Additional administrative support may be provided by other employees of the department at the direction of the commissioner of public safety.

661—400.6(97A) Forms and information. Persons who wish to obtain forms or information about the peace officers' retirement, accident, and disability system shall address requests to:

Peace Officers' Retirement System
Iowa Department of Public Safety
State Public Safety Headquarters Building
215 East 7th Street
Des Moines, Iowa 50319
(515)725-6248
asdinfo@dps.state.ia.us

[Editorial change: IAC Supplement 6/17/09]

661—400.7(97A) Annual statements.

400.7(1) As soon as practical after the close of each fiscal year, a statement of account shall be furnished to each actively engaged member, which shall include the member's contribution for the year.

400.7(2) As soon as practical after the end of a calendar year, and in any event within any deadlines for this purpose established by the Internal Revenue Service or the Iowa department of revenue, a Form 1099, W2-P or an equivalent shall be prepared for and mailed to each person who received benefits during the year. The form shall detail the total pension paid during the year and shall comply with any applicable requirements established by the Internal Revenue Service and the Iowa department of revenue.

661—400.8(97A) Books of account. The following books of account shall be maintained by the secretary.

400.8(1) Self-balancing combination journal that records all receipts, disbursements and necessary adjustments.

400.8(2) Self-balancing ledger of control accounts.

400.8(3) Schedules at the close of the fiscal year which shall detail all control accounts except:

a. Pension reserve account.

b. Pension accumulation account.

661—400.9(97A) Investments. Investments of assets of the system shall be administered through the office of the treasurer of state. The board of trustees has the authority to direct the investment of funds, including, but not limited to, the execution of contracts with appropriately qualified individuals or firms to provide advice regarding investments.

661—400.10(97A) Medical board.

400.10(1) The medical board shall consist of three physicians, including at least one occupational medicine specialist, with the knowledge and experience to adequately evaluate the fitness for duty of a peace officer.

400.10(2) The board of trustees shall ratify the composition of the medical board and all subsequent changes to the composition of the medical board. The board of trustees may review the composition of the medical board at any time.

These rules are intended to implement Iowa Code chapter 97A.

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CHAPTER 401
PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—ADMINISTRATIVE PROCEDURES

[Prior to 10/27/04, see 581—Ch 24]

661—401.1(97A) Applications. Applications for benefits under Iowa Code chapter 97A shall be filed with the secretary on forms provided by the secretary. Applications for service retirement shall be made not more than 90 days nor less than 30 days in advance of the date of retirement. Applications for service retirement, ordinary or accidental disability, or temporary incapacity shall be reviewed by the secretary for completeness and then forwarded to the board of trustees.

401.1(1) *Manner of review for ordinary or accidental disability or for temporary incapacity.* The secretary shall compile the following materials, if available and applicable, for the board's review of a claim:

a. The application;

b. Any materials provided by the applicant;

c. Any available medical information in the possession of the board or the state;

d. Any information available through any workers' compensation claims made by the applicant; and

e. Recommendations and reports from the medical board.

NOTE: This subrule does not impose a responsibility on the secretary to discover documents or evidence not in the secretary's possession. It is only intended to outline the types of evidence the secretary should provide to the board if available.

401.1(2) *Commissioner's application.* The commissioner may file an application for ordinary or accidental disability on behalf of a member in service. The secretary shall review such applications in the same manner as those filed by a member. The fact that the commissioner has filed an application on a member's behalf shall not prevent the commissioner or the board from denying the application. All applications for accidental disability benefits shall be deemed cross-filed by the commissioner for the purpose of considering disability benefits. Nothing in this rule prevents the board from denying any application.

661—401.2(97A) Determination on initial review.

401.2(1) *Board approval.* The board may approve or deny the application as presented or may direct the applicant to provide further medical information.

401.2(2) *Denial and appeal.* A decision by the board to deny the application may be appealed by the applicant. Written notice of a denial shall be provided to the applicant by certified mail. The written notice shall disclose the applicant's right to appeal, the procedure for filing an appeal, and the deadline for filing an appeal. An appeal must be filed in writing with the secretary within 30 calendar days after the applicant receives written notice of the decision of the board. The board may extend the deadline for filing an appeal. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal.

661—401.3 to **401.100** Reserved.

PROCEDURE FOR RULE MAKING

661—401.101(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

661—401.102(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action, solicit comments from the public on a subject or subjects of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where,

when, and how persons may comment, or by otherwise publicizing the interest of the board in soliciting comment on a subject or subjects of possible rule making. Any such effort shall include publication of the interest of the board on the department of public safety's Web site and may include publication in any other venue deemed appropriate by the board or officials or staff of the department.

661—401.103(17A) Public rule-making docket. Pursuant to Executive Order 9, the department maintains a current public rule-making docket. All rule-making activity of the board of trustees of the peace officers' retirement, accident, and disability system shall be included in the rule-making docket of the department, including a rule making which has formally commenced with a Notice of Intended Action and an anticipated rule making identified by the board or staff. The rule-making docket is maintained on the Web site of the department.

661—401.104(17A) Notice of proposed rule making.

401.104(1) *Contents.* At least 35 days before the adoption of rules, the agency rules administrator of the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rules;

b. The specific legal authority for the proposed rules;

c. Except to the extent impracticable, the text of the proposed rules;

d. Where, when, and how persons may present their views on the proposed rules; and

e. The date, time and place of an oral proceeding at which any interested party may comment on the proposed rules, or where, when, and how persons may demand an oral proceeding on the proposed rules if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the board for the resolution of each of those issues.

401.104(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference.

661—401.105(17A) Public participation.

401.105(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Agency Rules Administrator, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or to the person or office designated in the Notice of Intended Action.

401.105(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. If an oral proceeding has not previously been scheduled regarding proposed rules, the department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons.

An oral proceeding may be scheduled or conducted by the board at the discretion of the board or of the chair of the board.

401.105(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* or this chapter.

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in

the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The agency rules administrator of the department of public safety or the administrator's designee shall preside at the oral proceeding on a proposed rule, unless the board conducts the oral proceeding. If the board does not conduct the oral proceeding, the presiding officer may prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding if the administrator determines that such a memorandum would be helpful to the board.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and may be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to summarize matters which have already been submitted in writing.

(3) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(4) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the system.

(5) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing. The presiding officer may provide for the record of an oral proceeding to be held open for a specific length of time, announced at the oral proceeding, to allow for the submission of additional information.

(6) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other representatives of the board who may be present about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(7) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

401.105(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

401.105(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Agency Rules Administrator, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail, by telephone at (515)725-6185, or by electronic mail at admrule@dps.state.ia.us, in advance to arrange access or other needed services.
[Editorial change: IAC Supplement 6/17/09]

661—401.106(17A) Regulatory analysis. The agency rules administrator shall prepare a regulatory analysis of proposed rules in compliance with Iowa Code section 17A.4A if requested pursuant to Iowa Code section 17A.4A, subsection 1.

661—401.107(17A,25B) Fiscal impact statement. For each Notice of Intended Action or emergency adoption of rules filed, the staff of the system and the department shall develop a fiscal impact statement in compliance with Iowa Code section 17A.4, subsection 3, and procedures established by the legislative services agency, if the preparation of a fiscal impact statement is required.

661—401.108(17A) Time and manner of rule adoption.

401.108(1) *Time of adoption.* The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

EXCEPTION: The board may waive the notice requirements or time periods specified in Iowa Code chapter 17A, in compliance with Iowa Code section 17A.4, subsection 2, or Iowa Code section 17A.5, subsection 2, paragraph *"b,"* or both.

401.108(2) *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

401.108(3) *Reliance on department expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment, or that of department staff, in the adoption of a rule.

401.108(4) *Adoption by reference.* The board may, by adoption of an administrative rule, adopt by reference another document produced by the board, the department, another agency of Iowa government, a federal agency, or any other organization. If any document or portion of any document is adopted by reference and is not already available in the state law library, the department shall provide a copy of the document for filing in the state law library, in compliance with Iowa Code section 17A.6, subsection 4.

661—401.109(17A) Variance between adopted rule and published notice of proposed rule adoption.

401.109(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

401.109(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

401.109(3) The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

401.109(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

661—401.110(17A) Concise statement of reasons. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Agency Rules Administrator, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received. After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request. If the board does not meet during the time between the receipt of a request and the deadline for issuance of the concise statement, the staff may issue the concise statement with the approval of the board chair.
[Editorial change: IAC Supplement 6/17/09]

661—401.111(17A,97A) Agency rule-making record. The department shall maintain an official rule-making record for each rule proposed by the board by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection. Requests to view material from the rule-making record may be addressed to the agency rules administrator of the department.

661—401.112(17A,97A) Petitions for rule making. Any person or agency may file a petition for rule making with the secretary at the location specified in rule 661—400.6(97A). A petition is deemed filed when it is received by the secretary. The secretary shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The secretary shall transmit a copy of the petition to the agency rules administrator. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS'
RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

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

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 401.112(5).

401.112(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

401.112(2) The board may deny a petition because it does not substantially conform to the required form. However, the board may consider any petition received, regardless of errors or variations in

form, provided that the content of the request for rule making is clear or has been clarified through communication with the petitioner. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

401.112(3) The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

401.112(4) Inquiries concerning the status of a petition for rule making may be made to the Agency Rules Administrator, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or via electronic mail at admrule@dps.state.ia.us.

401.112(5) Upon request by petitioner in the petition, the chair of the board may schedule a brief and informal meeting between the petitioner and the board, a member of the board, the secretary, or other staff of the department to discuss the petition. Such meeting shall include the agency rules administrator of the department or another employee of the department knowledgeable about the administrative rule-making process who is jointly designated by the agency rules administrator and the director of the administrative services division of the department. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

401.112(6) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial or grant the petition and notify petitioner that it will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the secretary to the petitioner by regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the secretary mails the required notification to the petitioner.

401.112(7) Inquiries concerning the status of a petition for rule making may be made to the Agency Rules Administrator, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail to admrule@dps.state.ia.us.
[Editorial change: IAC Supplement 6/17/09]

661—401.113(17A,97A) Waivers of rules. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from the rule in question.

401.113(1) *Requests for waivers.* Requests for waivers of rules shall be addressed to the secretary. A request shall state specifically what provisions are requested to be waived, a concise statement of the reasons for requesting the waiver, and any conditions proposed to be placed on the waiver, including conditions which would substitute for compliance with the provisions requested to be waived.

401.113(2) *Applicability of rule.* The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

401.113(3) *Criteria for waiver or variance.* In response to a petition completed pursuant to this rule, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

401.113(4) *Filing of petition.* A petition for a waiver must be submitted in writing to the board as follows:

a. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

b. If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

c. A petition is deemed filed when it is received in the secretary's office. A petition should be sent to the Board of Trustees, Peace Officers' Retirement, Accident, and Disability System, Attention: Secretary of the Board, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319-0050.

401.113(5) *Content of petition.* A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, telephone number, and electronic mail address of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

b. A description of and citation to the specific rule from which a waiver is requested.

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 401.113(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to benefits or potential benefits or eligibility requirements affected by the proposed waiver, including a description of each affected benefit or eligibility requirement held or requested by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the membership in the system within the last five years.

f. Any information known to the requester regarding the board's action in similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

h. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition. This does not create any duty to individually notify other members of the system, unless they are known to have requested or received a waiver of the identical provisions.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

401.113(6) *Additional information.* Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request.

401.113(7) *Notice.* The secretary shall acknowledge a petition upon receipt and shall notify the members of the board, the legal counsel to the board and the agency rules administrator of the department of the receipt of the petition as soon as practical after its receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, including the petitioner. In addition, the board may give notice to any other person. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice

is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

401.113(8) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

401.113(9) *Ruling.* An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

c. Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

d. Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

e. Conditions. The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impractical. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

g. Time for ruling. The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

h. When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

i. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law. A copy of the order shall be provided to the agency rules administrator of the department to facilitate compliance with this rule.

401.113(10) *Indexing.* All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders may contain information the board is authorized or required to keep confidential, the board may instruct the secretary to accordingly redact confidential information from petitions or orders prior to public inspection.

401.113(11) *Summary reports.* Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the agency rules administrator of the department which contain such information for administrative rules of the department.

401.113(12) *Cancellation of a waiver.* A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

401.113(13) *Violations.* Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

401.113(14) *Defense.* After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

401.113(15) *Judicial review.* Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

401.113(16) *Sample petition for waiver.* A petition for waiver filed in accordance with this rule must meet the requirements specified herein and must substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS'
RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter). }	PETITION FOR WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in the answer all of the following:

- Why application of the rule would result in undue hardship to the petitioner;
- Why waiver of the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the benefits or rights affected by the requested waiver. Include a description of each contested case hearing held, or any investigations related to the benefits or rights.

6. Provide information known to the petitioner regarding the board's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver or variance.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

(Date) (Petitioner's Signature)

[Editorial change: IAC Supplement 6/17/09]

661—401.114 to **401.200** Reserved.

DECLARATORY ORDERS

661—401.201(17A) Petition for declaratory order. Any person may file with the secretary a petition to the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The secretary shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS'
RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 401.207(17A).

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

661—401.202(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 401.206(17A) to whom notice is required by any provision of law. The department may also give notice to any other persons.

661—401.203(17A) Intervention.

401.203(1) Any person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 20 days of the filing of a petition for declaratory order (after time

for notice under rule 401.202(17A) and before 30-day time for agency action under rule 401.208(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

401.203(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

401.203(3) A petition for intervention shall be filed with the secretary. Such a petition is deemed filed when it is received by the secretary. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS'
RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition). }	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

661—401.204(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

661—401.205(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the secretary.

661—401.206(17A) Service and filing of petitions and other papers.

401.206(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

401.206(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the secretary. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the secretary.

401.206(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by subrule 401.301(7).

661—401.207(17A) Consideration. Upon request by petitioner, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the department to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

661—401.208(17A) Action on petition.

401.208(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the commissioner of public safety or the commissioner's designee shall take action on the petition as required by Iowa Code section 17A.9(5).

401.208(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

661—401.209(17A) Refusal to issue order.

401.209(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9, subsection 1, and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

k. The petition relates to any criminal investigation.

l. The petition concerns any procedure or practice of the board or any other agency related to initiation or conduct of criminal investigations or referral of matters for possible criminal investigation or prosecution.

m. The petition states facts and circumstances which are theoretical in nature to the extent that issuance of a declaratory order is unlikely to assist in guiding future conduct or the petitioner is neither a person with interest in the operation of the system nor a representative of such a person. "Representative of such a person" includes any organization with members or participants who are active or retired members of the system, or family members or survivors of active or retired members of the system.

401.209(2) A refusal to issue a declaratory order shall indicate the specific grounds for the refusal, unless the refusal pertains to a matter under criminal investigation, or which has been referred for possible criminal prosecution, in which event no information which might compromise the investigation or prosecution shall be released to the petitioner or any intervenor. A refusal to issue a declaratory order constitutes final agency action on the petition.

401.209(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

661—401.210(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

661—401.211(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to each original petitioner and to each intervenor.

661—401.212(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

661—401.213 to **401.300** Reserved.

CONTESTED CASES

661—401.301(17A) Contested case proceeding. Consideration of an appeal of a decision of the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

401.301(1) *Delivery of notice.* Delivery of the notice of hearing by the secretary constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the applicant, the applicant's attorney if known, and the assistant attorney general designated to represent the public interest.

401.301(2) *Contents of notice.* The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a statement that it is the applicant's burden to prove each of the statutory elements relative to the application. The notice shall also contain a reference to the applicable statute and rules.

401.301(3) *Scope of issues.* The applicant shall prove each of the statutory elements required before the application may be granted. Denial of an application shall be upheld based on the applicant's failure to prove any of the statutory elements. When an applicant has requested accidental disability benefits, the board has the option of denying accidental disability benefits, but granting ordinary disability benefits based on the evidence.

401.301(4) *Legal representation.* Following the filing of the notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board. The public interest, as referenced in this rule, shall include the responsibility to protect the assets of the system from applications that do not meet the standards set by the statute for disability benefits. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

401.301(5) *Presiding officer.* The presiding officer in a contested case shall be an administrative law judge assigned by the department of inspections and appeals.

401.301(6) *Procedural matters.* Procedural matters and motions, including, but not limited to, motions to continue, may be heard and ruled upon by the presiding officer.

401.301(7) *Service and filing.*

a. Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as attorney for the state or the agency, simultaneously with their

filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

b. Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

c. Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the secretary. All documents that are required to be served upon a party shall be filed simultaneously with the secretary.

d. Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the secretary at the location set forth in rule 661—400.6(97A), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

e. Proof of mailing. Proof of mailing includes either:

(1) A legible United States Postal Service postmark on the envelope;

(2) A certified mail return receipt;

(3) A notarized affidavit; or

(4) A certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Secretary of the Board of Trustees, Iowa Department of Public Safety, Peace Officers' Retirement System, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

[Editorial change: IAC Supplement 6/17/09]

661—401.302(17A) Discovery.

401.302(1) Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

401.302(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

661—401.303(17A) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

401.303(1) The board chair shall, upon the written request of the applicant or the state, issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

401.303(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other evidence requested;

f. The date, time and location for production, or inspection and copying.

401.303(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the board administrator or designee;

j. The date of issuance;

k. A return of service attached to the subpoena.

401.303(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the board administrator or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

401.303(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

401.303(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chair shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

401.303(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board's secretary, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

401.303(8) If the person contesting the subpoena is not the member whose application for benefits is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the member whose application for benefits is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

661—401.304(17A) Motions.

401.304(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

401.304(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

401.304(3) The presiding officer may schedule oral argument on any motion.

401.304(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

401.304(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 401.314(17A) and appeal pursuant to subrule 401.312(2).

661—401.305(17A) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by the assistant attorney general appointed to represent the public interest or by the applicant. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless both parties waive this prohibition.

661—401.306(17A) Prehearing conference.

401.306(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

401.306(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

401.306(3) In addition to the requirements of subrule 401.306(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters that the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters that will expedite the hearing.

