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

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

Editor's telephone (515)281-3355 or (515)242-6873

### **Aging, Department on[17]**

Replace Chapter 7

### **Agriculture and Land Stewardship Department[21]**

Replace Analysis  
Replace Chapter 45  
Replace Chapter 67  
Replace Chapter 76  
Replace Chapter 85  
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### **Banking Division[187]**

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Replace Chapters 1 and 2  
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### **Economic Development Authority[261]**

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Replace Chapter 15  
Replace Chapter 47  
Replace Chapter 52  
Replace Chapter 65  
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### **Inspections and Appeals Department[481]**

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Replace Chapter 52

### **State Public Defender[493]**

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Replace Chapters 10 to 13

### **Natural Resources Department[561]**

Replace Chapter 9

**Energy and Geological Resources Division[565]**

Replace Analysis

Remove Chapter 1, Reserved Chapter 2, Chapter 3, Reserved Chapter 4, Chapters 5 and 6, Reserved Chapters 7 to 12, Chapter 13, Reserved Chapters 14 to 17, Chapter 18, and Reserved Chapters 19 to 51

**Environmental Protection Commission[567]**

Replace Analysis

Replace Chapter 107

**Natural Resource Commission[571]**

Replace Analysis

Replace Chapter 23

Replace Chapter 27

Replace Chapter 30

Replace Chapter 33

Replace Chapter 35

Replace Chapters 98 and 99

Replace Chapter 106

CHAPTER 7  
AREA AGENCY ON AGING SERVICE DELIVERY

[Prior to 5/20/87, see Aging, Commission on the [20] Ch 8]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 7]

**17—7.1(231) Definitions.** Words and phrases as used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

*“Legal assistance”* means legal advice and representation provided by an attorney to older individuals with economic or social needs and, to the extent feasible, includes counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney and counseling or representation by a nonlawyer where permitted by law.

*“Multipurpose senior center”* (OAA) means a community facility for the organization and provision of a broad spectrum of services, which shall include, but not be limited to, provision of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

*“Nutrition Services Incentive Program”* or *“NSIP”* means the Nutrition Services Incentive Program established under the OAA.

*“Site”* means a facility designated for provision of congregate meals or other nutrition-related services.

*“Therapeutic menu”* means a soft, low-fat, low-sodium, or controlled calorie menu.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.2(231) Service delivery.** If the requirements of 17—Chapter 6 are met, each AAA may contract for service delivery or provide services directly. All applicable terms, procedures and specifications of the department shall be followed contingent upon the source of funding under the Act. At a minimum, the contract for nutrition services shall include nutrient requirements for meals; food safety, including time limits for transporting food; use of project income; length of contract; cost per unit; participant evaluation surveys as available; and performance requirements to ensure accountability and monitoring.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.3(231) Outreach for greatest need.** Each AAA shall conduct outreach efforts to identify the older individuals with greatest economic or social needs and to inform the older individuals of the availability of services. The outreach efforts shall place special emphasis on rural, low-income, minority and American Indian older individuals.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.4(231) Delivery of service.**

**7.4(1) Facility and focal points.** Each AAA shall designate a focal point for a comprehensive and coordinated system of services in each served community, giving special consideration to the designation of multipurpose senior centers that currently or potentially can accommodate the collocation of services, where feasible.

**7.4(2) Focal points.** The area profile submitted by the AAA as required in 17—Chapter 6 shall specify the communities and facilities which are designated as focal points.

**7.4(3)** In the designation of focal points, the AAA shall consider:

*a.* Communities with the greatest incidence of older individuals with the characteristics as given in 17—7.3(231) and the efforts of voluntary organizations in the community;

*b.* The needs of participants and the delivery pattern of services funded under the Act and from other sources;

*c.* The location of current multipurpose senior centers and congregate nutrition sites;

*d.* The geographic boundaries of communities and natural neighborhoods; and

*e.* The location of facilities suitable for designation.

**7.4(4)** Developing collocation of services at the focal point. The AAA shall:

- a. Encourage service providers to coordinate and collocate their services;
- b. Coordinate with public and private agencies, institutions and elected officials in the community to achieve maximum collocation, coordination, and access to other services or opportunities for the elderly;
- c. Ensure that information and referral and emergency service programs are provided;
- d. Ensure that services funded under the Act will be based at, linked to, or coordinated with focal points; and
- e. Establish guidelines for operating schedules which are convenient for older individuals in the community.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.5(231) Funding for services and program facilities.**

**7.5(1)** The AAA may distribute funds received from the department to a public or private nonprofit agency for construction, acquisition, remodeling, leasing or renovation of a facility, including a mobile facility, to be a focal point for providing programs or services.

a. In distributing these funds, the AAA shall obtain the approval of the commission before contracting for the construction of a facility.

b. The commission may approve the construction of a facility after considering the views of the AAA and reviewing material from the AAA that documents that there are no suitable facilities available to be a focal point for service delivery.

**7.5(2)** The AAA may make an award for purchasing or constructing a facility:

- a. If there are no suitable facilities for leasing;
- b. If the AAA's budget shows that sufficient funds are or will be available;
- c. To meet the nonfederal share of the cost of purchase or construction of the facility;
- d. For effective use of the facility for the purpose for which it is being acquired or constructed;
- e. To pay the cost of professional and technical personnel required for the operation of facilities used to provide services to older individuals under the cost-share terms and conditions set by the department.

**7.5(3)** Shared facilities. In a facility that is shared with other age groups, funds received from the Act may support only:

- a. That part of the facility used by older persons; or
- b. A proportionate share of the costs based on the extent of use of the facility for services or programs for the older individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.6(231) Compliance with health, safety and construction requirements.** A recipient of any award from the department for a facility housing a program or service shall comply with all applicable state and local health, fire, safety, accessibility, building, zoning, and sanitation laws, ordinances and codes including:

1. Rules of the state fire marshal adopted pursuant to Iowa Code chapter 17A, which apply to the occupancy type of the facility;
2. Applicable requirements for accessibility of the facility to persons with disabilities, including but not limited to provisions of the state of Iowa building code, the federal Americans with Disabilities Act, federal Fair Housing Act and related regulations; and
3. Provisions of any local building code in force in the jurisdiction in which the facility is located and any provisions of the state of Iowa building code which apply statewide. If the facility is located in a jurisdiction in which no local building code is in force, the facility shall comply with the state of Iowa building code in its entirety.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.7(231) Term of use of an acquired or constructed facility.** A recipient of funds under the Act that uses these funds for the acquisition or construction of a facility housing a program or service shall

comply with the requirements of the Act and other applicable federal requirements regarding the term of use of such facility.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.8(231) Restrictions.**

**7.8(1) *Membership fees.*** Payment of a membership fee shall not be required of participants in programs and services offered in facilities that receive or have received funds under the Act.

**7.8(2) *Sectarian use of a facility prohibited.*** A facility altered, renovated, acquired, leased or constructed using funds under the Act shall not be used for sectarian instruction or as a place for religious worship.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.9(231) Information and assistance services.**

**7.9(1)** The AAA shall provide for information and assistance services sufficient to ensure that all older individuals within the PSA have convenient access to the services.

**7.9(2)** English not principal language. In a PSA in which 3 percent of the older individual population does not speak English as the principal language, the service provider must provide information and assistance services in the language spoken by older individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.10(231) Legal assistance requirements.** The provisions and restrictions in this rule apply only to legal assistance providers and only when they are performing tasks covered by Section 307(a)(11) of the Act.

**7.10(1) Provider requirements.** The AAA shall award funds to the legal assistance provider(s) that most fully meets the standards given in this rule. The legal assistance provider(s) shall:

*a.* Have staff with expertise in specific areas of law affecting older individuals with economic or social needs and give priority to issues related to income, health care, long-term care, nutrition, utilities, housing, protective services, abuse, neglect, age discrimination and defense of guardianship;

*b.* Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older individuals with economic or social needs;

*c.* Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care resident's advocate program or elder abuse initiatives programs;

*d.* Demonstrate the capacity to deliver legal services to institutionalized, isolated, and homebound older individuals effectively;

*e.* Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language; and

*f.* Coordinate the provision of legal assistance with private bar attorneys and legal services corporation state grantees.

**7.10(2) Client income disclosure.** A legal assistance provider shall not require an older individual to disclose information about income or resources as a condition for providing legal assistance under this rule.

**7.10(3) Client information.** A legal assistance provider may ask about an older individual's financial circumstances only as a part of the process of providing legal advice or counseling and representation, or for the purpose of identifying additional resources and benefits for which an older individual may be eligible.

**7.10(4) Assistance allowed.** Nothing in this rule is intended to prohibit an attorney or staff attorney from providing any form of legal assistance or to interfere with the fulfillment of the attorney's professional responsibilities.

**7.10(5) Provider compliance with OAA regulations.** The legal assistance provider and its attorney(s) and employee(s) shall comply with all federal and state laws, regulations and rules which govern ethical and professional conduct and the practice of law.

**7.10(6)** An AAA shall not require a provider of legal assistance to reveal information protected by attorney-client privilege.

**7.10(7)** The department will be responsible for the following:

- a. Providing for the coordination of the furnishing of legal assistance to older individuals within the state;
- b. Providing advice and technical assistance in the delivery of legal assistance to older individuals within the state;
- c. Supporting the provision of training and technical assistance for legal assistance for older individuals; and
- d. Assigning personnel, one of whom shall be known as a legal assistance developer, to provide state leadership in developing legal assistance programs for older individuals throughout the state.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.11(231) Disease prevention and health promotion under Title III-D of the Act.** AAA shall use Title III-D funds to provide disease prevention and health promotion services and information at multipurpose senior centers, at congregate meal sites, through home-delivered meals programs or at other appropriate sites.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.12(231) Nutrition services.**

**7.12(1)** Purposes of the program. The purposes of the nutrition services program are to:

- a. Provide meals and other nutrition-related services, including outreach and education to older individuals;
- b. Provide information and referral services, health and human service counseling, recreation activities, and access to nutrition services to participants when services are needed; and
- c. Provide activities of interest to older individuals on each day the congregate meal site is open including a monthly nutrition education program under the supervision of a licensed dietitian if the nutrition education provides medically oriented information.