401.306(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

661—401.307(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

401.307(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may waive notice of such requests for a particular case or an entire class of cases.

401.307(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

661—401.308(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

661—401.309(17A) Hearing procedures.

401.309(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

401.309(2) All objections shall be timely made and stated on the record.

401.309(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

401.309(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

401.309(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

401.309(6) Witnesses may be sequestered during the hearing.

401.309(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. The parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

401.309(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

401.309(9) The hearing shall be open to the public, except as otherwise provided by law.

401.309(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the secretary for five years after the resolution of the case.

401.309(11) Default.

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 401.312(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

f. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

g. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

h. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

661—401.310(17A) Evidence.

401.310(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

401.310(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

401.310(3) Evidence in the proceeding shall be confined to the contested issues as provided in Iowa Code section 97A.6.

401.310(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

401.310(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

401.310(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

661—401.311(17A) Ex parte communication.

401.311(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, including the secretary, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

401.311(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

401.311(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

401.311(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

401.311(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

401.311(6) The secretary may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the secretary is not disqualified from participating.

401.311(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

401.311(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order; or

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited

communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

401.311(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 2, or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

401.311(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the director of the administrative services division of the department.

661—401.312(17A) Decisions.

401.312(1) *Proposed decision.* The decision prepared by the presiding officer is a proposed decision. The proposed decision becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in subrule 401.312(2).

401.312(2) *Appeals and review.*

a. *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

b. *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

c. *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

e. *Scheduling.* The board shall issue a schedule for consideration of the appeal.

f. *Briefs and arguments.* Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

661—401.313(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

661—401.314(17A) Applications for rehearing.

401.314(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

401.314(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

401.314(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

401.314(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

401.314(5) *Disposition.* The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

These rules are intended to implement Iowa Code chapters 17A and 97A.

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[Editorial change: IAC Supplement 6/17/09]

CHAPTER 403
PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM— LINE-OF-DUTY DEATH BENEFIT

661—403.1(97A) Member death benefit program. As provided in Iowa Code Supplement section 97A.6, subsection 16, the board will administer the payment of line-of-duty death benefits to beneficiaries of members who die in the line of duty.

Information about the program may be obtained by mail from the Secretary of the Board of Trustees, Iowa Department of Public Safety, Peace Officers' Retirement System, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by telephone at (515)725-6248, or by electronic mail to asdinfo@dps.state.ia.us.
[Editorial change: IAC Supplement 6/17/09]

661—403.2(97A) Application. Application forms for the line-of-duty death benefit program may be obtained on request from the secretary. The board may accept a legible copy of a completed application for the federal Public Safety Officer Benefits Program as an application for payment of benefits from the member death benefit program. Completed application forms shall be mailed or delivered to the Secretary of the Board of Trustees, Iowa Department of Public Safety, Peace Officers' Retirement System, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

661—403.3(97A) Determination. After receiving a completed application for benefits from the member death benefit program, the board shall make a determination as to whether or not the application meets the requirements for payment of benefits. Prior to making a determination, the board may require the beneficiary or responsible supervisory official who has certified that the death is a line-of-duty death to submit any additional information that the board deems material to making the determination. If the determination is that the requirements for payment of benefits have been met, the board shall so notify the beneficiary or cobeneficiaries and shall instruct the secretary to prepare documents to cause the department of administrative services to issue a warrant payable to the beneficiary in the amount of the lump-sum payment provided or, if there are cobeneficiaries, to issue warrants in equal shares of the lump-sum amount payable to each of the cobeneficiaries. Payments pursuant to this rule shall come from the system's funds.

403.3(1) *Denial and notification.* If the board determines that the eligibility criteria have not been met, the board shall notify in writing the beneficiary or cobeneficiaries and the responsible supervisory official who certified that the death occurred in the line of duty of the determination and of the reason or reasons for the denial.

403.3(2) *Appeals.* If an application for benefits is denied, the beneficiary or any cobeneficiary may appeal that decision to the board by filing an appeal in writing to the secretary within 30 days of the date of the denial of the application by the board. Appeals shall be processed in accordance with contested case procedures specified in 661—Chapter 401.

These rules are intended to implement Iowa Code Supplement section 97A.6A(16).

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CHAPTER 500
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM— ORGANIZATION AND ADMINISTRATION

661—500.1(82GA,ch197) Establishment of program. The electrician and electrical contractor licensing program is established in the fire marshal division of the department of public safety. The program is under the direction of the electrical examining board and the daily supervision of the state fire marshal or the state fire marshal's designee.

500.1(1) *Electrical examining board.* The electrical examining board, appointed by the governor, directs the electrician and electrical contractor licensing program, adopts administrative rules governing the program, establishes licensing requirements, and administers discipline related to licensure and to those engaged in activities requiring licensure but who are not licensed.

500.1(2) *Executive secretary.* The electrical examining board shall appoint an executive secretary who shall be responsible for carrying out the policies of the board and for hiring and supervising additional administrative staff.

500.1(3) *Board office.* The board office is located within the fire marshal division of the department of public safety.

a. The address of the board office is as follows:

Electrical Examining Board
Iowa Department of Public Safety
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319

b. The board may be contacted by telephone through the fire marshal division at (515)725-6145 or by E-mail at elecinfo@dps.state.ia.us.

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661—500.2(82GA,ch197) Definitions. The following definitions apply to all rules adopted by the electrical examining board.

"Approved by the board" means the approval of any item, test or procedure by the electrical examining board by adoption of a resolution at a meeting of the board, provided that the approval has not been withdrawn by a later resolution of the board. A list of any such items, tests, or procedures that have been approved by the board is available from the board office or from the board Web site.

"Board" means the electrical examining board created under 2007 Iowa Acts, chapter 197, section 12.

"Department" means the department of public safety.

"Division" means the fire marshal division of the department of public safety.

"Documented experience" means experience which an applicant for licensing has completed and which has been documented by the applicant's completion and submission of a sworn affidavit or other evidence required by the board.

"Executive secretary" means the executive secretary appointed by the board.

"Final agency action" means the issuance, denial, suspension, or revocation of a license. If an action is subject to appeal, "final agency action" has occurred when the administrative appeal process provided for in 661—Chapter 503 has been exhausted or when the deadline for filing an appeal has expired.

"Residential electrical work" means electrical work in a residence in which there are no more than four living units within the same building.

"Routine maintenance" means the repair or replacement of existing electrical apparatus or equipment of the same size and type for which no changes in wiring are made. The performance of routine maintenance in itself does not require a person to obtain or hold a license as an electrician or electrical contractor.

These rules are intended to implement 2007 Iowa Acts, chapter 197.

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REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

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701—226.1(423) Sale or rental of farm machinery and equipment. The sales price from the sale or rental of farm machinery and equipment is exempt from sales and use tax.

226.1(1) *Farm machinery and equipment.*

a. Exempt. To be eligible under this rule for exemption from the tax, the farm machinery or equipment must be directly and primarily used in production of agricultural products and must also be one of the following:

(1) A self-propelled implement; or

(2) An implement customarily drawn or attached to a self-propelled implement; or

(3) A grain dryer; or

(4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer; or

(5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

b. Taxable. A vehicle subject to registration as defined in Iowa Code section 423.1, an implement customarily drawn or attached to a vehicle, an auxiliary attachment for a vehicle, or any replacement part for a vehicle, implement, or auxiliary attachment for a vehicle is not eligible for the exemption allowed under this rule.

226.1(2) *Definitions and specific provisions.* For the purposes of this rule, the following definitions and provisions apply.

a. Production of agricultural products. The term "production of agricultural products" means the same as the term "agricultural production," which is defined in rule 701—211.1(423) to mean a farming operation undertaken for profit by the raising of crops or livestock. Not included within the meaning of the term is the clearing or preparation of previously uncultivated land, the creation of farm ponds, or the erection of machine sheds, confinement facilities, storage bins, or other farm buildings. See *Trullinger v. Fremont County*, 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to, but not a part of, the production of agricultural products and, therefore, are not exempt.

b. Farm machinery and equipment. The term "farm machinery and equipment" means machinery and equipment specifically designed for use in the production of agricultural products and machinery and equipment that are not specifically designed for use in the production of agricultural products but are directly and primarily used for that purpose.

EXAMPLE: Farmer Jones raises livestock, and his farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but is directly and primarily used in the production of agricultural products. Therefore, the exemption would apply.

c. Self-propelled implement. The term "self-propelled implement" means an implement which is capable of movement from one place to another under its own power. The term "self-propelled implement" includes, but is not limited to, the following items: skid loaders and tractors. The term also includes, but is not limited to, the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners and windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, hay mowers, hay rakes, husking machines, manure spreaders, planters, plows, rotary hoes, sprayers and tanks, and tillage equipment.

e. Directly used in agricultural production.

(1) Property is "directly used" only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is directly used, consideration should be given to the following factors:

1. The physical proximity of the property to other property clearly exempt as directly used in agricultural production. The closer the property is to exempt property, the more likely it is that the property is directly used in agricultural production.

2. The chronological proximity of the use of the property in question to the use of property clearly exempt as directly used in agricultural production. The closer the proximity of the property's use within the production process to the use of exempt property, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the property in question and agricultural production. The fewer intervening causes between the use of the property and the production of the product, the more likely it is that the property is directly used in agricultural production.

(2) The fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment that comes into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Primarily used in agricultural production. Property is "primarily used" in agricultural production based on the total time it is used in agricultural production in comparison to the time it is used for other purposes. Any property used in agricultural production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of agricultural production. Agricultural production begins with the cultivation of land previously cleared for the planting of crops or begins with the purchase or breeding of livestock or domesticated fowl. Agricultural production ceases when an agricultural product has been transported to the point where it will be sold by the producer or processed for further use.

EXAMPLE: Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later, the same tractor and wagon are used to deliver the corn from the farm to the local elevator where the corn is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products, and the exemption would apply. However, the elevator has not used its tractor and wagon in agricultural production; thus, the exemption would not be allowed.

h. Grain dryer. The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. The term "grain dryer" does not include equipment, such as augers and spreaders, used in grain storage or movement, nor does it include any other equipment, such as specialized flooring, that is not a grain dryer. Equipment that is not a grain dryer but is used in grain drying may be exempt if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

i. Replacement parts. The term "replacement parts" means any farm machinery or equipment which is substituted for another part that has broken, worn out or has become obsolete or otherwise unable to perform its intended function. Replacement parts are those parts which materially add to the value of farm machinery or equipment, appreciably prolong its life or keep it in its ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies and computer software. Sales of supplies and computer software are taxable. Nonexclusive examples of supplies include: lubricants, oils, greases, and coolants.

Tangible personal property which has an expected useful life of 12 months or more and is used in the operation of farm machinery or equipment is rebuttably presumed to be a replacement part. Tangible personal property which is used in the same manner but has an expected useful life of less than 12 months is rebuttably presumed to be a supply.

(1) For periods prior to July 1, 2008, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to the exempt piece of farm machinery or equipment used in the production of agricultural products. The term "replacement parts" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories that are not essential include: cigarette lighters, radios, portable global positioning devices, and add-on air-conditioning units.

(2) For periods beginning on and after July 1, 2008, the sale or lease of a replacement part is exempt from tax if the replacement part is used in any repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products. Nonexclusive examples of replacement parts to machinery and equipment which would be exempt include: air-conditioning parts, computer equipment parts, fire equipment parts, glass parts, mirrors, headlights, communication systems, and global positioning equipment parts.

226.1(3) *Taxable and nontaxable transactions.* The following are nonexclusive examples of sales and leases of and services for farm machinery or equipment subject to or exempt from tax. Taxable services performed on farm machinery or equipment are subject to tax even when the replacement parts are exempt.

a. A lessor's purchase of farm machinery or equipment is not subject to tax if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee's use of the machinery or equipment is otherwise exempt. To claim exemption from tax, the lessor does not need to make an exempt use of the machinery or equipment as long as the lessee uses the machinery or equipment for an exempt purpose. On and after July 1, 2004, the lease of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because leases of tangible personal property are taxable retail sales of that property.

b. The owner or lessee of farm machinery or equipment need not be a farmer as long as the machinery or equipment is directly and primarily used in the production of agricultural products and the owner or lessee and the machinery or equipment meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and who uses the airplane directly and primarily for agricultural production is entitled to the benefits provided under this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for the exemption if the transaction is otherwise qualified under this rule.

226.1(4) *Auxiliary attachments.* The following is a noninclusive list of auxiliary attachments for which the sale or use in Iowa is exempt from tax: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear-wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upper beaters, silage bags, and weights.

This rule is intended to implement Iowa Code subsections 423.3(8) and 423.3(11).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.2(423) Packaging material used in agricultural production. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production is exempt from sales tax.

This rule is intended to implement Iowa Code subsection 423.3(15).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.3(423) Irrigation equipment used in agricultural production. The sales price from the sale or rental of irrigation equipment used in agricultural production is exempt from tax. The term "irrigation equipment" includes, but is not limited to, circle irrigation systems and trickle irrigation systems, whether installed aboveground or belowground, as long as the equipment is sold or rented by a contractor or

farmer and the equipment is directly and primarily used in agricultural production. The term "agricultural production" is defined in rule 701—211.1(423).

This rule is intended to implement Iowa Code subsections 423.3(12) and 423.3(13).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.4(423) Sale of a draft horse. The sales price from the sale of draft horses, when they are purchased for use and used as draft horses, is not subject to tax. Draft horses are horses that pull loads, including loads in shows, or transport persons or property. For purposes of this rule, horses commonly known as Clydesdales, Belgians, Shires, and Percherons are draft horses. However, upon proper showing by the person or entity claiming exemption, the sales price exemption will be granted by the director for other breeds. However, the burden of proof lies with the person or entity claiming exemption.

This rule is intended to implement Iowa Code subsection 423.3(14).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.5(423) Veterinary services. Veterinary services are not subject to sales tax. Purchases of food, drugs, medicines, bandages, dressings, serums, tonics, and the like which are used in treating livestock raised as part of agricultural production are exempt from tax. Where these same items are used in treating animals maintained as pets or for hobby purposes, sales tax is due. Purchases of equipment and tools used in the veterinary practice are subject to tax. Rule 701—226.17(423) explains the exemption for machinery or equipment used in livestock or dairy production which may be applicable to veterinarians, but should only be claimed with caution. A veterinarian must charge sales tax on any sales of tangible property or enumerated services, such as pet grooming, that are not part of professional veterinarian services.

This rule is intended to implement Iowa Code subsection 423.3(5).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.6(423) Commercial fertilizer and agricultural limestone. Sales of commercial fertilizer and agricultural limestone are exempt from tax only if the purchaser intends to use the fertilizer or limestone for the health promotion of plants produced for market as part of agricultural production. See rule 701—211.1(423) for definitions of "agricultural production" and "plants." Plant hormones are considered to be commercial fertilizer. Sales of commercial fertilizer or agricultural limestone used for other purposes are subject to sales tax. Examples of taxable use include, but are not limited to: commercial fertilizer sold for application on a lawn, golf course, or cemetery.

This rule is intended to implement Iowa Code subsections 423.3(4) and 423.3(5).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.7(423) Sales of breeding livestock. The sale of agricultural livestock is exempt from tax only if at the time of purchase the purchaser intends to use the livestock primarily for breeding. The sale of agricultural livestock which is capable of breeding, but will not be used for breeding or primarily for breeding, is not exempt from tax. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax. See rule 701—211.1(423) for a definition of "livestock."

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale, the intent of the purchaser is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk which the cows produce, the sale of the dairy cows to the farmer is exempt from tax.

This rule is intended to implement Iowa Code subsection 423.3(3).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.8(423) Domesticated fowl. The purchase of any domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not. See rule 701—211.1(423) for a definition of the term "domesticated fowl."

This rule is intended to implement Iowa Code subsection 423.3(3).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.9(423) Agricultural health promotion items.

226.9(1) *Definitions.* For purposes of this rule, the following definitions apply:

"Adjuvant" means any substance which is added to a herbicide, a pesticide, or an insecticide to increase its potency.

"Agricultural production" means the same as defined in rule 701—211.1(423).

"Food" includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

"Herbicide" means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term shall include preemergence, postemergence, lay-by, pasture, defoliant, and desiccant herbicides and fungicides.

"Insecticide" means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices which are used to kill insects are not insecticides.

"Livestock" means the same as defined in rule 701—211.1(423). For the purposes of this rule, "livestock" includes domesticated fowl.

"Medication" includes antibiotics or other similar drugs administered to livestock.

"Pesticide" means any substance which is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this rule, a disinfectant is a pesticide. Excluded from the term "pesticide" is any substance which merely repels pests or any device, such as a rat trap, which kills pests by mechanical action.

"Plants" means the same as defined in rule 701—211.1(423).

"Surfactant" means a substance which is active on a surface.

226.9(2) *Sales of agricultural health promotion items and adjuvants.* Sales of herbicides, pesticides, insecticides, food, and medication which are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are exempt from tax. Sales of adjuvants, surfactants, and other products which enhance the effects of herbicides, pesticides, or insecticides used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are also exempt from tax. Sales of herbicides, pesticides, insecticides, food, medication, and products to any person not engaged in agricultural production for market are exempt if the property sold will be used for an exempt purpose, e.g., in disease control or on the behalf of another person engaged in agricultural production for market.

This rule is intended to implement Iowa Code subsections 423.3(5) and 423.3(16).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.10(423) Drainage tile. The sale or installation of drainage tile which is to be used in disease control or weed control or in health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code section 423.2. Sales of the following materials associated with the installation of agricultural drainage tile are also exempt from tax: tile intakes, outlet pipes and outlet guards, aluminum and gabion structures, erosion control fabric, water control structures, and tile fittings.

This rule is intended to implement Iowa Code section 423.3.

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.11(423) Materials used for seed inoculations. Materials used for seed inoculations are exempt from sales tax. All forms of inoculation, whether for promotion of better growth and healthier

plants or for the prevention or cure of plant mildew or disease of seeds and bulbs, are intended for the same general purpose and are therefore exempt.

This rule is intended to implement Iowa Code section 423.3.

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.12(423) Fuel used in agricultural production.

226.12(1) *Definitions.* For purposes of this rule, the following definitions apply:

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

"Fuel" includes electricity.

"Implement of husbandry" means the same as defined in rule 701—211.1(423).

"Livestock" means the same as defined in rule 701—211.1(423) and includes domesticated fowl.

"Plants" means flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.

226.12(2) *Exemptions.*

a. Fuel used for livestock buildings. The sale of fuel used to provide heating or cooling for livestock buildings is exempt from tax.

b. Fuel used for plant production buildings.

(1) Sales of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business are exempt from tax. See subparagraph (3) for the formula for calculating exempt use if a building is only partially used for growing plants.

(2) Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space, loading docks, storage of property other than plants, housing of heating and cooling equipment, and packaging plants for shipment.

(3) Calculating proportional exemption. It may be possible to calculate the amount of total fuel used in plant production by dividing the number of square feet of the greenhouse heated or cooled and used for raising plants by the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in plant production. See 701—subrule 15.3(3) regarding fuel exemption certificates and subrule 226.18(12) regarding seller's and purchaser's liability for sales tax.

EXAMPLE 1: Bill Brown's herb farming operation has a separate greenhouse used to grow his herbs. All other aspects of his farm operations are conducted in other facilities. Because the greenhouse is used exclusively for raising plants, Bill Brown is able to claim exemption from sales tax on the cost of fuel used to heat and cool the greenhouse.

EXAMPLE 2: Martha Green's greenhouse has a separate meter to track the electricity used only for heating or cooling. Her greenhouse is used partially for growing plants and partially for a nonexempt purpose. Martha Green is able to claim a proportional exemption from sales tax on the cost of fuel used to heat and cool her growing plants. Martha Green calculates her exempt amount by dividing the number of heated or cooled square feet of her greenhouse that are used for raising plants by the total number of square feet heated or cooled in the entire greenhouse.

Total square footage used for raising plants		=	800
Total square footage		=	1,000
TOTAL:	800 ÷ 1,000	=	.80 or 80%

Thus, 80 percent of the cost of the fuel used to heat and cool Martha Green's greenhouse is exempt from sales tax.

c. Sales of fuel used for aquaculture. Sales of fuel used in the raising of agricultural products by aquaculture are exempt from tax.

d. Sales of fuel, gas, electricity, water, and heat consumed in implements of husbandry. The sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if the fuel is consumed while the implement is engaged in agricultural production. For example, the sale of fuel used not only in tractors or combines, but also used in implements which cannot move under their own power, is exempt from tax. The sale of fuel used in milk coolers and milking machines, grain dryers, and stationary irrigation equipment and in implements used to handle feed, grain, and hay and to provide water for livestock is exempt from tax even though these implements of husbandry would not ordinarily be considered self-propelled.

226.12(3) *Partial use.* If a building is used partially for an exempt agricultural purpose and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage obtained by dividing the number of square feet of the building heated or cooled and used for an exempt agricultural purpose by the number of square feet heated or cooled in the entire building.

This rule is intended to implement Iowa Code subsection 423.3(6).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.13(423) Water used in agricultural production. Water sold to farmers who are purchasing water for household use, sanitation, swimming pools, or other personal use is subject to sales tax. Water sold to farmers and others and used directly as drinking water for livestock production (including the production of domesticated fowl) is exempt from sales tax. When water is used for exempt purposes, as in livestock production, as well as for taxable purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for exempt purposes from taxable purposes. When it is impractical to separately meter exempt water from taxable water, the purchaser may furnish to the seller a statement enabling the seller to determine the percentage of water subject to exemption. In the absence of proof to the contrary, the retailer of the water shall bill and collect tax on the first 5,000 gallons of water per month. The first 5,000 gallons of water per month will be considered to be for nonexempt use, and the balance will be considered to be used as part of agricultural production.

This rule is intended to implement Iowa Code subsection 423.3(5).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.14(423) Bedding for agricultural livestock or fowl. The sales price from the sale of woodchips, sawdust, hay, straw, paper, or any other materials used for bedding in the production of agricultural livestock (including domesticated fowl) is exempt from tax. See rule 701—211.1(423) for definitions applicable to this rule.

This rule is intended to implement Iowa Code subsection 423.3(9).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.15(423) Sales by farmers. The sale of grain, livestock, or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing, or human consumption, and is not subject to tax. Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the sales price from their sales.

This rule is intended to implement Iowa Code subsections 423.3(2), 423.3(51), and 423.3(57).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.16(423) Sales of livestock (including domesticated fowl) feeds. Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets. Antibiotics that are administered as an additive to feed or drinking water and vitamins and minerals that are sold for livestock (including domesticated fowl) are exempt from tax.

This rule is intended to implement Iowa Code subsection 423.3(16).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.17(423) Farm machinery, equipment, and replacement parts used in livestock or dairy production.

226.17(1) Sales or rentals of farm machinery, equipment, and replacement parts used in livestock or dairy production are exempt from sales and use tax.

226.17(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term "machinery" means major mechanical machines, or major components thereof, which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term "equipment" means tangible personal property (other than a machine) that is directly and primarily used in livestock or dairy production. Equipment may be characterized as property which performs a specialized function and which has no moving parts, or if the equipment does possess moving parts, its source of power is external to it. The following nonexclusive examples differentiate between machinery and equipment:

EXAMPLE 1: An auger places feed into a cattle feeder. The auger is a piece of machinery; the cattle feeder is a piece of equipment.

EXAMPLE 2: An electric pump is used to pump milk into a bulk milk tank. The electric pump is a piece of machinery; the bulk milk tank is equipment.

c. Property used in livestock or dairy production which is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. See *Cloverleaf Cold Storage Co. v. Dep't of Revenue and Fin.*, 2002 WL 31769009 (Iowa Dept. Insp. App. July 26, 2002). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of the following example, assume that property is being sold to a contractor rather than a person engaged in livestock or dairy production. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of the building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a farm supply if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply which is not machinery or equipment. See subrule 226.19(4) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

d. Hand tools. The term "hand tools" means tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax as farm machinery.

e. "Directly used" in livestock or dairy production. To determine if machinery or equipment is "directly used" in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. See paragraph *"g"* of this subrule for an explanation of when livestock or dairy production begins and ends.

(1) Definition. If the machinery or equipment is used in livestock or dairy production, "directly used" means the use is an integral and essential part of production as distinguished from use that is

incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to livestock or dairy production, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in livestock or dairy production. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in livestock or dairy production.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in livestock or dairy production. The closer the proximity of the machinery's or equipment's use within the production process to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. "Primarily used" in livestock or dairy production. Machinery or equipment is "primarily used" in livestock or dairy production based on the total time it is used in livestock or dairy production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in livestock or dairy production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock or dairy production ceases when an animal or the product of an animal's body (e.g., wool) has been transported to the point where it will be sold by the farmer or processed.

h. Machinery and equipment design. Farm machinery and equipment used in livestock or dairy production is eligible for exemption if specifically designed for use in livestock or dairy production. Farm machinery and equipment which are not specifically designed for use in livestock or dairy production, but are directly and primarily used in livestock or dairy production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Farmer Jones raises livestock and must use fans to cool the animals. Farmer Jones buys electric fans designed for use in a residence, but uses them directly and primarily to cool the livestock. The fans' use would be considered exempt.

i. Replacement parts. The term "replacement parts" means the same as defined in subrule 226.1(2), paragraph *"i."*

226.17(3) Examples of machinery and equipment directly used in livestock or dairy production.

a. Machinery and equipment used to transport or limit the movement of livestock or dairy animals (e.g., electric fence equipment, portable fencing, head gates, and loading chutes) are directly used in livestock or dairy production.

b. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment) are directly used in livestock or dairy production.

c. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property) are directly used in livestock or dairy production.

d. Machinery and equipment used to test or inspect livestock during production are directly used in livestock or dairy production.

226.17(4) Taxable examples. The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

b. Machinery or equipment used in farm management, administration, advertising, or selling (e.g., a computer used for record keeping, calculator, office safe, telephone, books, and farm magazines).

c. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home, or other facilities for farm employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of farm buildings generally.

g. Vehicles subject to registration.

226.17(5) The sales price, not including services, of the following machinery or equipment is exempt from tax regardless of whether the machinery or equipment remains tangible personal property after installation or is incorporated into the realty: auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment, including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets, shutter or inlet systems, refrigerators, and replacement parts if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is used in a repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products.

226.17(6) Auxiliary attachments exemption. Sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of exempt machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt.

226.17(7) Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for sales tax and shall remit the tax to the department.

This rule is intended to implement Iowa Code subsections 423.3(11) and 423.3(15).

[**ARC 7870B**, IAB 6/17/09, effective 7/22/09]

701—226.18(423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants.

226.18(1) The sales or rentals of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants are exempt from sales and use tax. The production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production and exempt from sales tax. The term "plants" does not include trees, shrubs, other woody perennials, or fungi.

226.18(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. *Machinery.* The term "machinery" means major mechanical machines, or major components thereof, which contribute directly and primarily to the flowering, ornamental, or vegetable plant production process. Usually, a machine is a large object with moving parts which performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term "equipment" means tangible personal property (other than a machine) that is directly and primarily used in the flowering, ornamental, or vegetable plant production process. Equipment may be characterized as property which performs a specialized function which, of itself, has no moving parts, or if the equipment does possess moving parts, its source of power is external to it.

c. Plants. The term "plants" means flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.

d. Property used in the flowering, ornamental, or vegetable plant production process which is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. See *Cloverleaf Cold Storage Co. v. Dep't of Revenue and Fin.*, 2002 WL 31769009 (Iowa Dept. Insp. App. July 26, 2002). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of this example, assume that the property is being sold to a contractor rather than a person engaged in the flowering, ornamental, or vegetable plant production process. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of this building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a supply if it is used up or destroyed by virtue of its use in the flowering, ornamental, or vegetable plant production process or, because of its nature, can only be used once in the flowering, ornamental, or vegetable plant production process. A light bulb is an example of a supply which is not machinery or equipment. See subrule 226.19(4)for examples of supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

e. Hand tools. The term "hand tools" means tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in the flowering, ornamental, or vegetable plant production process are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax.

f. "Directly used" in the flowering, ornamental, or vegetable plant production process. To determine if machinery or equipment is "directly used" in the flowering, ornamental, or vegetable plant production process, one must first ensure that the machinery or equipment is used during the flowering, ornamental, or vegetable plant production process and not before that process has begun or after it has ended. See paragraph *"h"* of this subrule for an explanation as to when the flowering, ornamental, or vegetable plant production process begins and ends.

(1) Definition. If the machinery or equipment is used in the flowering, ornamental, or vegetable plant production process, "directly used" means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to the flowering, ornamental, or vegetable plant production process, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in the flowering, ornamental, or vegetable plant production process.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the proximity of the machinery's or equipment's use within the production process is to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and the flowering, ornamental, or vegetable plant production process. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

g. "Primarily used" in flowering, ornamental, or vegetable plant production. Machinery or equipment is "primarily used" in flowering, ornamental, or vegetable plant production based upon the total time it is used in flowering, ornamental, or vegetable plant production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in flowering, ornamental, or vegetable plant production more than 50 percent of its total use time is eligible for exemption.

h. Beginning and end of flowering, ornamental, or vegetable plant production. Flowering, ornamental, or vegetable plant production begins with the purchase of seeds or starter plants. Flowering, ornamental, or vegetable plant production ceases when a plant has grown to the size or weight at which it will be prepared for shipment to the destination where it will be marketed.

i. Machinery and equipment design. Machinery and equipment used in flowering, ornamental, or vegetable plant production are eligible for exemption if they were specifically designed for use in flowering, ornamental, or vegetable plant production. Machinery and equipment which are not specifically designed for use in flowering, ornamental, or vegetable plant production, but are directly and primarily used in flowering, ornamental, or vegetable plant production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Bob Jones raises tulips and must use a thermometer to monitor the temperature in his greenhouse. Bob Jones buys a thermometer designed for use in a residence, but uses it directly and primarily to monitor the temperature in his greenhouse. The thermometer's use would be considered exempt.

j. Replacement parts. The term "replacement parts" means the same as defined in subrule 226.1(2), paragraph *"i."*

226.18(3) Examples of machinery and equipment directly used in flowering, ornamental, or vegetable plant production can be found in subrule 226.19(3).

226.18(4) Taxable examples. The following are nonexclusive examples of machinery or equipment which would not be directly used in flowering, ornamental, or vegetable plant production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in flowering, ornamental, or vegetable plant production.

b. Machinery or equipment used in the growing operation's management, administration, advertising, or selling (e.g., calculators, office safes, telephones, books, and plant magazines).

c. Machinery or equipment used in the exhibit of flowering, ornamental, or vegetable plants.

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a grower, the grower's family or employees, or persons associated with the grower is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a grower's home, or other facilities for the grower's employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of office, retail, or display buildings where production does not occur.

g. Vehicles subject to registration.

226.18(5) Packing material used in flowering, ornamental, or vegetable plant production. The sales price for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or other places which sell such

items in the ordinary course of business is not subject to sales tax. Containers and packaging materials include but are not limited to boxes, trays, labels, sleeves, tape, and staples.

226.18(6) Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. Exempt implements include, but are not limited to, forklifts used to transport pallets of plants, wagons containing sterilized soil, and tractors used to pull these items.

226.18(7) Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—226.19(423) includes nonexclusive examples of machinery and equipment which are not self-propelled or attached to self-propelled machinery and equipment and which are directly and primarily used in plant production.

226.18(8) Fuel used in plant production. See subrule 226.12(2), paragraph *"b."*

226.18(9) Sales of water used in the production of plants are exempt from tax. If water is not separately metered, the plants' grower must determine by use of a percentage the portion of water used for a taxable purpose and the portion used for an exempt purpose. Nonexclusive examples of taxable usage include rest rooms, sanitation, lawns, and vehicle wash.

226.18(10) Agricultural health promotion items. Sales to a commercial greenhouse of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, and insect control or in other health promotion of flowering, ornamental, or vegetable plants are exempt from tax. For the purposes of this rule, a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an insecticide or pesticide. Refer to rule 701—226.9(423) for more information regarding these exemptions.

226.18(11) Miscellaneous exempt and taxable plant sales.

a. Sales of pots, soil, seeds, bulbs, and starter plants for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product.

b. Sales of portable buildings which will be used to display plants for retail sales are taxable.

c. Sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those greenhouses are taxable sales of a supply rather than exempt sales of equipment.

226.18(12) Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller receives from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for the sales tax and shall remit the tax to the department.

This rule is intended to implement Iowa Code subsections 423.3(11) and 423.3(15).

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701—226.19(423) Nonexclusive lists. The following tables list items that are taxable or exempt.

226.19(1) *Exempt for agricultural production.*

adjuvants	irrigation equipment
alternators and generators*	kill cones
augers*	limestone, agricultural
balers	manure spreaders
bale transportation equipment	mowers, hay
baling wire and binding twine	oil filters
batteries for exempt machinery	oil pumps
blowers, grain dryer	packing materials
brush hogs*	pesticides

combines, cornheads, platforms
conveyors, temporary or portable*
corn pickers
crawlers, tractor
cultipackers
cultivators
discs
draft horses
drags
drainage pipe and tile
dusters*
ensilage cutters
ensilage forks and trucks (a pickup does not qualify)
farm wagons and accessories
fertilizer, agricultural
fertilizer spreaders
filters
forage harvesters, boxes
fuel for grain drying or other agricultural production
gaskets
grain augers, portable*
grain drills
grain dryer, heater and blower only
grain planters
harrows
hay conditioners
hay hooks
hay loaders
herbicides
implements customarily drawn or attached to a self-propelled implement
insecticides
pickers
plants (seeds)
planters
plows
piston rings
pruning and picking equipment*
replacement parts
rock pickers
rollers*
rotary blade mowers; not lawn mowers
rotary hoes
seeders
seed cleaners*
seed planters
seeds
self-propelled implements
shellers*
silo blowers, unloaders*
sowers
spark plugs for exempt machinery
sprayers*
spreaders
sprinklers
subsoilers
surfactants
tillers
tires for exempt machinery
tractor chains
tractors, farm
tractor weights
vegetable harvesters
weeders*

*Exempt if drawn or attached to a self-propelled farm implement or, if portable, used directly and primarily in agricultural production.

226.19(2) *Exempt for dairy and livestock production.*

adjuvants
alternators and generators[1]
artificial insemination equipment
auger systems
automatic feeding systems, portable
heaters, portable
hog feeders, portable
hog ringers[3]
hoof trimmers, portable[3]
hypodermic syringes and needles, nondisposable

batteries for exempt machinery
barn ventilators
bedding materials[2]
breeding stock, agricultural
bulk feeding tanks, portable
bulk milk coolers and tanks, portable
calf weaners and feeders, portable
cattle feeders, portable
chain and rope hoists, portable[1]
chicken pickers, plucking equipment
chick guards
clipping machines, portable[3]
conveyors, temporary or portable[1]
cow stalls, portable
cow ties, portable
cow watering and feeding bowls, portable
crawlers, tractor
currying and oiling machines, portable
curtains and curtain systems
dehorners
domestic fowl
draft horses
drip systems
electric fence equipment, portable
fans and fan systems
farm wagons and accessories
farrowing houses, crates, stalls, portable
feed
feed bins, portable
feed carts, portable
feed elevators, portable
feed grinders, portable
feed scoops[3]
feed tanks, portable
feeder chutes, portable
feeders, portable
fence and fencing supplies, temporary or portable
foggers
fuel to heat or cool livestock buildings
gaskets
gates, portable
implements customarily drawn or attached to a self-propelled implement
incubators, portable
inlets and inlet systems
inoculation materials
insecticides
kill cones
livestock feeding, watering and handling equipment, portable
loading chutes, portable
manure brooms, portable[3]
manure handling equipment, includes front-end and rear-end loaders, portable[3]
manure scoops, portable[1]
medications
milk coolers, portable
milking equipment, includes cans, etc.[3]
milking machines
milk strainers and strainer disks, if not disposable
milk tanks, portable
pesticides
poultry feeders, portable
poultry founts, portable
poultry litters, portable
poultry nests, portable
refrigerators
replacement parts
sawdust[2]
self-propelled implements
shutters and shutter systems
space heaters, portable
specialized flooring, portable
sprayers[1]
squeeze chutes, stalls, portable
stanchions, portable
surfactants
tires for exempt machinery
thermometers[3]
tractor chains
tractors, farm
tractor weights
vacuum coolers
ventilators
water filters, heaters, pumps, softeners, portable

gestation stalls, portable
grooming equipment, portable[3]
head gates, portable
waterers/watering tanks, portable
weaners
wood chips[2]

[1]Exempt if drawn or attached to a self-propelled farm implement or, if portable, used directly and primarily in dairy or livestock production.