**7.12(2)** Assessment of need. The AAA shall determine the best location for nutrition services within the planning and service area at least once during the long-range plan development cycle. The needs of the community will be considered in determining the locations for nutrition services.

**7.12(3)** Inspection of congregate nutrition sites. All congregate nutrition sites shall be inspected by the department of inspections and appeals and shall have a current food service establishment (restaurant) license posted in the congregate nutrition site.

**7.12(4)** The AAA shall ensure that nutrition funds are used to:

- a. Provide at least one meal per day in a congregate nutrition site or provide home-delivered meals based upon a determination of a participant's need.
- b. Provide other nutrition services to ensure that the maximum number of eligible older individuals, with emphasis on the frail, those with greatest social and economic need, and the isolated, shall have the opportunity to participate.
- c. Provide nutrition screening and counseling as appropriate and nutrition education services to address assessed needs.

**7.12(5)** Food assistance program. The AAA and nutrition services providers shall assist participants in taking advantage of benefits available to them under the food assistance program by providing current information to participants in both the congregate and home-delivered meals programs. Nutrition services providers shall be certified to accept food assistance as contributions for meals.

**7.12(6)** Licensed dietitian. Each AAA must utilize the services of a licensed dietitian to provide technical assistance in nutrition program management and to ensure that the project provides meals that comply with the RDA/AI.

**7.12(7)** The AAA shall develop procedures to:

- a. Ensure that food service personnel, both paid and volunteer, conform to hygienic food handling techniques and to standards given in the current edition of "Center for Food Safety and Applied Nutrition—Food Code" published by the U.S. Food and Drug Administration;
- b. Provide for ongoing training on safety, hygienic food handling and sanitation for both volunteer and paid food service personnel;

*c.* Ensure that food service personnel, both paid and volunteer, are provided with job descriptions and standards of performance which shall be evaluated annually; and

*d.* Regulate the use of foods remaining after serving at congregate meal sites.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—7.13(231) AOA NSIP programs.**

**7.13(1)** The AAA shall have an agreement with the department to receive commodities, cash or a combination of commodities and cash.

**7.13(2)** The department shall allocate all food, cash or the combination of food and cash received from AOA to AAA based on each AAA's proportion of the total number of meals served to eligible recipients in the state.

**7.13(3)** The AAA shall comply with the requirements of 7 CFR §250, June 3, 1988, for participation in the AOA program.

**7.13(4)** AAA electing to receive commodities shall maintain perpetual inventories of all commodities at each site and storage area and must submit an areawide inventory at least quarterly to the department within 30 days after the reporting period.

**7.13(5)** AAA shall comply with provisions of state laws regarding safe and sanitary handling of food, equipment and supplies. Nutrition services providers shall accept and use foods made available by AAA.

**7.13(6)** Commodities shall be consumed as food only and shall not be sold, exchanged, traded, transferred, destroyed, or otherwise disposed of for any reason without prior approval from the department.

**7.13(7)** An AAA shall report the loss, theft, damage, spoilage, or infestation of commodities to the department within 5 working days to initiate claim action.

**7.13(8)** An AAA that receives cash in lieu of commodities shall spend all cash received from the AOA to purchase agricultural food items.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—7.14(231) Nutrition performance standards.**

**7.14(1)** Each meal served by the nutrition services provider, whether at a congregate meal site, home-delivered or elsewhere, must comply with the current Dietary Guidelines for Americans, published by the Secretary of Health and Human Services and the Secretary of Agriculture, and provide to each participating older individual:

*a.* A minimum of 33 1/3 percent of the RDA/AI as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, if the program provides one meal per day;

*b.* A minimum of 66 2/3 percent of the allowances if the program provides two meals per day; and

*c.* One hundred percent of the allowances if the program provides three meals per day.

**7.14(2)** AAA shall ensure that the areawide percentage of residents with the greatest economic and social need is proportionately represented in the characteristics of individuals served in the nutrition program as outlined in 17—Chapter 6 for preference in service delivery.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0623C, IAB 3/6/13, effective 4/10/13]

**17—7.15(231) Food standards.** The AAA or contractor shall, when purchasing food and preparing and delivering meals, comply with all state and local health laws and ordinances concerning preparation, handling and serving food.

**7.15(1)** Each AAA shall establish and implement written procedures, in consultation with a licensed dietitian, on handling foods prepared for a meal but not served. The procedures shall address which foods may be saved, which foods need to be destroyed, and instructions on cooling and storing foods for reuse.

**7.15(2)** All raw fruits and vegetables and other foods utilized shall be free from spoilage, filth or contamination and must be safe for human consumption.

**7.15(3)** Foods prepared, canned or preserved noncommercially shall not be used.

**7.15(4)** Standardized, tested quantity recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable nutrient quality and quantity of meals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.16(231) Food-borne illness.** The AAA shall develop written procedures for handling suspected cases of food-borne illnesses. The contractor shall report the occurrence or suspected occurrence of a food-borne illness to the AAA within 12 hours. The AAA shall notify the department within 12 hours after the AAA becomes aware of the situation.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.17(231) Menus.**

**7.17(1)** All menus shall be planned for a minimum of four weeks, computer analyzed to ensure 33 1/3 percent of the RDA/AI is provided in each meal, certified in writing by the licensed dietitian whose services are utilized by the AAA, and submitted to the department for review at least two weeks prior to the initial use of the menu. For purposes of audit, AAA shall keep copies of the certified menus on file for a period of one year.

**7.17(2)** All certified menus shall be posted in a conspicuous location in each congregate meal site and regularly provided to home-delivered meal recipients. The certified menus may be modified occasionally if the provisions of rule 17—7.15(231) are maintained and a licensed dietitian or nutrition director is consulted prior to the change.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.18(231) Special dietary needs.** The AAA shall ensure that special dietary needs of program participants are met where feasible and appropriate, including the particular requirements arising from the health, religious, or ethnic backgrounds of eligible participants.

**7.18(1)** The following criteria shall be used to determine feasibility and appropriateness:

*a.* Sufficient numbers of older individuals who have special dietary needs exist to make the provision practical;

*b.* Skills and food necessary to provide the special menus are available.

**7.18(2)** Special dietary and therapeutic menus must be planned under the supervision of a licensed dietitian in accordance with a current diet manual approved by the department. Certified menus must be submitted to the department at least two weeks prior to the initial use of the menus.

**7.18(3)** A written physician's or physician assistant's order for each older individual requesting a therapeutic diet shall be obtained prior to the older individual's receipt of the meal and kept on file where the meal is prepared and served. The order shall be interpreted by a licensed dietitian and the individual's physician or physician assistant.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0623C, IAB 3/6/13, effective 4/10/13; ARC 6782C, IAB 1/11/23, effective 2/15/23]

**17—7.19(231) Congregate nutrition services.** In providing nutrition services or in making awards for congregate nutrition services, the AAA shall:

1. Select and designate as a site any location where meals are served in a group setting with federal AOA nutrition funds or contributions from an AOA federal nutrition program, or both;

2. Provide a site in as close proximity to the majority of eligible individuals' residences as feasible, preferably within walking distance, or where transportation is available;

3. Provide for hot or other appropriate meals at least once a day, five or more days a week. In a county where there is a site providing meals five or more days a week, additional sites may be established which provide meals one or more days a week. Efforts shall be made and documented to the department annually to increase the number of serving days to a minimum of three days each week;

4. Coordinate with other community providers to arrange meals for older individuals on holidays that occur on regularly scheduled serving days and also to the general public in weather- and disaster-related emergencies, where feasible.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.20(231) Eligibility for meals at congregate nutrition sites.**

**7.20(1)** A person aged 60 or older and the spouse of the person, regardless of age, are eligible to participate in congregate nutrition services.

**7.20(2)** Individuals providing volunteer services during meal hours are eligible to participate in congregate nutrition services.

**7.20(3)** Individuals with disabilities who reside at home or reside with and accompany eligible older individuals are eligible to participate in congregate nutrition services.

**7.20(4)** Individuals with disabilities who are not 60 years of age or older and who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided are eligible to participate in congregate nutrition services.

**7.20(5)** Ineligible individuals may eat at a site and pay the programmatic cost of the meal, if the ineligible individual's receipt of the meal does not deprive an eligible participant of a meal.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.21(231) Home-delivered meals.**

**7.21(1) Eligibility.** An older individual who is homebound by reason of illness, incapacitating disability or other cause is eligible to receive home-delivered meals. Regardless of age or condition, the spouse of an older individual may receive home-delivered meals if receipt of the meal is in the best interest of the homebound older individual under criteria set by the AAA.

**7.21(2) Individual assessment.** The AAA or the home-delivered meals contractor, subject to AAA approval, shall establish and utilize procedures for the determination of an older individual's eligibility for home-delivered meals, including specific criteria for:

- a. Initial assessment of the older individual's eligibility;
- b. Determination of the number of days per week the older individual has a need for home-delivered meals; and
- c. Determination of the older individual's need for other home-delivered nutrition services.

**7.21(3) Requirements for providers.** The AAA or contractor shall:

- a. Provide for home-delivered meals at least once a day, five or more days a week;
- b. Provide for home-delivered meals to participants according to the frequency of need determined by procedures required in subrule 7.21(2). Meals may be hot, cold, frozen, dried, canned or supplemental foods with a satisfactory storage life;
- c. Make arrangements for the availability of meals to older individuals in weather- and disaster-related emergencies, where feasible;
- d. Provide other nutrition and supportive services either directly or through referral to meet the need of the homebound older individual;
- e. Provide monthly nutrition education for home-delivered meal recipients, to include safe food handling of the delivered meals every six months;
- f. With the consent of the older individual or the older individual's representative, bring to the attention of appropriate officials for follow-up conditions or circumstances which place the older individual or the household in imminent danger. The AAA shall coordinate with other agencies to provide services to the homebound older individual to reduce dependency and cultural, social and geographic isolation caused by noneconomic factors.