[2]Exempt when used as livestock and poultry bedding.

[3]Designed for farm use.

226.19(3) *Exempt for flowering, ornamental, or vegetable plant production.*

air-conditioning pads
airflow control tubes
atmospheric CO_2 control and monitoring equipment
backup generators
bins holding sterilized soil
control panels for heating and cooling systems*
coolers used to chill plants*
cooling walls* or membranes
equipment used to control water levels for subirrigation
fans used for cooling and ventilating*
floor mesh for controlling weeds
germination chambers
greenhouse boilers*
greenhouse netting or mesh when used for light and heat control
greenhouse monorail systems*
greenhouse thermometers
handcarts used to move plants
lighting which provides artificial sunlight
overhead heating, lighting, and watering systems*
overhead tracks for holding potted plants*
plant tables*
plant watering systems*
portable buildings used to grow plants*
seeding and transplanting machines
soil pot and soil flat filling machines
steam generators for soil sterilization*
warning devices which monitor excess heat or cold
watering booms

*Exempt if not real property. "Real property" is defined in Iowa Code subsection 4.1(13) as "lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal." See 701—Chapter 219.

226.19(4) *Taxable even if used in agricultural production.*

additives
air compressors
air conditioners, unless a replacement part for exempt machinery
air tanks
antifreeze
axes
barn cleaner, permanent
baskets
belt dressing
bins, permanent
brooms
buckets
building materials* and supplies
burlap cleaners
lubricants and fluids
lumber*
marking chalk
mops
motor oils
nails
office supplies
oxygen
packing room supplies
paint and paint sprayers
pliers
posthole diggers, hand tool
poultry brooders, permanent
poultry feeders, permanent

cattle feeders, permanent
cement
chain saws
cleaning brushes
cleansing agents and materials
computers (including laptop), for personal use
computer software
construction tools
concrete
conveyors, permanent
cow ties, permanent
ear tags
fence, posts, wire, permanent
field toilets
fire prevention equipment
freon
fuel additives
fuel tanks and pumps
garden hoses and rakes
glass
grain bins and tanks, permanent*
grease
grease guns
hammers
hog rings
hydraulic fluids
hypodermic syringes, disposable
lamps
lanterns
light bulbs (for household use)
poultry nests, permanent
pruning tools
pumps for household or lawn use
radios, unless a replacement part for exempt machinery
refrigerators for home use
repair tools
road maintenance equipment
road scraper
roofing
sanders
scrapers
screwdrivers
shingles
shovels
silos
snow fence unless portable and used directly in dairy and livestock production
snow plows and snow equipment
space heaters, permanent
specialized flooring, permanent
sprinklers, permanent
stalls, permanent
staples
stanchions, permanent
storage tanks
tarps
tiling machinery and equipment
tractors, garden
welders
wheel barrows
wrenches

*The buyer of building materials is responsible for paying sales tax or use tax on those materials, including materials to construct grain bins. The buyer is the person who pays the vendor.

This rule is intended to implement Iowa Code subsections 423.3(6) and 423.3(11).

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CHAPTER 71
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

875—71.1(89A) Definitions. The definitions contained in this rule shall apply to 875—Chapters 71, 72, and 73.

"AECO" means an elevator/escalator certification organization accredited pursuant to ASME A17.7.

"Approved" means approved by the division.

"CCD" means code compliance documentation as described in ASME A17.7, Section 2.10.

"CEI" means a person who is a certified elevator inspector or a certified elevator inspector supervisor pursuant to ASME QEI-1-2007.

"Control" means the system governing the starting, stopping, direction of motion, acceleration, speed and deceleration of the moving member.

"Conveyance" means any elevator, escalator, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A.

"CPH" means a construction personnel hoist.

"CPH extension" means the act or process of increasing the range of travel for a CPH.

"Division" means the labor services division of the workforce development department.

"Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more floors of a building or structure. "Elevator" does not include a CPH.

"Elevator mechanic" means a person who meets the standard for "elevator personnel" found in ASME A17.1.

"Hoistway-unit system" means a series of hoistway-door interlocks, hoistway-door electric contacts or hoistway-door combination mechanical locks and electric contacts, or a combination thereof, the function of which is to prevent operation of the driving machine by the normal operating device unless all hoistway doors are in the closed position and, if required, locked.

"Major alteration" means an alteration for which rule 875—71.10(89A) requires that the entire conveyance comply with current codes.

"Wind tower lift" means a conveyance designed and utilized solely for movement of trained and authorized people and small loads in wind towers built for the production of electricity.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.2(89A) Registration of conveyances. The owner or authorized agent of each operable conveyance not previously registered shall register the conveyance. An application to install a new conveyance shall constitute registration. All registrations shall be submitted to the commissioner on forms available from the division of labor services and shall include all information requested by the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.3(89A) State identification number. The commissioner shall assign an identification number to each conveyance that shall be stamped on a metal tag permanently attached to the controller, to the electrical disconnecting switch, or in a wind tower lift cage.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.4(89A) Responsibility for obtaining permits. The procuring of all permits and the payment of all fees required by this chapter shall be the responsibility of the owner. Failure to obtain the appropriate permit prior to installation, alteration or operation may, at the discretion of the labor commissioner, result in a referral to the attorney general for prosecution of criminal penalties as described in Iowa Code section 89A.17.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.5(89A) Installation permits.

71.5(1) Installation shall not begin until an installation permit has been issued by the division. A separate installation permit shall be issued for each conveyance, except that a single installation permit

shall cover all identical wind tower lifts installed as the result of one construction contract in identical wind towers in a single wind farm.

71.5(2) Application for an installation permit shall be accompanied by the fee specified in rule 875—71.16(89A), shall be in the format required by the labor commissioner, and shall include the following, as applicable:

a. Sectional plan of car and hoistway.

b. Sectional plan of machine room.

c. Sectional elevation of hoistway and machine room including the pit, bottom and top clearance of car and counterweights.

d. Size and weight of rails and guide rail bracket spacing.

e. The estimated maximum vertical forces on the guide rails on application of the safety device.

f. In the case of freight elevators for class B or class C loading, the horizontal forces on the guide rail faces during loading and unloading and the estimated maximum horizontal forces in a post-wise direction on the guide rail faces on the application of the safety device.

g. The size and weight per foot of any rail reinforcements where rail reinforcements are provided.

h. Job specifications.

i. For a conveyance covered by ASME A17.7, a complete copy of the CCD with attachments and a complete copy of the Certificate of Conformance with attachments as described by ASME A17.7, Appendix I, Section 4.5.

j. For a CPH, the number of CPH extensions planned, the planned dates for each CPH extension, and the number of new floors anticipated with each CPH extension.

71.5(3) A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH extension. Each CPH extension shall be considered an alteration. The fee submitted for a CPH installation permit shall be the total of the CPH installation permit fee as set forth in subrule 71.16(3) and the CPH alteration permit fee as set forth in subrule 71.16(4).

71.5(4) Issuance of an installation permit shall not be construed as a waiver or variance of any requirement of law.

71.5(5) The installation permit or a copy of the installation permit shall be conspicuously posted at the worksite. All the wind towers covered by a single installation permit shall be considered a single worksite, and posting one copy of the installation permit at the construction project office shall be sufficient compliance with this subrule.

71.5(6) Except as described in paragraphs 71.5(6)*"a"* and *"b,"* the installation permit shall expire upon the earlier of the completion of the installation as described in the permit application or one year after issuance.

a. For a CPH, the installation permit shall expire upon completion of the last CPH extension.

b. For any conveyance, during the tenth month after issuance, and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension may be granted at the discretion of the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.6(89A) Construction permits. A construction permit authorizes the temporary, limited use of an elevator for purposes relating to construction or demolition.

71.6(1) Use of the elevator shall not begin until a construction permit has been issued by the division.

71.6(2) Application for a construction permit shall be in the format required by the labor commissioner and must include all the information requested by the labor commissioner and the fee specified by this chapter.

71.6(3) Upon submission of the completed application and fee, a state inspector shall be scheduled to inspect the elevator. Construction permits shall be issued only if the following criteria are met:

a. The elevator has been successfully tested pursuant to the requirements of ASME A17.1, Section 8.11.5.13; and

b. The applicable requirements of ASME A17.1, Section 5.10, are met.

71.6(4) The construction permit or a copy of the construction permit shall be posted conspicuously in a protective sleeve in the elevator car.

71.6(5) The construction permit shall expire 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of up to 90 days may be granted at the discretion of the labor commissioner.

71.6(6) Elevators with a construction permit but without an operating permit shall not be accessible to the general public.

71.6(7) Failure to comply with these provisions may result in the revocation of the construction permit.

71.6(8) An operating permit shall not be issued before construction and an acceptance inspection are complete.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.7(89A) Operating permits.

71.7(1) Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 875—71.6(89A) and 875—71.8(89A).

71.7(2) Operating permits shall not be issued prior to successful completion of an inspection pursuant to rule 875—71.11(89A) and payment of all permit and inspection fees owed to the division.

71.7(3) Current operating permits or copies of current operating permits shall be conspicuously displayed as follows:

a. The operating permit for an elevator or CPH shall be posted in the car.

b. The operating permit for an escalator, dumbwaiter, wind tower lift, moving walk, or wheelchair lift shall be posted on or near the subject conveyance.

71.7(4) An operating permit shall expire 60 days after the first permit renewal inspection following the issuance of the operating permit, unless an earlier date is dictated by this rule.

71.7(5) An operating permit is automatically suspended when construction is initiated to alter less than or equal to 50 percent of an elevator as calculated pursuant to rule 875—71.9(89A). The operating permit automatically resumes when the elevator passes an inspection pursuant to rule 875—71.11(89A).

71.7(6) An operating permit is automatically terminated when a major alteration is initiated on the conveyance. A new operating permit shall be issued upon successful completion of the major alteration and acceptance inspection.

71.7(7) An operating permit is automatically terminated when an imminent danger notice is posted on the conveyance.

71.7(8) Notwithstanding other provisions of this rule, at the discretion of the labor commissioner, a temporary operating permit may be issued for up to 30 days provided the inspection has been completed and no code violations were identified. Issuance of a temporary operating permit does not extend the expiration date of the conveyance's operating permit.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.8(89A) Controller upgrade permits. A controller upgrade permit may be issued to allow operation of an elevator while work to upgrade controls requires deactivation of the Phase I recall initiated by smoke sensing devices. Each elevator to be altered requires a separate controller upgrade permit. The duration of a controller upgrade permit shall not exceed 90 days. Each elevator in the group shall pass inspection pursuant to rule 875—71.11(89A) prior to being placed back into service.

71.8(1) A controller upgrade permit shall not be issued unless each of the following conditions is met:

a. Two or more elevators share a lobby at the level of the recall floor.

b. The project includes the installation of new elevator controllers in all of the elevators in the group.

c. Phase I fire recall initiated by a key-operated switch and all other controls shall be properly functioning for each elevator available for use.

d. There is a current alteration permit for the project.

e. A complete application for the controller upgrade permit and the fee established by this chapter have been submitted and accepted.

71.8(2) A controller upgrade permit shall not be construed to waive or excuse compliance with the requirements of any other governmental entity, including the department of public safety.

71.8(3) Upon the submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of the permit for up to 60 days may be granted.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.9(89A) Alteration permits.

71.9(1) Alteration shall not begin until an alteration permit has been issued by the division.

71.9(2) Application for an alteration permit shall be in the format required by the labor commissioner and shall include drawings and specifications of all planned changes and the fee specified by rule 875—71.16(89A).

71.9(3) Issuance of an alteration permit shall not be construed as a waiver or variance of any requirement of law.

71.9(4) The alteration permit or a copy of the alteration permit shall be conspicuously posted at the worksite.

71.9(5) If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days' advance notice of each CPH extension shall be provided to the labor commissioner. For a CPH installed without an installation permit prior to July 1, 2008, a completed alteration permit application shall be submitted to the labor commissioner at least seven days before each CPH extension.

71.9(6) The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification and other required information, an extension of the alteration permit may be granted at the discretion of the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.10(89A) Alterations. Alterations or changes shall comply with rule 875—72.13(89A) or rule 875—73.8(89A), as applicable. A conveyance that is relocated shall be brought into compliance with all codes that are applicable at the time of relocation.

71.10(1) *Elevators.* When any combination of alterations or changes is made that constitutes more than 50 percent of the elevator, the entire elevator shall be brought into compliance with ASME A17.1-2007/CSA B44-07, and it shall be deemed a new elevator.

a. Alterations or changes constitute more than 50 percent of the construction if they exceed 50 percent of the total points according to the following table:

Elevator Component	Hydraulic	Traction
Controller	31	26
Floor selector	4	8
Drive-MG-SCR	-	13
Main machine	-	15
Machine motor	5	7
Hoist ropes	4	8
Governor	4	7
Platform	9	9
Car fixtures	9	8
Cab	10	10
Safeties	6	7
Door operator	12	12

Elevator Component	Hydraulic	Traction
Hoistway door panels	11	10
Hoistway door frames	11	10
Hoistway hangers & tracks	11	11
Hoistway door locks	8	9
Traveling cable	6	9
Hoistway wiring	8	6
Hall fixtures	8	10
Buffers	6	6
Counterweight	4	7
Rails & brackets	10	18
Car & counterweight guides	6	6
Pump	9	-
Valve	9	-
Tank	9	-
Plunger	14	-
Cylinder	18	-
Total Points	242	232

b. If an elevator does not have one or more of the components in the chart above, and those components will not be added to the elevator during the alteration, the points for the component(s) shall be subtracted from the total points before a determination is made about whether the alteration or change constitutes 50 percent.

71.10(2) *Conveyances other than elevators.* With the exception of replacing brushes on or adding brushes to escalators, all alterations of conveyances other than elevators shall require that the entire conveyance be brought into compliance with the current code.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.11(89A) Inspections. Pursuant to Iowa Code section 89A.12, inspections by the labor commissioner's designee shall be permitted at reasonable times with or without prior notice.

71.11(1) *Scope of inspections.*

a. *Comprehensive.* Periodic inspections shall be comprehensive. Conveyances subjected to major alterations, elevators being transferred from construction permits to operating permits, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances shall be inspected in their entirety prior to operation.

b. *Limited.* The scope of an inspection after an alteration other than a major alteration shall be determined by rule 875—72.13(89A) or 875—73.8(89A), as applicable. However, if the inspector notices a safety hazard in plain view outside the altered components, or if the periodic inspection is due, the entire conveyance shall be inspected.

71.11(2) *When inspections will occur.*

a. *Periodic inspections.*

(1) Conveyance inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines annual inspections of state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

(2) Conveyance inspections by special inspectors shall be conducted at least annually.

b. *Acceptance inspections.* An acceptance inspection shall occur:

(1) After each relocation,

(2) After each alteration,

(3) After each installation,

(4) Before an elevator subject to a construction permit receives an operating permit, and

(5) Before a previously dormant conveyance is returned to service.

c. *Other inspections.* Inspections may be made when the commissioner reasonably believes that a conveyance is not in compliance with the rules. Accidents, complaints, or requests for consultative inspections may result in inspections by the labor commissioner's designee.

71.11(3) *Who may perform inspections.*

a. The labor commissioner's designee shall inspect altered conveyances, previously dormant conveyances being returned to service, wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), relocated conveyances, and new conveyances.

b. Except as noted in 71.11(3)*"c,"* annual inspections may be performed by state inspectors or special inspectors authorized by the labor commissioner pursuant to rule 875—71.12(89A).

c. An inspection report by a special inspector shall not be accepted as the required, annual inspection if the conveyance is under contract for maintenance, installation or alteration by the special inspector or the special inspector's employer, or if the property is owned or leased by the special inspector or the special inspector's employer.

71.11(4) *Inspection standards.* Inspections shall be performed in accordance with applicable safety codes or documents such as:

a. CCD;

b. ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;

c. ANSI A10.4-2007;

d. Rule 875—72.12(89A) for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A); or

e. ASME A18.1.

71.11(5) *Inspection reports.*

a. All inspectors shall file inspection reports on forms approved by the commissioner within 30 days from the date of inspection and shall provide owners of conveyances with copies of completed inspection reports. The inspection report must separately list each unsafe condition and the applicable, specific code citation. Up to 30 days shall be allowed for correction of the unsafe conditions.

b. The owner may file a petition for reconsideration of an inspection report pursuant to 875—Chapter 69. The timely and proper filing of a petition for reconsideration extends the deadline for correction of the hazards that are subject to the petition for reconsideration.

71.11(6) *Extension of time.* The owner may petition the commissioner for up to 60 additional days to make the necessary corrections. The time frames set forth in subrule 71.11(7) may be adjusted by the labor commissioner as necessary to accommodate an extension of time.

71.11(7) *Correction of unsafe conditions.* In the absence of a determination on reconsideration or appeal that correction of hazards is not required, all unsafe conditions identified in the inspection report shall be corrected. The labor commissioner shall verify correction of all unsafe conditions identified in the inspection report by sending a state inspector to reinspect the conveyance for the fee set forth in rule 875—71.16(89A), or by reviewing appropriate documentation such as a photograph, invoice, other verifiable document, or subsequent inspection report. The time frames set forth in this subrule may be accelerated at the request of the owner.

a. Promptly upon receipt of an inspection report listing unsafe conditions, the labor commissioner will send to the owner and the special inspector, if any, an abatement order. A copy of the inspection report shall be attached to the abatement order. Unless a special inspector conducted the inspection, the order may specify a period that ends no more than 45 days after the inspection during which the owner may submit written evidence that the unsafe conditions have been corrected. The abatement order shall:

(1) Identify the equipment.

(2) Demand that the unsafe conditions be corrected within the period set forth in the inspection report.

(3) Set forth the consequences of failure to comply.

b. After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant

progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

c. The labor commissioner may issue an operating permit after receipt of the appropriate fee and verification that each unsafe condition identified in the inspection report has been corrected.

d. If written proof of correction was requested in the abatement order, but adequate proof was not received by the deadline set forth in the abatement order, the labor commissioner may send a second abatement order or cause a state inspector to inspect the conveyance. If the labor commissioner elects to send a second abatement order, it shall notify the owner that, if written proof of abatement is not received within 20 days, a state inspector may be sent to the site. Copies of the abatement order and the inspection report shall be attached to the second abatement order.

e. If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may contact the special inspector, send a second abatement order to the owner, or send a state inspector to inspect the conveyance. Copies of the abatement order and the inspection report shall be attached to a second abatement order.

f. If an inspection as described in paragraph 71.11(7)*"d"* or *"e"* reveals no significant progress toward correcting the unsafe conditions, and the remaining unsafe conditions create no significant safety concerns, the labor commissioner may extend the time for abatement of the unsafe conditions an additional 10 days or may serve a notice of intent to suspend, deny or revoke the operating permit. The labor commissioner may also post a notice prohibiting use of the conveyance pending abatement of the unsafe conditions listed in the inspection report.

g. Procedures for appeal of a notice of intent to suspend, deny or revoke an operating permit are set forth in 875—Chapter 69.

71.11(8) *Imminent danger.* If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

71.11(9) *Interference prohibited.* No person shall interfere with, delay or impede an inspector employed by the state during an inspection.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.12(89A,252J,261,272D) Special inspector commissions.

71.12(1) *Definition.* As used in this rule, "certificate of noncompliance" means:

a. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;

b. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or

c. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

71.12(2) *Qualifications.*

a. Each applicant must possess a high school diploma or general equivalency degree.

b. Each applicant shall have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.

c. Each applicant shall be a CEI.

d. Each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.

e. Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy shall be in an amount of not less than $1,000,000 for bodily injury to or death of one person in any one accident,

and in an amount of not less than $5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than $100,000 for damage to or destruction of property in any one accident. The insurance coverage of the special inspector's employer shall be considered to comply with this requirement if the coverage provides equivalent coverage for each special inspector.

71.12(3) *Application.* An applicant for a commission shall complete, sign, and submit to the division the form provided by the division with the required fee. The applicant shall include with the application proof that the applicant is a CEI.

71.12(4) *Expiration.* The commission expires when the commission is suspended or revoked by the labor commissioner or one year from issuance, whichever occurs earlier.

71.12(5) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

71.12(6) *Denials.* The labor commissioner may refuse to issue or renew a special inspector's commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) to 71.12(10).

71.12(7) *Investigations.* The labor commissioner may investigate for any reasonable cause related to special inspectors or special inspector applicants. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the labor commissioner directs. The labor commissioner may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

71.12(8) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

71.12(9) *Reasons for suspension.* The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals any of 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 71.12(8);

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 special inspector is no longer a CEI;

i. The division received a certificate of noncompliance; or

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 71.12(9)*"a"* to *"h."*

71.12(10) *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 committed repeated violations as described in subrule 71.12(9);

e. 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;

f. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 71.12(10)*"a"* to *"e"*;

g. The special inspector is no longer a CEI; or

h. The division received a certificate of noncompliance.

71.12(11) *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, 261, 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.

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 the 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 surrender the special inspector's commission card to the labor commissioner. The labor commissioner may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.
[**ARC 7841B**, IAB 6/17/09, effective 7/22/09]

875—71.13(89A) State employees. ASME A17.1, Rule 8.11.1.1, shall not apply to inspectors who were hired before January 2005 and are state employees.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.14(89A) Safety tests. Only safety test reports submitted on approved forms from elevator mechanics who are employed by authorized companies shall be considered to meet the requirements of this rule.

71.14(1) *When safety tests will be performed.*

a. Safety tests shall be performed on new and altered installations before they are placed in service.

b. Annual, three-year, and five-year safety tests shall be made on all conveyances pursuant to the schedules and procedures set forth in:

(1) The maintenance control plan for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A);

(2) The CCD for conveyances covered by ASME A17.7-2007/CSA B44-07;

(3) ASME A17.1-2007/CSA B44-07, Part 8, (except for Rule 8.11.1.1);

(4) ASME A18.1(2003), Part 10; or

(5) ANSI A10.4-2007, Section 26.4.

71.14(2) *How safety tests will be reported.* Within 30 days after completion of a safety test, the elevator mechanic shall file with the labor commissioner a report on an approved form and shall provide a copy of the form to the owner and to the witness, if applicable.

71.14(3) *How safety tests will be recorded.* The elevator mechanic shall attach a tag showing the date of the test, the elevator mechanic's name, and the type of test performed.

a. On electric traction elevators, the elevator mechanic shall attach the tag to the safety-releasing carrier.

b. On hydraulic elevators, the elevator mechanic shall attach the tag to the disconnecting switch or the controller.

c. On wheelchair lifts, the elevator mechanic shall attach the tag to the disconnecting switch.

d. On other conveyances covered by these rules, the commissioner's designee witnessing the acceptance safety test shall indicate the proper location of the tag. Subsequent test tags shall be attached in the same location.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.15(89A) Authorized companies.

71.15(1) Each year, authorized companies shall train their elevator mechanics who perform safety tests on safety test procedures.

71.15(2) For each conveyance owned by an authorized company, the owner shall obtain the services of a CEI who is not employed by the authorized company or an inspector employed by the state to witness the safety test.

71.15(3) To become authorized to perform safety tests, a company shall submit a copy of its procedures for performing safety tests. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(4) Every five years or within six months after the board adopts a new edition of ASME, whichever is earlier, authorized companies shall submit revised safety test procedures for renewal of authorization. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(5) Investigations. Investigations shall take place at the times 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.

71.15(6) Suspension. If the labor commissioner determines that a falsified safety test report was submitted by an elevator mechanic, the labor commissioner shall suspend the authorization of the elevator mechanic's employer for six months. During the suspension, all safety tests performed by any employee of the authorized company shall be witnessed by a state inspector or a CEI who is not employed by the suspended authorized company.

71.15(7) Suspension procedures.

a. The labor commissioner shall notify an authorized company of its suspension by certified mail or by other service as permitted by Iowa Code chapter 17A.

b. The authorized company shall have 20 days to file a written notice of contest with the labor commissioner. If the authorized company does not file a written notice of contest in a timely manner, the suspension shall automatically be effective. If the authorized company does file a written notice of contest in a timely manner, the hearing procedures in 875—Chapter 1 shall govern.

c. If the labor commissioner finds, pursuant to Iowa Code section 17A.18A, that public health, safety or welfare imperatively requires emergency action, the authorization may be summarily suspended.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.16(89A) Fees. Except as noted below, all fees are nonrefundable and due in advance.

71.16(1) *Operating permits.* The annual operating permit fee shall be $50 per conveyance.

71.16(2) *Annual inspections.* Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for annual inspections shall be as follows:

a. Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), television tower elevators and hand-powered elevators): $75.

b. Escalators: $75.

c. Moving walks: $75.

d. Dumbwaiters: $60.

e. Hand-powered elevators: $60.

f. Wheelchair lifts: $60.

g. Television tower elevators: $300.

h. Wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A): $150.

i. CPHs: $300.

71.16(3) *Installation permits.* The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of $50. The fees for new installations shall be as follows:

a. Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A)) and CPHs up to and including four landings: $500.

b. Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A)) and CPHs with five or more landings: $600.

c. Escalators: $500.

d. Moving walks: $500.

e. Dumbwaiters: $350.

f. Wheelchair lifts: $350.

g. Wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A): $250 per lift.

71.16(4) *Alteration permits.*

a. The fees in paragraph 71.16(4)*"b"* cover the initial print review, alteration permit, and initial inspection for all objects except CPHs. For major alterations, the new operating permit fee is also included in the fee set forth in this subrule.

b. The table in rule 875—71.10(89A) shall be used to determine the change percentage for elevator alterations. The fees for elevator alterations shall be as follows:

(1) For alterations up to and including 25 percent: $200.

(2) For alterations of 26 percent up to and including 50 percent: $400.

(3) For alterations over 50 percent, the fees for new installations shall apply.

c. For all conveyances other than elevators, the fees for new installations shall apply to alterations.

d. For each CPH installed after July 1, 2008, the fee for each CPH extension shall be $150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

e. For CPHs installed prior to July 1, 2008, and extended to additional floors on or after July 1, 2008, the combined fee for the alteration inspection and alteration permit shall be $150.

71.16(5) *Construction permits.* The construction permit fee shall be $100 per conveyance. This fee includes the fee for initial inspection.

71.16(6) *Controller upgrade permits.* The controller upgrade permit fee shall be $200. This fee includes one inspection.

71.16(7) *Consultative inspections.* Consultative inspections may be performed at the discretion of the labor commissioner.

a. The consultative fee for each wind tower lift exempted from ASME A17.1 by rule 875—72.12(89A) shall be $150.

b. The consultative fee for each CPH shall be $300.

c. The consultative fee for each tower elevator shall be $300.

d. The consultative fee for all other conveyances shall be $100 per hour, including travel time, with a minimum charge of $200.

71.16(8) *Special inspector commission.* The special inspector commission fee shall be $60 annually.

71.16(9) *Witnessing safety tests.* The fee for division employees to witness safety tests shall be $100 per hour, including travel time, with a minimum charge of $200.

71.16(10) *Permit extensions.* The fee to extend an installation permit, alteration permit, or construction permit shall be $50.

71.16(11) *Inspections outside of normal business hours.* Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of $100 per hour, including travel time, with a minimum charge of $200.

71.16(12) *Reinspections.* The fees for reinspections are $300 for television tower elevators and CPHs, $150 for wind tower lifts, and $200 for all other conveyances.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.17(89A) Publications available for review. Standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.18(89A) Other regulations affecting elevators. Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating an exemption, waiver, or variance from any otherwise applicable regulation or statute.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.19(89A) Accidents.

71.19(1) *Reporting the accident.* The owner shall immediately notify the commissioner of each personal injury accident requiring the service of a physician or causing disability exceeding one day or causing damage to the conveyance exceeding $2,000. Notification shall be in writing and shall include the state identification number, owner, and description of accident.

71.19(2) *Securing the accident site pending investigation.* The removal of any part of the damaged conveyance or operating mechanism from the premises is forbidden until permission to do so is granted by the commissioner.

71.19(3) *Putting the conveyance back into operation.* When an accident involves the failure or destruction of any part of the conveyance or its operating mechanism, the use of the conveyance is forbidden until it has been made safe, until it has been reinspected, and until any repairs or alterations have been approved by the commissioner.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

These rules are intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

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CHAPTER 72
CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 72]

875—72.1(89A) Purpose and scope. This chapter contains safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of conveyances installed on or after January 1, 1975. The rules of this chapter also apply to previously dormant conveyances that are being reactivated, and to reinstalled or moved conveyances. As used in this rule, the word "installation" refers to the date on which a conveyance contractor enters into a contractual agreement pertaining to a conveyance.

72.1(1) For installations between January 1, 1975, and December 31, 1982, ANSI A17.1 shall mean ANSI A17.1 (1971).

72.1(2) For installations between January 1, 1983, and December 31, 1992:

a. ANSI A17.1 shall mean ANSI A17.1 (1981); and

b. ANSI A117.1 shall mean ANSI A117.1 (1980).

72.1(3) For installations between January 1, 1993, and December 31, 2000:

a. ASME A17.1 shall mean ASME A17.1 (1990);

b. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1990); and

c. ANSI A117.1 shall mean ANSI A117.1 (1980).

72.1(4) For installations between January 1, 2001, and December 31, 2003:

a. ASME A17.1 shall mean ASME A17.1 (1996 through the 1999 addenda);

b. ASME A18.1 shall mean ASME A18.1 (1999), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (1998); and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1999).

72.1(5) For installations between January 1, 2004, and April 4, 2006:

a. ASME A17.1 shall mean ASME A17.1 (2000 through the 2003 addenda);

b. ASME A18.1 shall mean ASME A18.1 (1999 through the 2001 addenda), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (1998); and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2002).

72.1(6) For installations between April 5, 2006, and July 22, 2008:

a. ASME A17.1 shall mean ASME A17.1-2004, A17.1a-2005 and A17.1S-2005;

b. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

72.1(7) For installations on or after July 23, 2008:

a. ASME A17.1 shall mean ASME A17.1-2007/CSA B44-07;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—72.2(89A) Definitions. The definitions contained in ASME A17.1, ASME A18.1, ANSI A117.1, and any other standard adopted herein by reference shall be applicable as used in this chapter to the extent that the definitions do not conflict with the definitions contained in Iowa Code chapter 89A and these rules. However, the definition of "building code" in ASME A17.1 is modified to exclude the Building Construction and Safety Code (NFPA 5000) and the National Building Code of Canada (NBCC) for any installation after March 1, 2008.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—72.3(89A) Accommodating the physically disabled. All passenger elevators installed between January 1, 1975, and December 31, 1982, which are available and intended for public use shall be usable by the physically disabled. All passenger elevators shall have control buttons with identifying features for the benefit of the blind and shall allow for wheelchair traffic. All passenger elevators and wheelchair lifts installed on or after January 1, 1983, which are accessible to the general public shall comply with Accessible and Usable Buildings and Facilities ANSI A117.1, sections 407 and 408.

875—72.4(89A) Electric elevators. The provisions contained in ASME A17.1, part 2, are adopted by reference.

875—72.5(89A) Hydraulic elevators. The provisions contained in ASME A17.1, part 3, are adopted by reference.

875—72.6(89A) Power sidewalk elevators. The provisions contained in ASME A17.1, section 5.5, are adopted by reference.

875—72.7(89A) Performance-based safety code. Conveyances may comply with ASME A17.7, in whole or in part, as an alternative to ASME A17.1.

875—72.8(89A) Hand and power dumbwaiters. The provisions contained in ASME A17.1, sections 7.1, 7.2, 7.3, and 7.8, are adopted by reference.

875—72.9(89A) Escalators and moving walks. The provisions contained in ASME A17.1, part 6, are adopted by reference.

875—72.10(89A) General requirements. The provisions contained in ASME A17.1, part 8, are adopted by reference unless specifically excluded herein.

875—72.11(89A) Acceptance and periodic tests and inspections of elevators, dumbwaiters, escalators and moving walks. Rescinded IAB 6/17/09, effective 7/22/09.

875—72.12(89A) Wind tower lifts. Wind tower lifts authorized by this rule shall not be installed in grain elevators, high-rise buildings, water towers, television towers or any facility other than a wind tower built for the production of electricity. This rule applies to all wind tower lifts, whether installed before or after May 28, 2008; however, this exception shall not apply to a wind tower lift if the contract for its installation is executed after an AECO is accredited.

72.12(1) Wind tower lifts that meet the requirements of subrules 72.12(2) through 72.12(10) are exempt from the requirements of ASME A17.1. This temporary exemption shall terminate for a wind tower lift upon the occurrence of at least one of the following events:

a. Three weeks have passed since the accreditation of at least one AECO, and the manufacturer of the wind tower lift has not filed with the labor commissioner an affidavit attesting that a request for Certificate of Conformance as described by ASME A17.7 (2007) was submitted to an AECO.

b. The AECO has reviewed a request pursuant to ASME A17.7 and refused to issue a Certificate of Conformance for the model or series of lifts.

c. The AECO has determined that modifications to the wind tower lift are necessary, and the modifications have not been made with reasonable diligence.

d. The AECO has determined that modifications to the wind tower lift are necessary, and the labor commissioner determines the wind tower lift is not safe to operate prior to completion of the modifications.

e. The AECO has reviewed an application pursuant to ASME A17.7 and issued a Certificate of Conformance for the model or series of lifts.

72.12(2) A wind tower lift placed in operation on or before May 28, 2008, shall be registered by the owner with the labor commissioner no later than July 1, 2008, and shall pass an installation inspection by

inspectors employed by the labor commissioner according to the schedule set by the labor commissioner. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

72.12(3) The owner of a wind tower lift installed after May 28, 2008, shall register the wind tower lift with the labor commissioner prior to its installation. A wind tower lift installed after May 28, 2008, shall pass an installation inspection by the labor commissioner's inspectors prior to its being placed into operation. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

72.12(4) Registration pursuant to this rule requires submission of the following information to the labor commissioner:

a. The unique identifier of the wind tower.

b. The name of the wind tower owner and contact information for the owner's representative.

c. The name of the wind tower lift manufacturer and contact information for the manufacturer's representative.

d. The location of the wind farm.

e. Three copies of the prints and design documents that are certified by a professional engineer duly licensed in the state of Iowa and that bear the professional engineer's P.E. stamp for the lifts.

f. The manufacturer's complete test procedures, inspection checklists, operating manual, service manual, and related documents as determined necessary by the labor commissioner.

72.12(5) The owner shall notify the labor commissioner within 30 days of any change in the information provided pursuant to 72.12(4)*"b"* and *"c."*

72.12(6) This subrule establishes reporting requirements in addition to the requirements of rule 875—71.3(89A). The manufacturer of a lift must notify the labor commissioner in writing within one week if one of its wind tower lifts anywhere in the world is involved in a personal injury accident requiring the service of a physician, a personal injury accident causing disability exceeding one day or death, or an incident causing property damage exceeding $2,000. The notification shall specifically identify the model number, serial number, and owner of the lift, and a description of the incident or accident. The labor commissioner shall determine and require necessary inspections, tests, changes or enhancements to prevent a similar incident or accident in this state.