The provider is not required to provide meals more than five days per week, but is encouraged to do so.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 3139C, IAB 6/21/17, effective 7/26/17]

**17—7.22(231) Noncompliance.** When a grantee fails to meet the nutrition requirements as provided in this chapter, the department shall follow procedures outlined in 17—Chapter 4.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—7.23(231) Requirements for opening or closing congregate nutrition sites.** The AAA shall notify the department, via electronic mail or other written notification, within 30 days of the AAA's opening, relocating, or terminating a nutrition site. The notification must include:

1. Reasons for the action;

2. Impact on eligible individuals;
3. Impact on nearby meal sites; and
4. Impact on provision of nutrition-related services.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0623C, IAB 3/6/13, effective 4/10/13]

**17—7.24(231) Evaluation of sites.** The AAA shall conduct on-site evaluations on an annual basis. The reports of these evaluations shall be kept on file for three years and shall include any areas that need additional monitoring or corrective actions.

**7.24(1)** At a minimum, the evaluation shall include the site's compliance with:

- a. Food acquisition, handling and safety standards;
- b. The requirement for the RDA/AI as established in this chapter;
- c. Food quality and acceptability (appearance, taste, temperature and smell);
- d. Services provided in addition to meals, such as nutrition education and counseling as appropriate, social opportunities and other activities.

**7.24(2)** The AAA shall provide each site a tool to guide food service personnel in a self-assessment to be conducted at midpoint between AAA on-site evaluations. This evaluation shall be conducted to document program compliance and to analyze areas for ongoing monitoring. The self-assessment reports shall be kept on file for three years.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapter 231.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

[Filed 12/3/82, Notice 7/21/82—published 12/22/82, effective 1/26/83]

[Filed emergency 2/25/83—published 3/16/83, effective 2/25/83]

[Filed 10/19/84, Notice 8/15/84—published 11/7/84, effective 12/12/84]<sup>1</sup>

[Filed 7/10/86, Notice 5/7/86—published 7/30/86, effective 9/3/86]<sup>2</sup>

[Filed 5/1/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]<sup>3</sup>

[Filed emergency 7/21/88—published 8/10/88, effective 7/22/88]

[Filed 4/26/90, Notice 2/21/90—published 5/16/90, effective 6/30/90]

[Filed without Notice 1/13/92—published 2/5/92, effective 3/11/92]

[Filed 6/26/92, Notice 4/1/92—published 7/22/92, effective 8/26/92]

[Filed 11/5/93, Notice 9/15/93—published 11/24/93, effective 12/29/93]

[Filed 11/3/95, Notice 8/16/95—published 11/22/95, effective 12/27/95]

[Filed 3/7/96, Notice 1/31/96—published 3/27/96, effective 5/1/96]

[Filed 10/15/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]

[Filed 2/21/06, Notice 11/23/05—published 3/15/06, effective 5/1/06]

[Filed 8/20/08, Notice 7/2/08—published 9/10/08, effective 10/15/08]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

[Filed ARC 0623C (Notice ARC 0505C, IAB 12/12/12), IAB 3/6/13, effective 4/10/13]

[Filed ARC 3139C (Notice ARC 2967C, IAB 3/15/17), IAB 6/21/17, effective 7/26/17]

[Filed ARC 6782C (Notice ARC 6591C, IAB 10/5/22), IAB 1/11/23, effective 2/15/23]

<sup>1</sup> Effective date of 20—8.42(2) delayed 70 days by the Administrative Rules Review Committee.

<sup>2</sup> Two or more ARCs

<sup>3</sup> Effective date of Chapter 7 delayed 70 days by the Administrative Rules Review Committee.

# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

[Created by 1986 Iowa Acts, chapter 1245]  
[Prior to 7/27/88, Agriculture Department[30]]  
Rules under this Department “umbrella” also include  
Agricultural Development Authority[25] and Soil Conservation Division[27]

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PESTICIDES

[Appeared as Ch 9, 1973 IDR]

[Prior to 7/27/88 see Agriculture Department 30—Ch 10]

DIVISION I

**21—45.1(206) Definitions and standards.**

**45.1(1)** The following definitions are hereby adopted.

“*Aerial applicator*” means a licensed commercial applicator, certified in category #11, Aerial Application, who applies pesticides by using aircraft in compliance with Federal Aviation Administration regulations under Title 14 CFR Part 137 (1-1-08 Edition).

“*Aerial applicator consultant*” means a person who is a resident of Iowa and holds a valid applicator certification in category #11, Aerial Application, and either an Iowa commercial applicator license or pesticide dealer license, who coordinates the commercial application of pesticides by aerial applicators.

“*Certified handler*” means a person employed by a licensed commercial applicator, noncommercial applicator, public applicator, or pesticide dealer who handles pesticides in other than unopened containers for the purposes of preparing, mixing or loading pesticides for application by another person, repackaging bulk pesticides or disposing of pesticide-related wastes from these activities.

“*Defoliant*” means any substance or mixture of substances intended for causing the leaves or foliage to drop from the plant with or without causing abscission.

“*Desiccant*” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

“*Fungi*” means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts and bacteria except those on or in living man or other animals.

“*Fungicide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

“*Herbicide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed or undesirable plant.

“*Insect*” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice.

“*Insecticide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects and related forms which may be present in any environment whatsoever.

“*Nematocide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes or subterranean pests.

“*Nematode*” means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or saclike bodies covered with cuticle and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

“*Nonchemical pest control device*” means any instrument or contrivance, other than a firearm or trap, intended or purported to be a primary pest control device or a pest control aid for repelling insects or rodents without the use of chemicals through utilization of electromagnetic, sound, ultrasonic, subsonic, cosmic, geotechnical or other similar wave technology.

“*Noncommercial applicator*” means any person who applies restricted use pesticides on lands or property owned, rented or leased by the applicator or the applicator’s employer. This definition shall not apply to private applicators using restricted use pesticides in the production of agricultural commodities.

“*Resident of Iowa,*” for purposes of subrule 45.22(17), means a person who meets the following qualifications:

1. The person is an owner or employee of a corporation, association, partnership, company, or firm that maintains a physical place of business located within Iowa.

2. Agricultural aircraft owned and operated by the person are registered with the Iowa department of transportation.

“*Rodent*” means any animal of the order Rodentia, including, but not limited to, rats, mice, rabbits, gophers, prairie dogs and squirrels.

“*Rodenticide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the secretary shall designate to be a pest.

“*Sensitive crop registry*” means the sensitive crop registry designated by the department, which may include but is not limited to the FieldWatch™, Inc. program.

“*Use of a pesticide contrary to its labeling*” means to use any registered pesticide in a manner not permitted by the labeling provided that the phrase shall not include:

1. Applying a pesticide for agricultural or horticultural purposes only at any dosage, concentration or frequency less than that specified on the labeling.

2. Applying a pesticide for agricultural or horticultural purposes only against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling; or

3. Employing any method of application not prohibited by the labeling for agricultural or horticultural purposes only.

4. Mixing pesticides or mixing pesticide with a fertilizer when such mixture is not prohibited by the labeling for agricultural or horticultural purposes only.

“*Weed*” means any plant which grows where not wanted.

“*Wood-destroying insect*” means subterranean termites, carpenter ants, and powder-post beetles.

**45.1(2)** Additional definitions and standards which are consistent and applicable to the pesticide Act shall be those established by the Association of American Pesticide Control Officials.

This rule is intended to implement Iowa Code section 206.5 and section 206.6 as amended by 2008 Iowa Acts, House File 2551.

[ARC 7556B, IAB 2/11/09, effective 2/1/09; ARC 8704B, IAB 4/21/10, effective 5/26/10; ARC 2881C, IAB 1/4/17, effective 2/8/17]

**21—45.2(206) Methods of analysis.** The current methods of analysis of the Association of Official Analytical Chemists of North America shall be adopted as the official methods insofar as they are applicable, and such other methods shall be used as may be necessary to determine whether the product complies with the law.

**21—45.3(206) Registration required.** No person shall distribute, give, sell or offer to sell any pesticide which has not been registered with the department of agriculture and land stewardship.

**45.3(1) Registration fees.** All pesticides distributed for sale in the state of Iowa shall be registered pursuant to Iowa Code section 206.12. The registration period shall be January 1 through December 31 of each year. A registration fee shall be paid for each brand and grade of pesticide.

Each registrant shall submit an application for registration on forms approved by the secretary of agriculture. The registration fee for each product shall be submitted with the application for registration. Application for new or initial registrations of pesticide products shall be accompanied by the minimum registration fee.

**45.3(2) Renewal fees.** Rescinded IAB 1/11/23, effective 2/15/23.

**45.3(3) Exemption from minimum fee.** A manufacturer or registrant of a pesticide product may file a request for an exemption to the minimum product registration fee and the secretary may grant an exemption to the minimum registration fee for a period not to exceed one year provided that at least one of the following conditions is met:

a. The application is for pesticide product renewal registration; and the total annual sales in Iowa are less than \$20,000; and no similar pesticides are registered in the state. A similar pesticide shall be

of similar composition and labeled for a similar use pattern provided that the applicant submits a signed affidavit reflecting gross annual sales in Iowa of the pesticide produced for the previous year.

*b.* The pesticide product is formulated or comprised of naturally occurring substances including, but not limited to, plant or animal derivatives or microorganisms, and which has an oral LD50 toxicity of 5000 milligrams per kilogram or greater.

*c.* Pesticides registered under the authority of Section 18 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) for emergency, crisis or public health quarantine situations, when the secretary of agriculture initiates the application.

*d.* Pesticides registered under the authority of Section 24(c) of FIFRA when the secretary of agriculture initiates the application.

**45.3(4) *Penalty for nonregistered pesticides.***

*a.* Any pesticide distributed in Iowa which is not registered in the state shall be subject to Stop Sale, Use or Removal Order. A penalty shall be assessed the registrant equal to 25 percent of the registration fee due to the department. Upon receipt of the required registration fee due and the required penalty, the pesticide product may be released for sale in Iowa for the effective registration period.

*b.* A manufacturer or registrant shall not be subject to penalties for nonregistered discontinued pesticide products if adequate proof can be provided to the department indicating that all distributors and retailers handling a discontinued pesticide product were properly notified.

**45.3(5) *Discontinued pesticides.*** Discontinued pesticide product registrations shall be renewed for a minimum of two years after the product is discontinued; and the pesticide product registration renewal application shall identify discontinued products. Any registrant that discontinues registration of a pesticide product shall accept the return of any product in its original unbroken container that remains in the channels of trade after the registration expires. This subrule shall not apply to registered custom blended pesticide products.

**45.3(6) *Registration renewal grace period.*** The registration period shall be January 1 through December 31 of each year. However, a registrant shall be granted a grace period of three months ending on the last day of March of each year for registration renewal. A registrant shall be assessed a late fee equaling 25 percent of the registration fees due by the registrant for a registration renewal received on or after the first day of April of each year. Application for registration renewal shall be made on forms prescribed by the secretary and certified by the registrant.

This rule is intended to implement Iowa Code section 206.12.

[ARC 0392C, IAB 10/17/12, effective 11/21/12; ARC 6783C, IAB 1/11/23, effective 2/15/23]

**21—45.4(206) Registration of products.** One exact copy of the labeling of each proposed product shall be submitted with the application. Also, there shall be submitted an ingredient statement, which shall comply with the provisions of 21—45.13(206) herein, the proposed directions for use of the product, and a list of the specific pests that the product to be sold is intended to control, if such information is not contained in the labeling. Other pertinent information concerning ingredients and physical properties of the product shall also be included on request by the secretary.

[ARC 0392C, IAB 10/17/12, effective 11/21/12]

**21—45.5(206) Registration, general application of.** A registration of a pesticide is held to apply to the product even though manufactured at or shipped from other than the registered address. When a product has been registered by a manufacturer or jobber, no registration shall be required of other sellers of the product so registered, provided shipments or deliveries thereof are in the manufacturer's or registrant's original unopened and properly labeled container.

**21—45.6(206) Revocation, suspension or denial of registration.** Any of the following causes is sufficient to justify revocation or suspension of registration or denial of application of renewal of an expired/expiring registration of a pesticide.

1. If the labeling bears any statement, design or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;

2. If the product is found to be an imitation of, or illegally offered for sale under the name of another pesticide;
3. If the labeling bears reference to Iowa registration number;
4. If the labeling accompanying the pesticide does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;
5. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to humans and other vertebrate animals;
6. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read under customary conditions of purchase. Provided, however, the secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is displayed;
7. If any word, statement or other information required to appear on the label or labeling is omitted or not prominently placed thereon and in such terms as to render it likely to be read and understood under customary conditions of purchase and use;
8. If an insecticide, nematocide, antibiotic, bactericide, fungicide or herbicide is found to be injurious to humans or other useful vertebrate animals or to vegetation (except weeds), to which it is applied or to the person applying such pesticide when used as directed or in accordance with commonly recognized safe practice; or if a plant regulator, defoliant or desiccant when used as directed is found to be injurious to humans or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide; provided, however, that physical or physiological effect on plants or parts thereof shall not be deemed to be injurious, when this is the purpose for which the plant regulator, defoliant or desiccant was applied in accordance with label claims and recommendations;
9. If the pesticide is misbranded;
10. If the registrant has been guilty of fraudulent and deceptive practices in the evasion or attempted evasion of the pesticide Act or any rules promulgated thereunder; provided, however, that no registration shall be revoked until the registrant shall have been given an opportunity for a hearing by the secretary.

Special local need registrations and permits. State registration of pesticides pursuant to Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or any special use permit issued pursuant to revisions of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or the Pesticide Control Act, Iowa Code chapter 206, may be denied, amended or revoked when the secretary has made a determination as follows: That such action is necessary to prevent unreasonable adverse effects to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide; or that "special local need" which necessitated the registration or permit no longer exists. Expiration of 24(c) registrations and all special use permits shall be governed by Iowa Code section 206.12.

"Special Local Need" means a pest problem (existing or likely to occur within a state) which cannot be effectively controlled because:

- (1) There is no pesticide product registered by EPA for such use; or
- (2) There is no EPA-registered pesticide product which, under the conditions of use within the state, would be as safe or as efficacious for such use within the terms and conditions of EPA registration; or
- (3) An appropriate EPA-registered pesticide product is not available.

This rule is intended to implement Iowa Code sections 206.9, 206.11, and 206.12, along with the cooperative enforcement program entered into between the state of Iowa and U.S.E.P.A. pursuant to Sec. 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act amended as of September 30, 1978.

**21—45.7(206) Changes in labeling or ingredient statement.** Changes in the labeling or ingredient statement in registered pesticides shall be submitted in advance to the secretary for approval. The registrant must describe the exact change desired and proposed effective date and such other pertinent

information that justify such changes. After the effective date of a change in labeling or ingredient statement the product shall be marketed only under the new claims or ingredient statement, except that a reasonable time may be allowed by the secretary for disposal of properly labeled stocks of the old product. Changes in the composition shall not be allowed if such changes would result in a lowering of the product's value as a pesticide.

**21—45.8(206) Label requirements.** Each package of pesticide sold separately shall bear a complete label. The label shall contain the name, brand or trademark of the product; name and address of the manufacturer, registrant or person for whom manufactured; directions for use which are necessary and if complied with, adequate for protection of the public; statement of net content in terms of weight or measure in general use; and an ingredient statement. The label of every pesticide, if necessary to prevent injury to humans, other animals and useful vegetation, must contain a warning or caution statement, in nontechnical language based on the hazard involved in the use of the pesticide. In addition, any pesticide highly toxic to humans shall be labeled with a skull and crossbones and with the word "poison" prominently in red on a background of distinctly contrasting color; the first-aid antidote for the poison shall be given and instructions for safe disposal of containers.

NOTE: Products subject to deterioration may bear on their label a statement such as "not to be sold or used after...date..." The use of such a statement, however, in no way relieves the manufacturer of the responsibility for label claims.

**21—45.9(206) Directions for use—when necessary.** Directions for use are required whenever they are necessary for the protection of the public. The public includes not only users of pesticides but also those who handle them or may be affected by their use, handling, or storage. Directions for use are considered necessary in the case of most small retail containers which go into the hands of users, and in the case of larger containers with the following exception:

Directions may be omitted if the pesticide is to be used by manufacturers in their regular manufacturing processes; provided, the label clearly shows that the product is intended for use only in manufacturing processes and bears an ingredient statement giving the name and percentage of each of the active ingredients.

**21—45.10(206) Other claims.** No claim shall be made for products in any written, printed or graphic matter accompanying the product at any time which differ in substance from written representations made in connection with registration.

**21—45.11(206) Name of product.** The name of the product shall appear on the labeling so as not to emphasize any one ingredient or otherwise be misleading. It shall not be arranged on the label in such a manner as to be confused with other terms, trade names or legends.

**21—45.12(206) Brand names, duplication of, or infringement on.** A brand name is distinctive with reference to the material to which it applies and the registration of a pesticide under the same brand name by two or more manufacturers or shippers should be denied or refused. This principle applies also to the registration of brand names so similar in character as to be likely to be confused by the purchaser. In the event the same name or a closely similar one is offered by another manufacturer, the secretary may decline the said name a second time, for registration unless required to do so by an order of court.

**21—45.13(206) Ingredient statement.**

**45.13(1) Location of ingredient statement.** The ingredient statement must appear on that part of the label displayed under customary conditions of purchase except in cases where the secretary determines that, due to the size or form of the container, a statement on that portion of the label is impractical, and permits such statement to appear on another side or panel of the label. When so permitted, the ingredient statement must be in larger type and more prominent than would otherwise be possible. The ingredient statement must run parallel with other printed matter on the panel of the label on which it appears and must be on a clear contrasting background not obscured or crowded.

**45.13(2) *Names of ingredients.*** The well-known common name of the ingredient must be given or, if the ingredient has no common name, the correct chemical name. If there is no common name and the chemical composition is unknown or complex, the secretary may permit the use of a new or coined name which the secretary finds to be appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the secretary may prescribe the terms under which it may be used. A trademark or trade name may not be used as the name of an ingredient except when it has become a common name.

**45.13(3) *Percentages of ingredients.*** Percentages of ingredients shall be determined by weight and the sum of the percentages of the ingredients shall be one hundred. Sliding scale forms of ingredient statements shall not be used.

**45.13(4) *Designation of ingredients.***

*a.* Active ingredients and inert ingredients shall be so designated, and the term “inert ingredient” shall appear in the same size type and be equally as prominent as the term “active ingredients.”

*b.* If the name but not the percentage of each active ingredient is given, the names of the active and inert ingredients shall respectively be shown in the descending order of the percentage of each present in each classification and the name of each ingredient shall be given equal prominence.

**45.13(5) *Active ingredient content.*** As long as a pesticide is subject to the Act the percentages of active ingredients declared in the ingredient statement shall be the percentages of such ingredients in the pesticide.