72.12(7) Wind tower lifts must comply with 29 CFR 1910.

72.12(8) The manufacturer shall notify the labor commissioner within seven days of notification to the manufacturer that an AECO has:

a. Issued a Certificate of Conformance for the model or series of wind tower lifts,

b. Refused to issue a Certificate of Conformance for the model or series of wind tower lifts, or

c. Determined that modifications to the wind tower lifts are necessary.

72.12(9) Wind tower lifts shall pass an inspection covering the following criteria:

a. Ascending speed, descending speed, and emergency descending speed shall not exceed the manufacturer's recommendations.

b. Stop switch, interior lighting, cage entry door, door contact, operating controls and remote operating controls shall operate according to manufacturer's recommendations.

c. Interior floor and cage framework shall appear to be structurally sound.

d. Enclosure signage recommended by the manufacturer shall be in place.

e. Manufacturer's data plate shall be visible.

f. Hoisting mechanism shall appear to be structurally sound and intact from inside and outside the car.

g. Guide shoes shall appear to be structurally sound and undamaged.

h. Suspended power cords and strain relief devices shall reveal no visible damage.

i. Upper and lower normal and final limits shall operate according to the manufacturer's recommendations.

j. Overspeed device shall successfully pass a full-load test.

k. Overload device shall successfully pass an overload test according to the manufacturer's recommendations.

l. Wire rope, safety rope, and guide rope shall show no evidence of wear.

m. Guide rope attachments, suspension attachment beam, beam tower attachments, suspension rope attachment, suspension rope secondary attachment (if present), and guide wire rope attachments shall show no evidence of wear or fatigue.

n. The wind tower lift shall not drift when subjected to a static full load.

o. Maintenance logs, tags, and other necessary documentation shall be available in sufficient detail to establish that maintenance is occurring pursuant to the manufacturer's schedule.

p. Guide rope tension device, safety rope tension device, and suspension rope tension device shall pass a visual test for proper tension.

q. Power cord catch basket shall pass a visual inspection.

r. Safety set distance, overspeed trip speed, overload limit setting, and maximum overload allowed shall not exceed manufacturer's recommendations.

s. A communication device, if installed in the car, shall be operable.

t. Any other items on the manufacturer's recommended inspection checklist shall pass inspection.

72.12(10) The owner or owner's representative shall provide weights as needed to perform necessary tests during inspections.

875—72.13(89A) Alterations, repairs, replacements and maintenance.

72.13(1) *General.* All maintenance, repairs, replacements, and alterations shall comply with ASME A17.1-2007/CSA B44-07 or ASME A17.7-2007/CSA B44-07, as applicable, except as noted in 875—subrules 73.8(3) and 73.8(4). Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current codes.

72.13(2) *Exemption for button renumbering.* All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2003), except for Rule 407.4.6.2.2.

72.13(3) *Sump pump exemption.* The provisions of ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.2.2, that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. There is evidence that groundwater has not entered the pit previously.

d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.

e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.

f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.

g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

72.13(4) *Pit excavation exemption.* The full length of the platform guard set forth in ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

72.13(5) *Sprinkler retrofits and shunt trip breakers.* When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.

b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of rule 875—72.13(89A), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—72.14(89A) Design data and formulas. Rescinded IAB 11/26/03, effective 1/1/04.

875—72.15(89A) Power-operated special purpose elevators. The provisions contained in ASME A17.1, section 5.7, are adopted by reference.

875—72.16(89A) Inclined and vertical wheelchair lifts. The provisions contained in ASME Safety Standard for Platform Lifts and Stairway Chairlifts A18.1, sections 1, 2, 3, 8, 9, and 10, are adopted by reference for all inclined and vertical wheelchair lifts.

875—72.17(89A) Hand-powered elevators. Hand-powered elevators shall not be installed after January 1, 1983.

875—72.18(89A) Accommodating the physically disabled. Renumbered as 875—72.3(89A), IAB 11/26/03, effective 1/1/04.

875—72.19(89A) Limited-use/limited-application elevators. The provisions contained in ASME A17.1, section 5.2, are adopted by reference.

875—72.20(89A) Rack and pinion, screw-column elevators. The provisions contained in ASME A17.1, sections 4.1 and 4.2, are adopted by reference.

875—72.21(89A) Inclined elevators. The provisions contained in ASME A17.1, section 5.1, are adopted by reference.

875—72.22(89A) Material lift elevators. Material lifts existing at a location prior to January 1, 1975, are not regulated or inspected by the labor commissioner.

875—72.23(89A) Elevators used for construction. The provisions contained in ASME A17.1, section 5.10, are adopted by reference only as they pertain to elevators utilizing permanent equipment in a permanent location.

875—72.24(89A) Construction personnel hoists. The provisions of American National Standards Institute (ANSI) A10.4-2007 are adopted by reference for construction personnel hoists as defined by ANSI A10.4-2007. Notwithstanding the ANSI definition, these conveyances may be used only temporarily during construction.

These rules are intended to implement Iowa Code chapter 89A.

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CHAPTER 73
CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 73]

875—73.1(89A) Scope and definitions.

73.1(1) This chapter establishes minimum safety standards for all conveyances installed prior to January 1, 1975, except material lift elevators. Conveyances installed on or after January 1, 1975, shall conform with the requirements set forth in 875—Chapter 72. Material lift elevators installed prior to January 1, 1975, are not subject to regulation pursuant to Iowa Code section 89A.2.

73.1(2) The definitions contained in ASME (1971) shall be applicable as used in this chapter to the extent that they do not conflict with the definitions contained in Iowa Code chapter 89A or 875—Chapter 71.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.2(89A) Hoistways.

73.2(1) Each passenger elevator hoistway landing shall be protected with a door or gate. The door or gate shall be of solid construction and shall guard the entire entrance.

73.2(2) All automatic passenger elevators with power doors shall have nonvision panels on hoistway doors.

73.2(3) Each hoistway landing in any elevator hoistway shall be continuously provided with a properly working door or gate.

73.2(4) Where freight elevator hoistway doors or gates are of open or lattice construction, they shall be at least 6 feet high and shall come within 2 inches of the floor when closed. Gates shall be constructed to reject a ball 2 inches in diameter. Doors and gates must be able to withstand 250 pounds of pressure applied in the center of the door or gate without breaking or being forced out of their guides.

73.2(5) Manually operated biparting entrances of elevators which can be operated from the landings shall be provided with pull straps on the inside and outside of the upper panel where the lower edge of the upper panel is more than 6 feet 6 inches above the landing when the panel is in the fully opened position.

73.2(6) All freight elevators having wooden hoistway gates in an area where power loading equipment, such as fork trucks, electric mules, etc. are used shall have an acceptable means to restrain the power equipment from running through such wooden gates.

73.2(7) Each hoistway door or gate shall be provided with interlocks designed to prevent the car from moving unless the doors or gates are closed. Where doors or gates do not lock when closed they shall lock when the elevator is not more than 12 inches away from the floor. Passenger elevator hoistway doors shall be closed and locked before the car leaves the floor.

73.2(8) All hoistway-door interlocks shall function as part of a hoistway-unit system.

73.2(9) Automatic fire doors shall not lock any landing opening in the hoistway enclosure from the hoistway side nor lock any exit leading from any hoistway landing to the outside of the building.

73.2(10) Emergency keys for hoistway doors and service keys shall be kept readily accessible to authorized persons and elevator safety inspectors.

73.2(11) Access means shall be provided at one upper landing to permit access to the top of the car, and at the lowest landing if this landing is the normal point of access to the pit.

73.2(12) Each hoistway door or gate which is counterweighted shall have its weights enclosed in a box-type guide or run in metal guides. The bottom of the guides or boxes shall be so constructed as to retain the counterweight if the counterweight suspension means breaks.

73.2(13) Hoistways containing freight elevators shall be fully enclosed. Enclosures shall be unperforated to a height of 6 feet above each floor or landing and above the treads of adjacent stairways. Unperforated enclosures shall be so supported and braced as to deflect not over 1 inch when subjected to a force of 100 pounds applied horizontally to any point. Open work enclosure may be used above the 6-foot level and shall reject a ball 2 inches in diameter.

73.2(14) Hoistways containing passenger elevators shall be fully enclosed and the enclosure shall be of solid construction to its full height.

73.2(15) All elevators that have automatic leveling, inching or teasing devices and that are configured with landing sills that project into the hoistway shall be equipped with a bevel on the underside of the landing sill or the underside of projections found on the bottom section of vertically opening biparting doors. Bevels shall be constructed of smooth concrete or not less than 16-gauge metal securely fastened to the hoistway entrance. Bevels shall extend the full depth of the leveling zone plus 3 inches.

73.2(16) Every hoistway window opening seven stories or less on an outside wall above a thoroughfare and every such window three stories or less above a roof of the building or of an adjacent building shall be guarded to prevent entrance by fire or emergency rescue persons. Each such window shall be marked "hoistway" in a readily visible manner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.3(89A) Car enclosure: Passenger.

73.3(1) Each passenger car shall be fully enclosed except on the sides used for entrance and exit. The enclosure shall be of solid construction. Grillwork at the top of the sides shall not be more than 8 inches high. If the car is provided with a solid door and there is no grillwork in the enclosure, adequate means of ventilation shall be provided.

73.3(2) Each passenger car enclosure shall have a top constructed of solid material. The top shall be capable of sustaining a load of 300 pounds on any area of 2 feet on a side and 100 pounds applied at any point. Simultaneous application of these loads is not required.

73.3(3) Passenger car enclosure tops shall have an emergency exit with cover. Opening size shall be as set forth in ANSI A17.1, 1971, Rule 204.1E. Hydraulic elevators provided with a manual lowering valve are not required to provide an emergency exit.

73.3(4) Each passenger car shall have a door or gate at each entrance. Doors or gates shall be of the horizontally sliding type. Doors shall be of solid construction. Gates shall be of the collapsible type. Gates and doors shall conform to ANSI A17.1, 1971, Rule 204.4.

73.3(5) Each passenger car door or gate shall have an electric contact to prevent the car from running with doors or gates open. EXCEPTIONS:

a. By a car-leveling or truck-zoning device.

b. By a combination hoistway access switch and operating device.

c. When a hoistway access switch is operated.

73.3(6) All automatic passenger elevators with power doors shall have reopening devices on the doors, designed to reopen doors in the event the doors should become obstructed.

73.3(7) Car door or gate closing force.

a. Where a car door or gate of an automatic or continuous-pressure operation passenger elevator is closed by power, or is of the automatically released self-closing type, and faces a manually operated or self-closing hoistway door, the closing of the car door or gate shall not be initiated unless the hoistway door is in the closed position. The closing mechanism shall be so designed that the force necessary to prevent closing of a horizontally sliding car door or gate from rest shall be not more than 30 pounds.

b. Paragraph 73.3(7)*"a"* does not apply when both of the following conditions are met:

(1) A car door or gate is closed by power through continuous pressure of a door-closing switch or the car operating device, and

(2) The release of the closing switch or operating device will cause the car door or gate to stop or to stop and reopen.

73.3(8) Each passenger car shall have lighting inside the enclosure of not less than 5 foot-candles. Bulbs and tubes shall be guarded to prevent breakage.

73.3(9) Each passenger elevator shall have a capacity plate prominently displayed in its enclosure. The capacity plate shall list its capacity in pounds.

73.3(10) All passenger elevator car floors shall be maintained so that persons are not exposed to the hazards of tripping or falling.

73.3(11) All automatic passenger elevators shall be provided with an alarm bell capable of being activated from inside the car and audible outside the hoistway. If the elevator is not equipped with a bell,

a two-way conversation device to the elevator and a ready accessible point outside the hoistway may be acceptable.

73.3(12) All automatic passenger elevators shall have their door open zones adjusted so that the door shall not open unless the car has stopped within 6 inches of floor level.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.4(89A) Car enclosure: Freight.

73.4(1) Each freight elevator car shall have a solid enclosure at least 66 inches in height. The space between the solid section and the car top shall be enclosed with solid material, perforated material, or latticework. Where used, perforated material or latticework shall reject a ball 1½ inches in diameter. The portion of open-type enclosure which passes the counterweights shall be of solid construction the entire width of the counterweights plus 6 inches on either side. The enclosure top shall be provided with an emergency exit, except for hydraulic elevators with manual lowering valves.

73.4(2) Each freight car enclosure shall have doors or gates at each entrance and shall be not less than 6 feet high. Each door or gate shall be constructed in accordance with ANSI A17.1, 1971, Rule 204.4.

73.4(3) Each car door or gate on a freight elevator shall have electric contacts to prevent the car from running with doors or gates open. EXCEPTIONS:

a. By a car-leveling or truck-zoning device.

b. By a combination hoistway access switch and operating device.

c. When a hoistway access switch is operated.

73.4(4) Each freight elevator car enclosure shall be provided with a top. The top may be of solid or open-work construction and shall be of metal. The openwork shall reject a ball 2 inches in diameter. Car tops shall be constructed to sustain a load of 200 pounds applied at any point on the car top. The top shall not have hinged or folding panels other than the emergency exit cover.

73.4(5) Each freight car enclosure shall have lighting not less than 2½ foot-candles. Bulbs or tubes shall be guarded to prevent breakage.

73.4(6) Each freight car enclosure shall have capacity plate, loading class plates, and a "No Passenger" sign conspicuously posted. Letters shall be not less than ½-inch high.

73.4(7) Freight elevators shall not be loaded to exceed the rated load as stated on their capacity plates.

73.4(8) Each freight elevator car floor shall be maintained so that personnel will not readily slip or trip. The floor shall be maintained so that it will hold its rated load without breaking through at any place in the car.

73.4(9) Freight elevators shall not be permitted to carry passengers other than the operator and persons to load and unload material.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.5(89A) Brakes.

73.5(1) Each electric elevator shall be provided with an electric brake.

73.5(2) Each brake shall be of the friction type applied by a spring or springs or gravity and released electrically. The brake shall be capable of holding the car at rest with its rated load.

875—73.6(89A) Machines.

73.6(1) Friction gearing or clutch mechanisms shall not be used for connecting the drum or sheaves to the main driving mechanism.

73.6(2) Set screw fastenings shall not be used on power elevators in lieu of keys or pins on connections subject to torque or tension.

73.6(3) Portable power-chain or cable hoist machines shall not be used to raise or lower an elevator car.

73.6(4) No belt or chain driven power machine shall be used for any elevator unless the machine is provided with a broken belt or broken chain safety switch of the electrical nonautomatic reset type. EXCEPTION: Hydraulic machines.

875—73.7(89A) Electrical protective devices.

73.7(1) All electric elevators shall have a labeled emergency stop switch. The switch shall be located on or adjacent to the operating panel.

73.7(2) All electric elevators shall have upper and lower final limit switches. Open-type switches shall not be accepted. Drum-type machines shall have final limit switches mounted on the machine and hoistway final limit switches.

73.7(3) All operating devices of car switch operations shall automatically return to the stop position and latch there when released.

73.7(4) Tiller-rope operations shall not be used unless all direction switches on controllers are mechanically operated. Contacts on direction switches shall be broken when the rope is at the centered position.

73.7(5) Except for firefighter service switches, leveling switches, and truck zone switches, no elevator shall be provided with a switch or device which makes more than one door or gate switch inoperative at any one time.

73.7(6) No person at any time shall make any required safety device or electrical protective device inoperative, except where necessary during tests, inspections or maintenance. Such devices shall be restored to their normal operating conditions as soon as all tests, inspections and maintenance have been completed. The conveyance shall not be left unattended while any of these devices are inoperative. To ensure that no jumpers are left behind, a counting system shall be utilized.

73.7(7) Each winding drum machine shall be provided with an electrical switch which shall disconnect power to the hoisting motor and brake when ropes are slackened.

73.7(8) No person shall enter an elevator pit for any reason without disconnecting power to the equipment using the pit stop switch, lockout, tagout procedures, or other appropriate means of de-energization in accordance with 875—Chapters 2 to 26.

73.7(9) Elevators having a polyphase AC power supply shall be provided with means to prevent the starting of the elevator drive motor or door motor if a reversal of phase rotation, or phase failure of the incoming polyphase AC power, will cause the elevator car or elevator door(s) to operate in the wrong direction.

73.7(10) All electrical equipment in the machine room shall be grounded and shall conform to ANSI C1-1975 (NFPA 70-1975).

73.7(11) All electrical wiring in the machine room and hoistway shall be enclosed in metal conduit, flexible conduit or metal raceways.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.8(89A) Maintenance, repairs and alterations.

73.8(1) *General.* All maintenance, repairs and alterations shall comply with ASME A17.1-2007/CSA B44-07 or ASME A17.7-2007/CSA B44-07, as applicable, except as noted in subrules 73.8(3) and 73.8(4). Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current code.

73.8(2) *Exemption for button numbering.* All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2003), except for Rule 407.4.6.2.2.

73.8(3) *Sump pump exemption.* The provisions of ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.2.2, that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. There is evidence that groundwater has not entered the pit previously.

d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.

e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.

f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.

g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

73.8(4) *Pit excavation exemption.* The full length of the platform guard set forth in ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

73.8(5) *Sprinkler retrofits and shunt trip breakers.* When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.

b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of rule 875—73.8(89A), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

73.8(6) *Safety bulkheads.*

a. ASME A17.1-2007, Rule 8.6.5.8, requires either:

(1) A safety bulkhead conforming to ASME A17.1-2007, Rule 3.18.3.4;

(2) Car safeties conforming to ASME A17.1-2007, Rule 3.17.1, and guide rails, guide rail supports and fastenings conforming to ASME A17.1-2007, Rule 3.23.1; or

(3) A plunger gripper conforming to ASME A17.1-2007, Rule 3.17.3, and set to grip when the applicable maximum governor tripping speed in ASME A17.1-2007, Table 2.18.2.1, is achieved.

b. The deadline for compliance with ASME A17.1-2007, Rule 8.6.5.8, is July 1, 2011.

c. Documentation from the manufacturer establishing that a safety bulkhead was installed shall establish compliance with this rule.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.9(89A) Machine rooms.