**21—45.14(206) *Net contents.*** Each package of pesticide shall show the net weight or measure of content, either stenciled or printed on the package or container, or on a tag attached thereto. Indefinite statements of content such as “. . . oz. when packed” shall not be used. Statements of liquid measure, or of specific gravity or density of liquid preparations, or expression of composition in terms of pounds per gallon shall be made on the basis of 68°F. (20°C.) except when other basis has been established through trade custom.

**21—45.15(206) *Coloration of highly toxic materials.*** The white powder pesticides hereinafter named shall be colored or discolored in accordance with this rule. Provided, however, that any such white powder pesticide which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dyer as a moth-proofing agent, which would not be suitable for such use if colored and which will not come into the hands of the public except when incorporated into a fabric, shall not be required to be so colored or discolored in accordance with this rule. The hues, values and chromas specified are those contained in the Munsell Book of Color, Munsell Color Company, 10 East Franklin Street, Baltimore, Maryland.

**45.15(1)** The coloring agent must produce a uniformly colored product not subject to change in color beyond the minimum requirements during ordinary conditions of marketing and storage and must not cause the product to become less effective or cause damage when used as directed or in accordance with commonly recognized safe practice.

**45.15(2)** Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than eight or a chroma of not less than four or shall be discolored to a neutral lightness value not over seven.

**45.15(3)** Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than eight and a chroma of not less than four or shall be discolored to a neutral lightness value not over seven.

**45.15(4)** Other white powder pesticides may be required to be colored or discolored after investigation and public hearing.

**45.15(5)** The secretary may permit other hues to be used for any particular purpose if the prescribed hues are not feasible for such purposes, and if such action will not be injurious to the public.

**45.15(6)** The coloration requirements above shall apply to the materials named therein and not to nonhighly toxic mixtures consisting of other ingredients with highly toxic materials.

This rule is intended to implement Iowa Code section 206.11.

**21—45.16(206) Illegal acts.** All pesticides, whether registered or not, sold or offered for sale shall comply with the provisions of section 206.11(1) of the pesticide Act.

The secretary shall examine pesticides from time to time, and if it appears at any time that a pesticide fails to comply with any provision of the pesticide Act, notice may be given to the manufacturer or seller thereof and an opportunity to present views either orally or in writing about the alleged violation. If it then appears that the provisions of this Act have been violated, a statement of the facts may be sent to the county attorney in the county in which the violation occurred for the purpose of instituting criminal proceedings.

**21—45.17(206) Guarantee of pesticide.**

**45.17(1)** Any manufacturer or distributor or other person residing in the United States may furnish to any person to whom it sells a pesticide a guarantee that the pesticide was lawfully registered at the time of sale and delivery to such person, and that the pesticide complies with all the requirements of the Act and rules herein.

**45.17(2)** No reference to or suggestion that a guarantee of registration has been given shall be made in the labeling of any pesticide.

**21—45.18(206) Shipments for experimental use.** A pesticide shipped or delivered for experimental use shall not be considered a violation of section 206.11(1) of the pesticide Act.

**45.18(1)** When the pesticide is shipped or delivered for experimental use under the supervision of any federal or state agency authorized by law to conduct research.

**45.18(2)** By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked “For Experimental Use Only—Not To Be Sold”.

**45.18(3)** Or provided that a written permit has been obtained from the secretary either specific or general subject to such restrictions or conditions as may be set forth in the permit. The application for such a permit shall contain such information as may be required by the secretary; and in addition the proposed labeling thereon shall bear (1) the prominent statement “For Experimental Use Only” on the container label; (2) a caution or warning statement which may be necessary and if complied with adequate for the protection of those who may handle or be exposed to the experimental products; (3) the name and address of the applicant; (4) the name or designation of the formulation; (5) if the pesticide is to be sold, the statement of the names and percentages of the principal active ingredients in the product.

**45.18(4)** A pesticide intended for experimental use shall not be offered for general sale by a retailer or others, or advertised for general sale.

**21—45.19(206) Enforcement.**

**45.19(1)** Collection of samples. Samples of pesticides and devices shall be collected by an official investigator or by any employee of the state who has been duly designated by the secretary, by entry into any place during reasonable business hours.

**45.19(2)** Nonchemical pest control devices. Manufacturers or their representatives intending to sell or lease a nonchemical pest control device in the state shall submit efficacy and safety data to the department of agriculture and land stewardship prior to the sale or lease. This requirement may include the furnishing of specimen devices or samples. The department or the department’s designee shall examine or test the device as may be necessary to ascertain the reliability, efficacy and safety data of the device and actual or potential adverse effects of the device upon human health and safety. The costs of conducting the examination or test shall be borne by the manufacturer or the manufacturer’s representative.

**45.19(3)** Notice of apparent violation. If from an examination or analysis a pesticide appears to be in noncompliance with the pesticide Act, a written stop sale, use or removal notice will be initiated by

the secretary or the secretary's duly appointed authority. The notice shall state the manner in which the product fails to meet the requirements of the Act and the regulations and that the recipient shall be given an opportunity to offer such written explanation as the recipient may desire.

**45.19(4)** Any person may obtain an opportunity to present relevant arguments or comments by submitting a written request within 20 days from the date of mailing of the notice.

**45.19(5)** The secretary may suspend an applicator's license, permit or certification pending inquiry and, after opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under the Act, upon receipt of information from the environmental protection agency that the applicator has been convicted under the criminal provision of Section 14(b) of FIFRA or has been assessed a civil penalty under Section 14(a) of FIFRA.

[ARC 8704B, IAB 4/21/10, effective 5/26/10]

**21—45.20(206) Hazardous rodenticides.** Before the rodenticides sodium fluoracetate (1080), thallium sulfate, and phosphorous pastes are to be used by any federal, state, county, municipal, or public officers, or their deputies, employees, or agents, in their official duties in pest control; or licensed pest control operators for use in their service work; the applicator shall notify the department of agriculture and land stewardship prior to use, of: (1) The location or site where the rodenticide is to be used; (2) Date the application is to be made; and (3) The amount of hazardous rodenticide to be used. At the time of notification the licensee must give assurance that the certified applicator understands the hazards of the product, the standard operating procedures as provided by the manufacturer, and, assure the department that the certified applicator will comply with all label precautions. Failure to comply with this rule may result in the suspension or revocation of the applicator's license.

**21—45.21(206) Highly toxic.** A pesticide which falls within any of the following categories when tested on laboratory animals (mice, rats and rabbits) is highly toxic to humans within the meaning of these principles:

**45.21(1) Oral toxicity.** Those which produce death within 14 days in half or more than half the animals of any species at a dosage of 50 milligrams at a single dose, or less, per kilogram of body weight when administered orally to ten or more such animals of each species.

**45.21(2) Toxicity on inhalation.** Those which produce death within 14 days in half or more than half of the animals of any species at a dosage of 200 parts or less by volume of the gas or vapor per million parts by volume of air when administered by continuous inhalation for one hour or less to ten or more animals of each species, provided such concentration is likely to be encountered by humans when the pesticide is used in any reasonably foreseeable manner.

**45.21(3) Toxicity by skin absorption.** Those which produce death within 14 days in half or more than half of the animals (rabbits only) tested at a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less to ten or more animals.

**45.21(4) Designation as highly toxic.** Provided, however, that the secretary may exempt any pesticide which meets the above standard but which is not in fact highly toxic to humans, from these principles with respect to pesticides highly toxic to humans, and may after a hearing designate as highly toxic to humans any pesticide which experience has shown to be so in fact.

**45.21(5) Human data.** If the secretary finds, after opportunity for hearing that available data on human experience with any pesticide indicates a toxicity greater than that indicated from the above described tests on animals, the human data shall take precedence and if that protection of the public health so requires, the secretary shall declare such pesticide to be highly toxic to humans for the purposes of this Act and the regulations thereunder.

**21—45.22(206) License and certification standards for pesticide applicators.** No person shall engage in the business of applying pesticides to the land or property of another at any time without being licensed and certified by the secretary. No person shall apply any restricted use pesticide without first complying

with certification standards or unless the application is made under the direct supervision of a certified applicator as specified in this chapter.

**45.22(1) License for commercial, noncommercial and public applicators.** Before a license is issued, each commercial, noncommercial and public applicator shall demonstrate competence by qualifying for a commercial, noncommercial and public applicator's license by successfully completing the appropriate certification examinations administered by the secretary to demonstrate knowledge regarding the potential for pesticides contaminating groundwater aquifers and proper pesticide handling practices that will aid in preventing the contamination of groundwater aquifers, calibration, integrated pest management, recognition of common pests to be controlled, timing and methods of application, interpretation of label and labeling information, safety precautions and preharvest or reentry restrictions, specific procedures to be used in disposing of pesticides and containers, and related legal responsibility under the classifications for which such applicant is to be licensed.

*a.* Examination scores for individuals not completing certification requirements or paying the required fees shall be maintained on file as valid test scores for a maximum of one year following the date each examination was successfully completed.

*b.* Certification categories which are added to an individual's current certification shall expire on the same date the individual's current certification card expires.

**45.22(2) Certification of commercial, noncommercial and public applicators.**

*a.* Initial certification. To be initially certified as a commercial, noncommercial or public applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for commercial applicators by passing an examination administered by the department. The examination may cover subjects relating to the safe handling, application and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon groundwater. The examination may also cover subjects related to the minimum standards of competency for commercial applicators outlined in 40 CFR 171.4(b) and (c) as revised July 1, 1992.

*b.* A person who employs noncommercial applicators shall apply for a noncommercial applicator's license; and all noncommercial applicators shall be certified by successfully completing the appropriate examinations for the type of restricted use pesticide applications being made and shall be required to pay the certification fee of \$75 for a three-year certification for each employee certified. Noncommercial applicators shall be subject to the \$25 annual license fee. The provisions of Iowa Code section 206.13 relating to licenses and requirements for their insurance shall not apply to a noncommercial applicator, providing that the noncommercial applicator:

(1) Is a full-time employee of a privately held entity.