73.9(1) All means of access to elevator machine rooms shall be of a permanent nature and shall be constructed and maintained in a clear and unobstructed manner.

73.9(2) The elevator machine and control equipment shall be located in a separate room or separated from other equipment by a substantial grill not less than 6 feet high. The grill shall be of a design that will reject a ball 2 inches in diameter. All rooms or enclosures shall have a self-closing and self-locking door.

73.9(3) All elevator machine rooms shall be provided with a floor. The floor shall cover the entire area of the machine room and hoistway.

73.9(4) Machine room floors shall be kept clean and free of grease and oil. Articles or materials not necessary for the maintenance or operation of the elevator shall not be stored therein. Storage of any equipment or materials in elevator machine rooms other than equipment directly related to elevator operation is prohibited.

73.9(5) Lighting in the machine room shall be not less than 10 foot-candles at floor level.

73.9(6) Where there is more than one machine in a room, each machine shall have a different number conspicuously marked on it. The controller, disconnecting means and relay panels for each machine shall be conspicuously numbered to correspond to the machine they control.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.10(89A) Pits.

73.10(1) All pits shall be kept clean and free of equipment or material not relating to the operation of the elevator. EXCEPTION: sump pumps.

73.10(2) Buffers under cars and counterweights shall be permanently fastened to the floor or their supporting beams.

73.10(3) All elevators shall have counterweight guards. Guards shall be of unperforated metal of at least the strength of or braced to the equivalent strength of number 14-gauge sheet steel. Guards shall extend from a point not more than 12 inches above the pit floor to a point not less than 7 feet above the pit floor. Where guards are not feasible, warning chains shall be installed on the bottom of the counterweights and shall extend no less than 5 feet below the counterweight. Chains shall be of a number 10 U.S. gauge wire or of equal size. EXCEPTION: When compensating chains or ropes are used, a counterweight guard is not required.

73.10(4) Buffers shall be installed where elevator pits are not provided with buffers and where the pit depth will permit. Buffers shall comply with ANSI A17.1, 1971, Section 201.

73.10(5) Where the depth of any pit is in excess of 4 feet it shall have a ladder permanently installed. The ladder shall extend not less than 30 inches above the sill of the access door, or hand grips shall be provided to the same height. Ladder shall be of noncombustible material.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.11(89A) Counterweights.

73.11(1) Broken or cracked sections of counterweights shall be replaced.

73.11(2) Counterweight hanger rods, tie rods or both shall firmly support and secure the counterweight sections in place.

73.11(3) Wire ropes extending through counterweights from one stack to another shall be guarded by metal sleeves attached to the wire ropes. Stacks shall not be spaced less than 8 inches apart.

875—73.12(89A) Car platforms and car slings.

73.12(1) All platforms shall be soundly constructed without cracks or breaks in stringers or frames. All floors shall be free of holes.

73.12(2) All car slings shall be soundly constructed and free of cracks or breaks.

73.12(3) Where cable sheaves are used on the crosshead, they shall be firmly attached and free of cracks or breaks.

73.12(4) All elevators shall have data plates attached to the crosshead.

73.12(5) All elevators with automatic leveling, inching or teasing devices shall have a platform guard or an apron. All other elevators shall have warning chains hung within 2 inches of the edge of the platform on the entrance sides. Chains shall be of number 10 U.S. gauge wire or of equal size. Chains shall extend not less than 5 feet below the platform and shall not be spaced more than 4 inches apart.

73.12(6) All car slings shall have guide shoes at the top and bottom of the sling. Shoes that are worn to a degree which affect the safe operation of the car shall be repaired or replaced.

875—73.13(89A) Means of suspension.

73.13(1) Suspension ropes on drum-type machines shall have not less than one turn of the rope on the drum when the car is resting on the fully compressed buffers.

73.13(2) Winding drum machines shall not be used unless they are provided with not less than two hoisting ropes. Each counterweight stack shall be provided with not less than two ropes.

73.13(3) Tiller cables on cable-operated elevators shall be kept free of breaks.

73.13(4) On tiller-cable operations, the cable shall pass through a guiding or stopping device mounted on the car. The cable shall be provided with adjustable stop balls and be provided with means to lock and hold the car at a floor. Stop balls at top and bottom shall be adjusted to automatically stop the car. The tiller cable shall be completely enclosed in the hoistway.

73.13(5) All hoisting or counterweight ropes located outside of the hoistway that are exposed shall be covered with a box-type guard. The guard shall be not less than 6 feet high from floor level.

73.13(6) Roller chains shall not be used as the suspension means for any conveyance except where specifically allowed by an applicable provision of ASME A17.1.

73.13(7) Hoisting ropes for power elevators shall not be less than 3/8 inch in diameter.

73.13(8) Hoisting rope fastening means shall be of the socket and babbitting type. Clamps shall not be used.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.14(89A) Car safeties and speed governors.

73.14(1) Each elevator suspended by ropes shall be provided with mechanically applied car safeties which shall be capable of stopping and sustaining its rated load.

73.14(2) Broken rope or slack rope safeties may be allowed if the car speed is not in excess of 50 FPM.

73.14(3) Elevators which are provided solely with broken rope or slack rope safeties shall not be used for passenger service. EXCEPTION: Handicapped restricted use elevators.

73.14(4) All safeties shall be adjusted so that clearances from the rail shall be in accordance with ANSI A17.1, 1971, Rule 1001.2.

73.14(5) All slack cable safeties shall be provided with an electrical switch which disconnects power to the elevator machine and brake when setting of the safeties occurs.

73.14(6) All safeties operated by a speed governor shall be provided with a speed switch operated by the governor when used with type B or C car safeties on elevators having a rated speed exceeding 150 FPM. A switch shall be provided on the speed governor when used with a counterweight safety for any car speed.

73.14(7) Speed governors shall have their means of speed adjustment sealed.

73.14(8) For hoistways not extending to the lowest floor and where space below the hoistway is used for a passageway or is occupied by persons, or if unoccupied but not secured against unauthorized access, the counterweights of the elevator shall be provided with safeties. Safeties shall be tripped by a speed governor if the car speed is in excess of 150 FPM. Speed governors shall be set to trip above the car governor tripping speed but not more than 10 percent greater.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.15(89A) Guide rails.

73.15(1) All guide rails and brackets whether of wood or steel shall be firmly and securely anchored or bolted in place. Where T rail is used, all fish-plate bolts shall be tight. This shall comply with ANSI A17.1, 1981, Section 200.

73.15(2) Where guide rails which are worn to such a point that proper clearance of safety jaws cannot be maintained, the worn sections shall be replaced to achieve clearances as specified in ANSI A17.1, 1971, Rule 1001.2.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.16(89A) Existing hydraulic elevators.

73.16(1) Cylinders of hydraulic-elevator machines shall be provided with a means for releasing air or other gas.

73.16(2) Each pump or group of pumps shall be equipped with a relief valve conforming to the following requirements:

a. *Type and location.* The relief valve shall be located between the pump and the check valve and shall be of such a type and so installed in the bypass connection that the valve cannot be shut off from the hydraulic system.

b. *Setting.* The relief valve shall be preset to open at a pressure not greater than that necessary to maintain 125 percent of working pressure.

c. *Size.* The size of the relief valve and bypass shall be sufficient to pass the maximum rated capacity of the pump without raising the pressure more than 20 percent above that at which the valve opens. Two or more relief valves may be used to obtain the required capacity.

d. *Sealing.* Relief valves having exposed pressure adjustments, if used, shall have their means of adjustment sealed after being set to the correct pressure.

EXCEPTION: No relief valve is required for centrifugal pumps driven by induction motors, provided the shut-off, or maximum pressure which the pump can develop, is not greater than 135 percent of the working pressure at the pump.

73.16(3) Storage and discharge tanks shall be covered and suitably vented to the atmosphere.

73.16(4) Hydraulic elevators shall be governed by the rules contained in Chapter 73 that apply to electric elevators except the following rules which are exempt: 73.5, 73.6(3), 73.7(2), 73.7(4), 73.7(7),73.9(9), 73.10(3), 73.11, 73.13, and 73.14.

73.16(5) Rescinded IAB 3/7/01, effective 4/11/01.

875—73.17(89A) Existing sidewalk elevators.

73.17(1) Hoistways shall be permanently enclosed. The enclosures shall conform to ANSI A17.1, 1971, Rule 401.1.

73.17(2) All interior landings shall have a door or gate which shall be provided with an interlock.

73.17(3) Doors opening in sidewalks or other areas exterior to the building shall be of the hinged type. Doors or covers shall be designed to hold a static load of 300 pounds per square foot. Doors shall always be closed unless elevator is at the landing.

73.17(4) Stops shall be provided to prevent the cover in the opening of the sidewalk from opening more than 90 degrees from its closed position.

73.17(5) Covers in sidewalk shall be designed to close when the car descends from the top landing.

73.17(6) Recesses or guides which will securely hold the cover in place on the car stanchions shall be provided on the underside of the cover.

73.17(7) All electrical wiring shall be enclosed in metal conduit, flexible conduit or metal raceways. If hoistway opens in the sidewalk, the wiring shall be weatherproof.

73.17(8) Operating devices and control equipment shall comply with ANSI A17.1, 1971, Rule 402.4.

73.17(9) All electric sidewalk elevators shall have upper and lower final limit switches. Open-type switches shall not be allowed.

73.17(10) Cars shall have enclosures which shall be not less than 6 feet in height provided the stanchions and bow iron are of sufficient height. The enclosure shall be provided with electric contacts to prevent the car from running with doors or gates open.

73.17(11) Cars shall have safeties. Where the speed of the elevator does not exceed 50 FPM, car safeties which operate as a result of breaking or slackening of the hoisting ropes may be used. Such safeties may be of the inertia type or approved type without governors. Governors shall not be required when car speed does not exceed 50 FPM.

73.17(12) Car enclosures and car gates shall not be required for hand-powered sidewalk elevators.

73.17(13) Rescinded IAB 3/7/01, effective 4/11/01.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.18(89A) Existing hand elevators.

73.18(1) Hand-powered elevators shall have hoistway doors. Doors shall be of the self-closing and self-locking type.

73.18(2) A sign reading "Danger—Elevator Hoistway—Keep Closed" shall be mounted on each hoistway door. The letters on the signs shall be legible, shall be at least 2 inches high, and shall contrast with the background color.

73.18(3) All hand-powered elevators shall be provided with safeties or slack cable devices. Safeties do not have to be operated by a speed governor unless the speed is in excess of 50 FPM.

73.18(4) Hand-powered elevators shall have a car enclosure which shall be constructed of metal or sound seasoned wood. The enclosure shall cover all sides which are not used for entrance or exit. The enclosure shall be secured to the car platform or frame in such a manner that it cannot work loose or become displaced in ordinary service.

73.18(5) Each hand-powered elevator shall be provided with a brake which shall be capable of stopping and sustaining the car whether loaded or unloaded.

73.18(6) Hand-powered elevators shall not be converted or changed to electric powered unless the complete conveyance is brought into conformity with 875—Chapter 72.

73.18(7) Rescinded IAB 3/7/01, effective 4/11/01.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.19(89A) Power-operated special purpose elevators.

73.19(1) Elevators complying with the following requirements may be installed in any structure where the elevator is not accessible to the general public, is used exclusively for designated operating and maintenance employees only, and where transportation of one or two persons is required to attend machinery or equipment frequently.

73.19(2) The inside platform area of the car shall not exceed 9 square feet. The rated speed shall not exceed 100 FPM. The rated load shall not exceed 650 pounds.

73.19(3) Hoistways shall be enclosed to their full width, to a height of not less than 7 feet with solid or perforated noncombustible material braced to deflect not more than 1 inch when subjected to a force of 100 pounds applied horizontally at any point. Open work enclosures shall be at least number 13 steel wire gauge or expanded metal at least number 13 U.S. gauge and shall reject a ball 2 inches in diameter. Where counterweights pass, landing and stairway side shall be of solid construction.

73.19(4) Wiring shall comply with the requirements of the National Electrical Code, ANSI C1-1975 (NFPA 70-1975).

73.19(5) Counterweights shall comply with rule 875—73.11(89A).

73.19(6) Hoistway doors shall comply with subrules 73.2(1), 73.2(7) and 73.2(11).

73.19(7) Cars shall be solidly constructed in accordance with subrules 73.12(1) and 73.12(2).

73.19(8) Car enclosure.

a. Except at the entrance, the car shall be enclosed on all sides and the top. The enclosure at the sides shall be solid or openwork. All openwork shall reject a ball 1 inch in diameter. The enclosure shall be constructed of sufficient strength that it will not deflect more than 1 inch at any one point.

b. There shall be an electric light to illuminate the car or hoistway with the switch placed on or near the operating panel.

c. There shall be no glass used in the elevator car except for the car light.

73.19(9) A car door shall be provided at each car entrance. Door or gate shall guard the complete entrance. The door or gate shall be at least 7 feet high, of metal construction with solid or open construction to reject a ball 1 inch in diameter. A contact switch shall be provided to prevent the operation of the elevator with doors or gates open. The door or gate shall be provided with interlocks.

73.19(10) Guide rails shall comply with rule 875—73.15(89A).

73.19(11) The means and methods of suspension shall comply with subrules 73.13(1), 73.13(5), 73.13(6), 73.13(7), and 73.13(8).

73.19(12) Electrical switches shall comply with subrules 73.7(2) and 73.7(9).

73.19(13) Brakes shall comply with rule 875—73.5(89A).

73.19(14) Emergency signal or communication shall comply with subrule 73.3(11).

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.20(89A) Inclined and vertical wheelchair lifts. All vertical and inclined wheelchair lifts shall conform to ANSI A17.1 (1981), part XX, sections 2000 and 2001.

875—73.21(89A) Handicapped restricted use elevators. All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Permits will be reissued only for locations where other elevators do not exist and where the absence of the elevator would deprive a known group of physically disabled individuals use of the building. Additionally, the elevators shall comply with the following limitations:

1. The elevator shall be used only by a maximum of one disabled person and one attendant at a time. Where a disabled individual cannot operate the elevator in a manner which will ensure access to all operating controls and safety features, an attendant shall accompany the disabled individual.

2. The elevator shall be key-operated and shall not be capable of being called by buttons or switches but may be called by a key operator.

3. Keys to operate the elevator shall be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.

4. A list shall be maintained at the location indicating the persons holding keys for the operation of the elevator.

5. Each landing and the elevator car shall be posted to indicate that the elevator is only for the use of disabled persons.

6. The travel distance of the elevator shall not exceed 50 feet.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.22(89A) Escalators.

73.22(1) Each escalator shall be provided with an electrically released mechanically applied brake capable of stopping the up and down traveling escalator with any load up to and including the rated load. The brake shall be located either on the driving machine or on the main drive shaft.

73.22(2) Starting switches shall be of the key-operated type. Starting switches shall be located on or near the escalator.

73.22(3) Emergency stop buttons or other type manually operated switches having red buttons or handles shall be accessibly located at or near the bottom and top landings. The buttons or levers shall be protected to prevent accidental operation.

73.22(4) A broken step-chain device shall be provided on each escalator that will cause interruption of power to the driving machine if a step chain breaks or if excessive sag occurs in either step chain.

73.22(5) Each escalator shall have comb plates at top and bottom landings of the escalator. Comb-plate teeth shall be meshed with and set into slots in the tread surface of the steps so that the points of the teeth are always below the upper surface of the treads.

73.22(6) Each escalator balustrade or moulding on the balustrade shall have a smooth surface. Screwheads shall set flush with the surface or be of the oval head type without any burrs or rough places on their surface.

73.22(7) The clearance on either side of the steps between the step tread and the adjacent skirt panel shall be not more than 3/16 inch.

73.22(8) Step treads shall be illuminated throughout their run. The light intensity shall be not less than 2 foot-candles.

73.22(9) An enclosed fused disconnect switch or circuit breaker arranged to disconnect the power supply to the escalator shall be in each machine room or wherever the controller is located.

73.22(10) A stop switch shall be provided in each machinery space where means of access to the space is provided. The switch when opened shall cause electric power to be removed from the escalator driving-machine motor and brake. The switch shall be of the manually opened and closed type and shall be marked "STOP".

73.22(11) Hand or finger guards shall be provided at the point where the handrail enters the balustrade.

73.22(12) Where the clearance of the upper outside edge of the balustrade and a ceiling or scaffold is less than 12 inches or where the intersection of the outside balustrade and a ceiling or soffit is less than 24 inches from the centerline of the handrail, a solid guard shall be provided in the intersection of the angle of the outside balustrade and the ceiling or soffit. The vertical front edge of the guard shall project a minimum of 14 inches horizontally from the apex of the angle. The escalator side of the vertical face of the guard shall be flush with the face of the wellway. The exposed edge of the guard shall be rounded.

This rule is intended to implement Iowa Code chapter 89A.

875—73.23(89A) Moving walks. Rescinded IAB 6/17/09, effective 7/22/09.

875—73.24(89A) Dumbwaiters. All dumbwaiters whether electric or hand powered shall conform to ANSI A17.1, 1971, section 700. Exceptions: Required rules for hoistway construction as set forth in ANSI A17.1, 1971, shall not apply to existing installations.

875—73.25(89A) Sprinkler retrofits and shunt trip breakers. Rescinded IAB 6/17/09, effective 7/22/09.

875—73.26(89A) Safety bulkheads. Rescinded IAB 6/17/09, effective 7/22/09.

These rules are intended to implement Iowa Code chapter 89A.