(2) Shall not publicly claim to be a commercial pesticide applicator nor engage in the business of applying pesticides other than as an employee of a company on company property.

*c.* Separate examinations shall be taken and passed for each classification or category in which the commercial, noncommercial or public applicator intends to become certified, including the following: #1a—Agriculture Weed Control, #1b—Agriculture Insect Control, #1c—Agriculture Crop Disease Control, #1d—Fruit and Vegetable Pest Control, #1e—Animal Pest Control, #2—Forest Pest Control, #3ot—Ornamental and Turf Pest Control, #3t—Turf Pest Control, #3o—Ornamental Pest Control, #3g—Greenhouse Pest Control, #4—Seed Treatment, #5—Aquatic Pest Control, #6—Right-of-Way Pest Control, #7a—General and Household Pest Control, #7b—Termite Control, #7c—Fumigation, #7d—Community Insect Control, #7e—Wood Preservatives, #8—Public Health Pest Control, #9—Regulatory Pest Control, #10—Demonstration and Research Pest Control, and #11—Aerial Application.

*d.* Wood-destroying insect inspection. Persons conducting wood-destroying insect inspections for the purpose of issuing a wood-destroying insect report for real estate transactions, real estate refinance transactions, or for treatment for control or prevention of wood-destroying insect infestations shall have in effect a valid Iowa commercial pesticide applicator license and certification in category 7b—Termite Control.

**45.22(3) Certification of private applicators.**

a. Initial certification. To be initially certified as a private applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for private applicators by passing an examination administered by the department and submitting a \$15 certification fee. The examination shall cover subjects relating to the safe handling, application, and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon groundwater. The examination shall also cover subjects related to the minimum standards of competency for private applicators outlined in 40 CFR 171.5 as revised July 1, 1992. A private applicator shall pay a certification fee of \$15 for a period not to exceed three years.

b. Renewal of private applicator certification. A private applicator's certification shall be renewed upon evidence that the applicator has paid the required certification fee and has successfully completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A private applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A private applicator failing to complete the required two hours of approved instruction for each year during the renewal period following initial certification or recertification shall be required to pass an examination prior to recertification.

c. A private applicator who purchases or applies a grain fumigant which is classified as a restricted use pesticide shall pass an examination prescribed by the department for initial certification in the private fumigation category in addition to the examination required for initial private certification. Upon successfully completing the required private fumigation examination the private applicator's certification credentials shall be so designated. The fumigation category designation shall remain valid until the private applicator's certification expires. To renew the fumigation category certification a private applicator may elect to complete an instructional course consisting of either an examination or instructional course as prescribed by the department in addition to the examination or instruction required for private certification.

**45.22(4) *Renewal of license classification and certification.***

a. Each commercial, noncommercial and public applicator's license classification shall expire annually on December 31 and shall be renewed upon payment of the required license fee provided that all of the applicant's personnel who apply pesticides are certified commercial, noncommercial or public applicators and are certified in the appropriate classifications covering their pesticide application activities.

b. Each commercial, noncommercial and public applicator's certification shall expire December 31 of the third year of the three-year certification and shall be renewed by the department upon receipt of evidence that the applicator has paid the required certification fee and has completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A commercial, noncommercial or public applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A commercial, noncommercial or public applicator seeking recertification by attending continuing instructional courses shall attend courses approved for each certification category in which the person is seeking recertification. A two-hour continuing instructional course may be approved for more than one certification category. A commercial, noncommercial or public applicator failing to complete the required two hours of approved instruction for each year during the renewal period shall be required to pass an examination prior to recertification.

c. Any person who attempts to misrepresent anyone or attempts to use unauthorized assistance in passing any examination shall be denied the privilege of taking any examination for the period of one year.

d. The secretary may revise certification periods for pesticide applicators with certification fees adjusted to reflect an equivalent certification fee based on fees currently established in order to provide a more uniform distribution of pesticide applicator certification renewal dates.

**45.22(5) *Certification renewal periods for commercial, noncommercial, public and private applicators.***

*a.* Renewal periods for commercial, noncommercial, and public applicators. The renewal period is the time within which the commercial, noncommercial, public and private applicators have to renew their certification by either completing the required certification examination or instructional courses and pay the required certification fee. Except as provided in paragraph 45.22(5)“c,” the renewal period for commercial, noncommercial and public applicators shall begin on the date a person has completed the required certification examination or instructional courses and paid the required certification fee. The renewal period shall end on December 31 of the third calendar year of the certification cycle.

*b.* The renewal period for private applicators. The renewal period for a private applicator shall begin on the date a person has completed the required certification examination or instructional courses and paid the required certification fee. The renewal period shall end on April 15 of the calendar year following the certification expiration date.

*c.* The renewal period for a person completing initial certification requirements on October 1 or any time thereafter during a calendar year shall begin on January 1 of the following calendar year.

*d.* Except as provided in paragraphs “a,” “b,” and “c” of this subrule, continuing instruction credits from a previous year in a certification renewal period shall not be accepted nor shall credits accumulated be accepted for use in a future year in a certification renewal period.

**45.22(6) Report of licensee.**

*a.* A commercial, noncommercial or public applicator applying for recertification without retesting shall file a report on a form provided by the department certifying that the required continuing instructional courses have been completed.

*b.* The licensee shall maintain a file of the certificates of completion required under subrule 45.52(4) for each employee recertifying by attending continuing instruction courses. The file shall contain the certificates of completion for the period covering the previous certification period and current certification period for each employee receiving continuing instruction courses.

*c.* An employee who transfers to a new employer shall, upon request, be provided copies of the certificates of completion on file with the previous employer for filing with a new employer.

*d.* Files containing certificates of completion shall be open for inspection upon request by the department.

**45.22(7) Standards for supervision of noncertified applicators by certified private and commercial applicators.** Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by noncertified applicators.

The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, “direct supervision” shall include verifiable instruction to the competent person, as follows: (a) detailed guidance for applying the pesticide properly; and (b) provisions for contacting the certified applicator in the event the certified applicator is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a noncertified applicator.

**45.22(8) License application—contents.** Each license application submitted pursuant to Iowa Code section 206.6 shall include a complete list of all employees who may apply pesticides. Any changes regarding the status of the employees named on the application or new employees shall be reported immediately to the pesticide section of the Iowa department of agriculture and land stewardship.

**45.22(9) Exemption from certification.** An employee of a public agency who applies pesticides classified for general use and which are in ready-to-use formulations shall be exempt from the certification requirements of Iowa Code chapter 206 provided that the application of pesticides is an incidental part of the person’s duties.

**45.22(10) Pesticide use on private golf courses.** Employees of private golf courses who apply pesticides shall comply with the same requirements for employees applying pesticides for public golf courses including, but not limited to, certification and notification requirements.

**45.22(11) Oral certification examination.** A private applicator may request certification by oral examination in lieu of a written examination. A written request shall be submitted to the secretary or an

authorized representative describing in detail the reasons an oral examination is requested in lieu of the written examination. Oral examinations will be administered by appointment only.

The oral examination shall cover the same certification standards as the written examination, and a minimum passing grade shall be 70 percent of the questions answered correctly.

As a prerequisite for an oral examination, the secretary may require the applicant to attend a private applicator training program sponsored by the Iowa State University cooperative extension service.

**45.22(12) *Temporary exemption from certification.*** A commercial, noncommercial, public or private applicator need not be certified to apply pesticides for a period of 21 days from the date of initial employment if the commercial, noncommercial, public or private applicator is under the direct supervision of a certified applicator. Except for subrules 45.22(13) to 45.22(15), “under the direct supervision of” means the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present by being in sight or hearing distance of the supervised person.

**45.22(13) *Temporary exemption for certification for agricultural applicators.*** A commercial applicator who applies pesticides to agricultural land may elect to be exempt from the certification requirements for a commercial applicator for a period of 21 days from the date of initial employment if the applicator meets the requirements of a private applicator. A commercial applicator who applies pesticides to agricultural land and elects to take advantage of the exemption as provided for in Iowa Code section 206.5 shall work under the instructions and control of a certified commercial applicator. The supervising applicator is not required to be physically present but shall be immediately available if and when necessary.

**45.22(14) *Employees of food processing and distribution establishments.*** An employee of a food processing and distribution establishment is exempt from the certification requirements of Iowa Code section 206.5 provided the following conditions are met:

- a. The employer has at least one person holding a supervisory position that is a certified applicator.
- b. The employer provides a program approved by the department for training, testing and certification of personnel who apply, as an incidental part of their duties, any restricted use pesticide on property owned or rented by the employer.
- c. The exempt employee applies pesticides under the direct supervision of a certified applicator. “Under direct supervision” shall not require the physical presence of the supervising certified applicator, if the supervising applicator is immediately available if and when needed.

**45.22(15) *Certified handler.***

a. **Certified handler.** Each person employed by a licensed commercial applicator, noncommercial applicator, public applicator, or pesticide dealer who handles pesticides in other than unopened containers for the purposes of preparing, mixing or loading pesticides for application by another person, repackaging bulk pesticides or disposing of pesticide-related wastes from these activities shall become certified by taking and passing an examination as prescribed by the secretary.

b. A certified handler shall demonstrate a fundamental knowledge of the potential for pesticides contaminating groundwater aquifers or surface waters and proper handling practices that will aid in preventing the contamination of groundwater aquifers or surface waters, adverse effects on the environment and any other personal or public hazards associated with the use of pesticides by passing a fundamental examination administered by the secretary covering interpretation of label and labeling information, mixing and application of pesticides in accordance with label instructions including proper concentration of pesticides to be used and local environmental situations that shall be considered during handling of pesticides to avoid contamination, specific procedures to be used in disposing of pesticides and containers, recognition of poisoning symptoms, procedures to follow in case of a pesticide accident, safe handling of pesticides and the effects on groundwater and surface water, the proper use of personal safety equipment and related legal responsibilities.

c. A certified handler’s certification shall expire December 31 of the third year of the three-year certification and shall be renewed by the secretary upon receipt of evidence that the applicator has passed a written examination similar and equal to that required to obtain initial certification and has paid the

required certification fee. A 21-day grace period from the day of initial employment shall be allowed to meet the certification requirements.

*d.* A certified handler employed by a licensed applicator shall work under the direct supervision of a certified commercial, noncommercial or public applicator employed by the same firm or agency. “Under direct supervision” shall not require the physical presence of the supervising certified applicator in reference to agricultural crop pesticide applications, if the supervisor is available if and when needed.

*e.* A certified handler shall not act in the capacity of a supervisor of other certified handlers or certified applicators.

**45.22(16)** *Transition to recertification by instruction.* Recertification may be accomplished by successful completion of the required written examination every third year or completion of an approved two-hour instructional course each year of the renewal period.

*a. Private applicator recertification.* A private applicator may apply for recertification by providing evidence of completion of an approved two-hour instructional course for each year during the preceding three-year renewal period. A private applicator failing to meet the required annual two-hour instruction requirement for recertification during the three-year certification renewal period shall apply for recertification by providing evidence of satisfactorily completing an examination. Applications for recertification shall be submitted with a \$15 certification fee.

*b. Commercial, noncommercial, and public applicator recertification.* A commercial, noncommercial or public applicator may apply for recertification by providing evidence of completion of an approved two-hour instructional course in each of the three calendar years preceding the expiration date. Applications for recertification shall be submitted with the appropriate certification fee.

**45.22(17)** *Requirements for commercial aerial applicator and aerial applicator consultant.*

*a. Commercial aerial applicator license.* The licensed aerial applicator applying pesticides to agricultural land shall operate in Iowa in consultation with an aerial applicator consultant. The application form for a commercial aerial applicator license shall be provided by the pesticide bureau. The completed application form, together with supporting documentation, will verify compliance with Iowa Code chapter 206 and the rules of this chapter. An aerial applicator license may be issued when the applicant has provided the name and license number of the aerial applicator consultant and other required information on the application form, passed the required certification examinations, and paid the commercial applicator license and certification fees in compliance with Iowa Code sections 206.5 and 206.6.

*b. Aerial applicator consultant duties.* An aerial applicator consultant shall:

(1) Complete requirements for category #11 aerial applicator certification and either a commercial pesticide applicator license or pesticide dealer license.

(2) Register with the pesticide bureau on forms provided by the pesticide bureau.

(3) Meet with each aerial applicator under the consultant’s consultation prior to application of pesticides and verify compliance with Iowa’s pesticide rules, the requirements of the Federal Aviation Administration, and the requirements of the Iowa department of transportation using a checklist provided by the pesticide bureau. A copy of the completed checklist shall be maintained on file for three years with the aerial applicator consultant.

(4) Provide detailed aerial maps for the intended application location which clearly depict field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(5) Maintain daily communication with the aerial applicator when pesticide applications are performed with a minimum of one meeting in person each day to emphasize safe pesticide application and handling procedures.

(6) Maintain daily oversight of pesticide handlers who supply or mix pesticides for the aerial applicator under the consultant’s consultation to ensure required personal protection equipment is utilized.

(7) Provide information to the aerial applicator regarding sensitive areas listed on the department’s sensitive crop registry and arrange for proper protection of registered apiaries. The aerial applicator consultant shall identify nearby sensitive areas including the location of endangered species as identified

by the U.S. Environmental Protection Agency (EPA) and listed on the pesticide bureau's website, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application which may be occupied by people, including farmworkers.

(8) Provide instructions for proper emergency response procedures for the aerial applicator and pesticide handlers in the case of a pesticide spill or accident. Require that while in the air all pilots have an electronic communication device capable of communicating with a consultant.

(9) Provide information immediately upon request to regulatory officials regarding the identification of a pesticide applied to an area of concern and the name and license number of the applicator working under the consultant's consultation.

(10) Notify the aerial applicator in person and in writing upon termination of consultation services. The aerial applicator shall notify the pesticide bureau when the aerial applicator begins working with a new aerial applicator consultant.

*c. Procedures for aerial application.* The aerial applicator consultant shall provide the licensed aerial applicator the following:

(1) Name and telephone number where the consultant may be reached during hours of operation.

(2) Name and address or location of the property where the pesticide will be applied including detailed maps of fields which clearly depict the field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(3) Name of the pesticide(s) to be applied and copies of each label along with instructions necessary to comply with Iowa's pesticide rules. The aerial applicator consultant shall verify that the aerial applicator has read and understands the label instructions.

(4) Maps of the intended location for each pesticide application reviewed and approved by the aerial applicator consultant. The aerial applicator consultant shall provide information to the aerial applicator regarding sensitive areas listed on the department's sensitive crop registry and shall arrange for proper safety precautions to protect registered apiaries.

(5) The identification of nearby sensitive areas including the location of endangered species as identified by EPA and listed on the pesticide bureau's website, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application which may be occupied by people, including farmworkers.

*d. Responsibility.* The aerial applicator is responsible for applying pesticides in compliance with label directions and Iowa's pesticide rules. The aerial applicator consultant supplying a pesticide for application by the aerial applicator is responsible for handling and mixing the pesticides according to label directions and Iowa's pesticide rules.

*e. Aerial applicator certification and continuing instruction.* An aerial applicator and aerial applicator consultant shall pass an examination for initial certification. An aerial applicator from a state with an approved reciprocal certification agreement will be eligible for reciprocal certification. Each certified aerial applicator and aerial applicator consultant shall participate in a program of continuing instruction which shall consist of either an examination or educational program approved by the department. The continuing instruction program shall include information regarding the safe application and handling of pesticides and responsible operation of aircraft spray equipment.

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.7, and 206.31 and Iowa Code section 206.6 as amended by 2008 Iowa Acts, House File 2551.

[ARC 7556B, IAB 2/11/09, effective 2/1/09; ARC 0392C, IAB 10/17/12, effective 11/21/12]

**21—45.23(206) Sale or possession of thallium.** No person shall sell or possess any thallium or thallium compound except federal, state, county, municipal officers or their deputies for use in their official duties in pest control; research or chemical laboratories in their respective fields; regularly licensed pest control operators for use in their own service work; properly registered ant, mole and rodent poisons containing thallium expressed as metallic not more than one percent; wholesalers or jobbers of pesticides for sale to the aforementioned persons; or for export.

**21—45.24(206) Warning, caution and antidote statements.** In order to promote uniformity between the requirements of the Iowa pesticide Act and requirements of the several states and the federal government, Iowa Code section 206.21 of the Iowa pesticide Act provides for the adoption of rules and regulations in conformity with those prescribed by the United States department of agriculture. Warning, caution and antidote statements required to appear on labels of pesticides under the pesticide Act shall conform to the warning, caution and antidote statements required under interpretation 18 and revisions thereof of the regulations for the enforcement of the federal Insecticide, Fungicide, and Rodenticide Act, which interpretation 18 and revisions thereof are hereby incorporated into this rule by this reference and made a part hereof.

**21—45.25(206) Declaration of pests.** The secretary declares the following to be pests:

1. Any insect, rodent, nematode, fungus, weed, or
2. Any form of plant and animal life, virus, or other microorganism, except viruses or other microorganisms on or in living man or other living animals, which exists under circumstances that make it unduly injurious to plants, man, domestic animals, other useful vertebrates, useful invertebrates, or other articles or substances.

**21—45.26(206) Record-keeping requirements.** Commercial applicators and retail dealers shall maintain records with respect to application of pesticides for a period of three years from the date of application of the pesticides to which the records refer; and shall furnish copies to the secretary upon request in writing.

**45.26(1) Retail dealers—sales to certified applicators.** Each restricted use pesticide retail dealer shall maintain at each individual dealership records of each transaction where a restricted use pesticide is made available for use by that dealership to a certified applicator. Record of each transaction shall include the following information:

- a. Name and address of the residence or principal place of business of each person to whom the pesticide was made available for use.
- b. The certification number on the document evidencing that person's certification, the state (or other governmental unit) that issued the document, the expiration date of the certification and the categories in which the applicator is certified, if appropriate.
- c. The product name, EPA registration number granted under Section 24(c) of the FIFRA (if any) on the label of the pesticide.
- d. The quantity of the pesticide made available for use in the transaction.
- e. The date of the transaction.

**45.26(2) Sales to uncertified persons.** No dealership may make a restricted use pesticide available to an uncertified person unless the dealer or dealership can document that the restricted use pesticide will be used by a certified applicator and the dealer or dealership maintains the records required in this subrule. Each restricted use pesticide retail dealer shall maintain records at each individual dealership of each transaction where a restricted use pesticide was made available to an uncertified person for use by a certified applicator. Records of each transaction shall be maintained for a period of 36 months after the date of the transaction and shall include the following information:

- a. The name and address of the residence or principal place of business of the uncertified person to whom the restricted use pesticide is made available for use by a certified applicator.
- b. The name and address of the residence or principal place of business of the certified applicator who will use the restricted use pesticide.
- c. The certified applicator's certification number, the state (or other governmental unit) that issued the certification document, the expiration date of the certification and the categories in which the applicator is certified, if appropriate.
- d. The product name, EPA registration number and the state special local need registration number granted under Section 24(c) of the FIFRA (if any) on the label of the pesticide.
- e. The quantity of the pesticide made available for use in the transaction.
- f. The date of the transaction.