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CHAPTER 74
EXISTING ESCALATORS, MOVING WALKS AND DUMBWAITERS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 74]

Rules 74.1 to 74.3 renumbered as 73.22 to 73.24 IAB 3/7/01, effective 4/11/01

CHAPTER 75
FEES

Rescinded IAB 6/17/09, effective 7/22/09

CHAPTER 76
PERMITS

Rescinded IAB 6/17/09, effective 7/22/09

CHAPTER 77
VARIANCES

Rescinded IAB 6/18/08, effective 7/23/08.

CHAPTERS 78 and 79
Reserved

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. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89.

875—90.2(89,261,252J) 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 a boiler or pressure vessel that substantially alters the original design requiring consideration of the effect of the change on the original design. It is not intended that the addition of nozzles smaller than an unreinforced opening size will be considered an alteration.

"ANSI/ASME CSD-1" means Control and Safety Devices for Automatically Fired Boilers.

"ASME" means the American Society of Mechanical Engineers.

"Authorized inspector" means a special inspector or an inspector of boilers and pressure vessels employed by the division.

"Blowoff valve" means all blowoff valves, drain valves, and pipe connections.

"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.

"BSI" means British Standards Institute.

"Certificate of noncompliance" means a certificate of noncompliance with child support payment obligations issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J or a certificate of noncompliance with student loan repayment obligations issued by the college student aid commission pursuant to Iowa Code chapter 261.

"CFR" means Code of Federal Regulations.

"Construction or installation code" means the applicable recognized national or international standard for construction or installation in effect at the time of installation such as ASME, DIN, BSI, JIS or CSA.

"CSA" means the Canadian Standards Association, CSA B51, Boiler Pressure Vessel, and Pressure Piping Code.

"DIN" means German Institute of Standards.

"Division" means the division of labor services, unless another meaning is clear from the context.

"Electric boilers" means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

"External inspection" means as complete an examination as can be reasonably made of the external surfaces and safety devices while the boiler or pressure vessel is in operation.

"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 completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 250 degrees F.

"Internal inspection" means as complete an examination as can be reasonably made of the internal and external surfaces of a boiler or pressure vessel while it is shut down and while manhole plates, handhole plates or other inspection opening closures are removed as required by the inspector.

"ISO" means International Standards Organization.

"JIS" means Japanese Industrial Standards.

"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.

"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 local boiler codes.

"National Board Inspection Code" 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.

"Pressure vessel" means a vessel in which pressure is obtained from an external source, or by the application of heat from an indirect or direct source.

"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.

"Reinstalled boiler or pressure vessel" means an object removed from its original setting and reinstalled at the same location or at a new location.

"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.

"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.

"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.

"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.

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. Except for cast iron boilers, cast aluminum boilers, and objects governed by 875—Chapter 95, all objects must be registered with the National Board.

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. Water 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.

875—90.6(89) Inspections.

90.6(1) *General.* All boilers and pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2004), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

90.6(2) *Schedule.* Inspections must be performed according to the schedule set forth in Iowa Code section 89.3 and within a 60-day period prior to the expiration date of the operating certificate. Modification of this period will be permitted only upon written application showing just cause for waiver of the 60-day period. Special inspections may be conducted at any time mutually agreed to 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 30 days of the inspection. The reports shall list all adverse conditions and all requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, 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 resulting fire.

g. A welded repair not documented as required.

h. Personal injury, property damage accident, or malfunction affecting the pressure vessel'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.* 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 posted by the labor commissioner. Upon such notice, the owner shall immediately begin the necessary steps to cease operation of the object. The object shall not be used until the necessary repairs have been completed and the object has passed inspection. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code section 89.11 as amended by 2007 Iowa Acts, House File 368, section 7, and Iowa Code section 89.14 as amended by 2007 Iowa Acts, House File 368, section 8.

875—90.7(89) Fees.

90.7(1) *Special inspector certification fee.* A $40 fee shall be paid annually to the commissioner to obtain a special inspector certification pursuant to Iowa Code section 89.7, subsection 1.

90.7(2) *Certificate fee.* A $25 fee shall be paid for each one-year certificate, a $50 fee shall be paid for each two-year certificate, and a $100 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 $40 fee for each water heater supply boiler.

b. An $80 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 $200 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 $40 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. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, travel expenses may be charged at the discretion of the division.

f. Inspections and code qualification surveys made by the commissioner at the request of a boiler or tank manufacturer shall be charged at a rate set by the commissioner not to exceed the rate currently charged by the various insurance companies for performing a similar service. This charge shall not void the regular fee for inspection or certification when the boiler or tank is installed.

g. If a boiler or pressure vessel has to be reinspected through no fault of the division, there shall be another inspection fee as specified above. However, there shall be no fee charged for the first scheduled reinspection to verify that ordered repairs have been made.

90.7(4) *Fees for attempted inspections.* A $20 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.

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875—90.8(89) Certificate. 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.

875—90.9(89,252J,261) Special inspector commissions.

90.9(1) *Application.* A person applying for a 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.

90.9(2) *Expiration.* 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 June 30 of each year.

90.9(3) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

90.9(4) *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(6) to 90.9(8).

90.9(5) *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(6) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

90.9(7) *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(6);

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; or

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.

90.9(8) *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(7);

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; or

i. The division received a certificate of noncompliance.

90.9(9) *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 261 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.

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) Notification of explosion. Owners and users of covered objects must report any object explosion by calling (515)281-3647 or (515)281-6533. If the explosion occurs during normal division operating hours, notification shall occur before close of business on that day. If the explosion 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.

875—90.12(89) Publications available for review. Pursuant to Iowa Code section 89.5, subsection 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, 1000 East Grand Avenue, Des Moines, Iowa.

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 boilers. A certificate to operate a temporary boiler shall expire one year from the date of issuance or when the temporary boiler is disconnected. Inspections on temporary boilers that remain in one location longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3. A temporary boiler that is installed at a different location less than a year since the prior internal inspection of the boiler shall be subjected to a hydrostatic test pursuant to the National Board Inspection Code or to an internal inspection, at the discretion of the inspector.

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, and 261.

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◊ Two or more ARCs

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CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION

[Prior to 10/21/98, see 347—Ch 150]

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than $2,000 annually or who performs work or has work performed on the person's own property.

875—150.2(91C) Definitions.

"Commissioner" means the labor commissioner of the division of labor services of the workforce development department or the commissioner's designee.

"Construction" means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 871—23.82(96) for purposes of the Iowa employment security law. For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, "construction" includes asbestos abatement.

"Contractor" means a person who engages in the business of construction as the term is defined in 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors. Also included are persons who conduct or perform construction on an incidental or occasional basis, regardless of whether the person is classified as being engaged in construction by the unemployment insurance services division of the workforce development department.

"Contract price" means the total pretax price of the contractor's project less the amount of all subcontracts. Contract price does not include the sales price of a product if the manufacturer installs the product and the price of the product is separately listed in the contract.

"Division" means the division of labor services of the workforce development department.

"File" means deliver to the division.

"Out-of-state contractor" means a contractor whose principal place of business is in another state, and who contracts to perform construction in this state.

"Principal place of business" means the state in which a substantial part of the contractor's business is transacted and from which the centralized supervision is exercised. Factors to be reviewed include:

1. State designated as home office on documents filed with governmental agencies.
2. State where payroll is prepared.
3. State where business transactions are performed.
4. State where officers, owners, or partners reside and work.
5. State in which bank accounts are located.
6. State in which fixed business property is located.
7. State where management decisions are made.

"Same phase of construction" means in the same type of construction operations or trade, such as, but not limited to, electrical work; masonry, stonework, tile setting and plastering; roofing; sheet metal work; excavation work; concrete work; glasswork; painting, paper hanging and decorating; plumbing, heating and air conditioning work; carpentry work; and miscellaneous special trade contractors.

"Working days" 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.

875—150.3(91C) Registration required. Before performing any construction work in this state, a contractor shall be registered with the division. A joint venture is an independent entity and shall be registered independently.

875—150.4(91C) Application. Each contractor shall file an application with the division for a registration number on forms provided by the division. The application shall contain the information specified in this rule.

150.4(1) *Name.* The name of the contractor.

150.4(2) *Place of business.* The complete mailing address of the principal place of business of the contractor.

150.4(3) *Telephone number.* The business telephone number of the contractor.

150.4(4) *Business classification.* The type of business entity of the contractor (i.e., corporation, partnership, sole proprietorship, trust, etc.).

150.4(5) *Ownership information.*

a. If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation.

b. If the contractor is other than a corporation, the name, address, and telephone number of each owner.

150.4(6) *Workers' compensation coverage information.*

a. A certificate of insurance from the insurer showing proof of workers' compensation insurance, the effective dates of coverage, and listing the division of labor as a certificate holder;

b. Employer's release from the insurance requirements under workers' compensation law form provided to self-insured employers by the commissioner of insurance under Iowa Code section 87.11; or

c. A statement that the contractor is not required to carry workers' compensation coverage.

150.4(7) *Account number.* The employer account number or special contractor number issued by the unemployment insurance services division of the workforce development department prior to making application for a contractor's registration number.

150.4(8) *Business description.* A description of the business to include:

a. The employer's North American Industry Classification System (NAICS) code; or

b. The principal products and services provided.

150.4(9) *Fee exemption.* An exemption from fee may be requested if the contractor meets the requirements of and provides information specified in subrule 150.6(3).

150.4(10) *Social security number.* The contractor, if a natural person, shall include the contractor's social security number.

875—150.5(91C) Amendments to application.

150.5(1) A contractor shall report to the commissioner any change in the information originally reported on or with the application within 15 working days of the change, except that the contractor shall notify the commissioner of changes to workers' compensation coverage within ten days prior to any change in coverage.

150.5(2) After the time specified in subrule 150.5(1), with good cause shown the commissioner may determine that an amendment may be made to correct an application.

150.5(3) Amendments to applications shall not be permitted where a change occurs in the business classification, such as, but not limited to, a change from a sole proprietorship to a corporation.

875—150.6(91C) Fee.

150.6(1) *Applications.*

a. *New applications.* A new application deposited in the U.S. mail shall be accompanied by the fee effective on the date the application is postmarked. A new application delivered in any other manner shall be accompanied by the fee effective on the date the application is received by the division.

b. *Renewal applications.* A timely renewal application shall be accompanied by the fee effective on the expiration date of the contractor's expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is postmarked. An application for renewal delivered to the division in a manner other than U.S. mail and after the expiration date of the contractor's expiring

registration shall be accompanied by the fee effective on the date the application is received by the division.

150.6(2) *Exemption from fee.* A contractor shall not be required to pay the fee if the application contains an affidavit which shows the contractor is self-employed, does not pay more than $2,000 annually to employ other persons in the business, and does not work with or for other contractors in the same phase of construction. At any time that a contractor no longer meets the provision for an exemption from the fee, the fee shall be paid to the division.

150.6(3) *Application attachment.* To apply for a fee exemption, the contractor shall attach to the application an affidavit which contains:

a. A statement that the contractor is self-employed;

b. A list of all employees employed in the past 12-month period and the amount paid to each employee; and

c. A list of all current employees.

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875—150.7(91C) Registration number issuance. Within 30 days of receipt of a completed application, the commissioner will issue to the contractor a registration number. The registration number will consist of the letter "C" followed by six unique digits.

875—150.8(91C) Workers' compensation insurance cancellation notifications.

150.8(1) *Insurance company coverage.* The division shall be notified by the insurance company carrying the contractor's workers' compensation insurance at the time of cancellation. The notice shall contain:

a. The name of the insurance carrier;

b. The name of the insured contractor; and

c. The date the workers' compensation coverage cancellation is effective.

150.8(2) *Self-insured contractors.* The contractor shall notify the division ten days prior to any cessation in self-insurance.

150.8(3) *Noninsured contractors.* The contractor shall notify the division whenever the required notice is not posted or in any change in insurance status.

875—150.9(91C) Investigations and complaints.

150.9(1) *Investigations.* Investigations may take many forms to determine if there is compliance with the law. Investigations shall take place at the times and in the places as the commissioner may direct. The commissioner may interview persons at the work site and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the division. At the initiation of an investigation at the contractor's establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the commissioner may seek an administrative warrant, if necessary.

150.9(2) *Complaints.* Complaints in which the complainant provides a name and address made to the commissioner in writing shall receive a written response as to the results of the investigation. A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant's identity would be protected under other statutes or rules (i.e., a complaint filed under both Iowa Code chapters 88 and 91C).

875—150.10(91C) Citations/penalties and appeal hearings.

150.10(1) *Citations.* The commissioner shall issue a citation to a contractor where an investigation reveals the contractor has violated:

a. The requirement that the contractor be registered;

b. The requirement that the contractor's registration information be substantially complete and accurate; or

c. The requirement that an out-of-state contractor file a bond with the division.

150.10(2) *Penalties.* If a citation is issued, the commissioner shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than $500 in the case of the first violation and not more than $5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

150.10(3) *Appeal.* The contractor shall have 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.10(4) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

875—150.11(91C) Revocation of registrations and appeal hearings.

150.11(1) *Reason for revocation.* The commissioner shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

150.11(2) *Notice of revocation.* The commissioner shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding hearing conducted in accordance with Iowa Code chapter 17A.

150.11(3) *Hearing.* The purpose of the fact-finding hearing is to ensure the contractor is not in compliance before the registration is revoked. All hearings shall be held in the offices of the division. A telephone interview may be conducted upon request.

150.11(4) *Hearing procedures.* Administrative hearing rules at 875—Chapter 1 shall be applicable to the fact-finding hearings.

150.11(5) *Decision.* The commissioner shall serve the decision on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the commissioner shall send the decision to the address by first-class mail.

150.11(6) *Effective date of revocation.* Revocations shall become effective 21 days after certified mailing of the decision.

150.11(7) *Suspension.* The division and the commissioner find the public health, safety or welfare imperatively requires emergency action where a construction contractor fails to maintain compliance with the laws of this state relating to workers' compensation as required in subrule 150.4(6) due to the financial impact upon the public and any worker who might be injured. Therefore, a construction contractor's registration may be suspended effective upon issuance of the subrule 150.11(2) notice of revocation. Upon application showing good cause and proof of compliance with the workers' compensation laws as required in subrule 150.4(6), the commissioner may alter the finding and temporarily reinstate a registration number pending hearing on the revocation. In cases of suspension pending a revocation hearing, the hearing shall be instituted and determined promptly.

150.11(8) *Appeal.* The contractor shall have 15 working days from receipt of the decision issued pursuant to subrule 150.11(5) to file a notice of contest of decision. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.11(9) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to appealed decisions.

150.11(10) *Effect of revocation.* A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

150.11(11) *Relinquishing registration certificate.* A contractor shall return the original registration certificate to the division when a revocation or suspension becomes final.

875—150.12(91C) Concurrent actions. Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

875—150.13(91C) Out-of-state contractor bonds.

150.13(1) *Project size.* Before commencing a contract for a project in Iowa with a contract price in excess of $5,000 in value, an out-of-state contractor shall file a valid original project or blanket surety bond with the division.

150.13(2) *Information.* The division bond forms shall be used. The bond shall include the identification of the contractor including the name and address, and a valid power of attorney from the surety company shall be attached. If the Iowa construction contractor registration number has been issued, it shall be included on the bond.

150.13(3) *Surety company.* The bond shall be executed by a surety company authorized to do business in this state.

150.13(4) *Time.* The bond shall be continuous in nature until canceled by the surety or for the two-year registration period in the case of a blanket bond.

150.13(5) *Cancellation.* The surety shall give the commissioner and the contractor 30 days' written notice indicating the desire to cancel the bond.

150.13(6) *Federal preemption.* Rules 875—150.13(91C) to 150.15(91C) shall be suspended to the extent necessary to prevent any inconsistency with the requirements of federal law or to prevent the denial of federal funds. In addition, contractors performing work undertaken on a federal aid project shall submit to the division a letter of legal justification for the suspension or a letter from the contracting agency that the requirements of this rule are inconsistent with the federal requirements.

875—150.14(91C) Project bonds.

150.14(1) *Information.* In addition to the requirements in subrule 150.13(2), the following shall be included on the bond:

a. The name of the person for whom the construction work will be performed; and

b. The identification of the contract including the project name, contract number or identification, address where the work will be performed and a copy of the contract.

150.14(2) *Amount.* The bond shall be in the amount of $1000 or 5 percent of the contract price, whichever is greater. A separate bond is required for each contract. An increase in the bond may be required by the department of revenue pursuant to Iowa Code chapter 91C.

875—150.15(91C) Blanket bonds. A blanket bond shall be in an amount not less than $50,000. The commissioner may increase the bond after a hearing conducted pursuant to 875—Chapter 1.

875—150.16(91C) Bond release.

150.16(1) *Notifications.* Prior to releasing a bond, the commissioner will notify the department of revenue, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The commissioner shall provide ten days for the filing of objections to the release of the bond. The commissioner may deem any failure to respond to the notice within the time provided as an approval of the release.

150.16(2) *Conditions for release.* A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

These rules are intended to implement Iowa Code chapter 91C as amended by 2006 Iowa Acts, chapter 1176.

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◊ Two or more ARCs

[1] Effective date (2/15/89) delayed 70 days by the Administrative Rules Review Committee at its January 5, 1989, meeting.

SAILBOATS
See BOATS AND BOATING

SALE BARNS
See LIVESTOCK: Movement: Markets

SALES AND USE TAX
See TAXATION

SALONS
See COSMETOLOGY AND COSMETOLOGISTS

SALVAGE
See also FOOD; GAME; MOTOR VEHICLES
Landfills, salvaging **567**—113.8(1)*c*

SANATORIUMS
Mentally ill, *see MENTAL HEALTH*
Oakdale **681**—12.1(3)
Tuberculosis **681**—12.1(3)

SAND
See MINES AND MINING: Minerals
Construction facilities, storm water discharge **567**—64.6(1)*a*(3), 64.6(1)*c*(3), 64.15(3)
Foundry, landfill cover **567**—108.3, 108.4(6), 108.6(1)*a*, 108.8(5)
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