**45.26(3) Commercial applicators.** Every commercial applicator shall make, or cause to have made, office records of all application activities on each pesticide applied. Records for application activities involving more than one licensed commercial applicator or billed through a licensed pesticide dealer shall be maintained by each licensee. Each set of records shall include the following:

- a. The name and license number of the licensee.
- b. The name and address of the landowner or customer.
- c. Address of the place of application of restricted use pesticide.
- d. Date of pesticide application.
- e. Trade name of pesticide product used.
- f. The quantity of pesticide product used and the concentration or rate of application.
- g. If applicable, the temperature and the direction and estimated velocity of wind at time of application to any outdoor area.
- h. Use of "restricted use" pesticide.
- i. Time pesticide application begins and ends.

This rule is intended to implement Iowa Code sections 206.11(3) and 206.15.  
[ARC 7572B, IAB 2/11/09, effective 1/22/09]

**21—45.27(206) Use of high volatile esters.** The use of high volatile esters formulations of 2,4-D and 2,4,5-T, the alcohol fraction of which contains five or fewer carbons, shall be prohibited in the counties of Harrison, Mills, Lee, Muscatine and that part of Pottawattamie county west of Range 41 West of the 5th P.M. to become effective upon filing.

**21—45.28(206) Emergency single purchase/single use of restricted pesticide.** The department shall issue a temporary certificate to private applicators for a single purchase/single use of restricted pesticides in situations declared to be an emergency by the department, upon receipt of the following completed and signed affidavit.

21—45.28(206) EMERGENCY USE OF A RESTRICTED USE  
PESTICIDE BY A PRIVATE APPLICATOR

Emergency Single Purchase/Single Use of Restricted Pesticide—Affidavit.

The Label which I have read, indicates:

Brand name of pesticide: \_\_\_\_\_

Federal Registration Number: \_\_\_\_\_

Name of Active Ingredient(s): \_\_\_\_\_

Percentage of Active Ingredient(s): \_\_\_\_\_

If the pesticide product is to be mixed with a carrier, show the amount of pesticide product per gallon of tank mix:

\_\_\_\_\_

Application rate per acre: \_\_\_\_\_

Name pest to be controlled: \_\_\_\_\_

At what stage of development is the pest most easily controlled:

\_\_\_\_\_

State degree of hazard (signal word): \_\_\_\_\_

Describe safety equipment required: \_\_\_\_\_

What is the recommended antidote for this product: \_\_\_\_\_

List environmental precaution shown on label: \_\_\_\_\_

Length of time until re-entry, if given: \_\_\_\_\_

Preharvest interval days required: \_\_\_\_\_

Describe method of container disposal: \_\_\_\_\_

I wish to make application of this pesticide on (date) \_\_\_\_\_  
and I hereby swear under penalty of perjury that I understand the above label information and warnings.

\_\_\_\_\_

(name of private applicator)

This rule is intended to implement Iowa Code sections 206.4 and 206.5.

**21—45.29(206) Application of general use pesticide by nonlicensed commercial applicator.** A person may apply a general use pesticide without satisfying the licensing requirements of Iowa Code chapter 206, upon presenting evidence to the secretary of applying the pesticide under the direct supervision of a licensed commercial applicator or a public applicator.

**21—45.30(206) Restricted use pesticides classified.** Pesticide products containing active ingredients classified as restricted use are limited to use by or under the direct supervision of a certified applicator. The pesticide use classification as promulgated by the United States Environmental Protection Agency in 40 CFR, Section 152.160-175, revised as of May 4, 1988, is hereby adopted in its entirety by this reference.

This rule is intended to implement Iowa Code section 206.20.  
[ARC 1508C, IAB 6/25/14, effective 7/30/14]

**21—45.31(206) Application of pesticides toxic to bees.**

**45.31(1)** Owners of apiaries, in order to protect their bees from pesticide applications, shall register the location of their apiaries with the state apiarist. Registration shall be on forms provided by the department. The registration expires December 31 each year and may be renewed the following year.

**45.31(2)** Between 8 a.m. and 6 p.m., a commercial applicator shall not apply to blooming crops pesticides labeled as toxic to bees when the commercial applicator is located within one mile of a registered apiary. A commercial applicator shall be responsible for maintaining the one-mile distance from apiaries that are registered and listed on the sensitive crop registry on the first day of each month.

This rule is intended to implement Iowa Code sections 206.6(5)“a”(3) and 206.19(2).  
[ARC 7572B, IAB 2/11/09, effective 1/22/09]

**21—45.32(206) Use of DDT and DDD.** Pesticides containing dichloro diphenyl trichloroethane (DDT) or dichloro diphenyl dichloroethane (DDD) shall not be distributed, sold or used except for control of pests of public health importance and pests subject to state or federal quarantines where applications of pesticides are made under the direct supervision of public health officials or state or federal quarantine officials.

**21—45.33(206) Use of inorganic arsenic.**

**45.33(1) Home use.** Formulations of inorganic arsenic containing more than one percent arsenic (expressed as elemental arsenic) shall not be distributed or sold for use as a pesticide in or around the home for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests.

**45.33(2) Other uses.** Formulations of inorganic arsenic shall not be distributed or sold for use as a pesticide for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests, unless there are no acceptable alternative methods of control available, as determined by the department. Where no acceptable alternative methods of control are available, and an inorganic arsenic formulation is approved for use by the department, such approval shall include specific conditions designed to protect the applicator, as well as the public health and welfare; and a permit must be secured by the user from the department prior to the application or use of the product.

**21—45.34(206) Use of heptachlor.** Pesticides containing heptachlor shall not be distributed, sold or used for the purposes of preventing, destroying or repelling mosquitoes or flies.

**21—45.35(206) Use of lindane.** Formulations of pesticides containing lindane or crystalline lindane shall not be distributed, sold or used when the lindane is prepared, identified, packaged or advertised to be vaporized through the use of thermal vaporizing devices.

**21—45.36(206) Reports of livestock poisoning.** Any person practicing veterinary medicine under the provisions of Iowa Code chapter 169 encountering a case of poisoning, or suspected poisoning, of domestic livestock through injury from contact with, exposure to, or ingestion of any biological or chemical agent or compound, shall immediately report by telephone or telegraph such poisoning to the head of the veterinary diagnostic laboratory of Iowa state university of science and technology who shall immediately notify the state veterinarian of any such reports. Reports made pursuant to this rule shall be confirmed in writing as provided in 45.36(2).

**45.36(1) Verbal report.** The verbal report of a case of such poisoning shall provide information on as many of the items listed in 45.36(2) as available data allows.

**45.36(2) Written report.** The written report of a case of such poisoning shall be submitted within 48 hours, with one copy to the department and one copy to the veterinary diagnostic laboratory, and shall contain the following information on forms provided by the veterinary diagnostic laboratory or the department:

- a. Location of incident.
- b. Time and date of incident.
- c. Number and type of livestock affected.
- d. Poison agent, known or suspected.
- e. Location of source of poisoning.
- f. Type and degree of poisoning.
- g. Name, mailing address and telephone number of livestock owner.
- h. Whether release of poisoning agent is continuing.
- i. Whether poisoning agent is on land or in water.
- j. Any other information that may assist in evaluation of the incident.
- k. Name and address of reporting veterinarian.

**45.36(3) Subsequent findings.** All subsequent findings and diagnostic results shall be submitted as soon as they become available.

**21—45.37(206) Approval of use of inorganic arsenic formulation.** There are two stages in obtaining approval for the use of an inorganic arsenic formulation pursuant to rule 21—45.33(206). First, the advisory committee must approve the use of the formulation in the state for a particular pest. Then, each individual desiring to use the approved formulation must secure a permit from the department. The required procedure is set out in this rule.

**45.37(1) Who may apply.** Any person may apply for approval for the use of an inorganic arsenic formulation to control a specific pest or pests pursuant to rule 21—45.33(206).

**45.37(2) Form of application.** All such applications shall be made in writing, signed by the applicant, and shall specify:

- a. Common name or scientific name of pest or pests to be controlled with the formulation,
- b. Crops which the pest or pests endanger,
- c. Chemical name of inorganic arsenic formulation for which approval is requested,
- d. Why there are no acceptable alternative methods of controlling the pests available,
- e. Rate of application needed for control,
- f. Number of applications needed annually for control,
- g. Name, address and telephone number of the applicant.

**45.37(3) Hearings, when held.**

a. Applications for approval shall be considered at public hearings by the advisory committee.  
b. The committee shall grant, modify, or deny the request for approval within 72 hours of the conclusion of the hearing.

**45.37(4) Conditions of approval.** Approvals shall be valid until revoked by the department.

- a. In its approval, the committee shall specify:
- (1) The inorganic arsenic formulation to be used.
  - (2) The pests for which it may be used.
  - (3) The crops on which it may be used.

- (4) The maximum number of applications to be made annually, and
- (5) Information to be submitted to the department following use of the formulation.

b. The committee shall also specify the conditions designed to protect the public health and welfare as conditions for the issuance of a permit by the department. Such conditions shall include, but not be limited to:

- (1) That the permit applicant has sustained or will likely sustain damage from the pest for which control is approved,
- (2) Topographical requirements to ensure minimal runoff into waters of the state,
- (3) Minimum separation distance of area to be treated from waters of the state,
- (4) Minimum distance of area to be treated from property not under control of applicant,
- (5) Grass or other plant cover to prevent erosion on slopes to which the formulation is applied.

**45.37(5) Permits.** After an application for approval is granted, any person may use the formulation approved, provided that a permit is obtained from the department. The department and the committee shall review at least annually its approvals of uses of inorganic arsenic formulations and shall revoke an approval whenever it finds an acceptable alternative method of control is available.

Rules 21—45.33(206) and 21—45.37(206) are intended to implement Iowa Code sections 206.19, 206.20 and 206.23.

**21—45.38 to 45.44** Reserved.

**21—45.45(206) Ethylene dibromide (EDB) residue levels in food.** The following is the maximum allowable residue levels of Ethylene dibromide (EDB) for each of the three primary tiers of grain products:

**45.45(1)** For raw grain, the level should not exceed 900 parts per billion.

**45.45(2)** Intermediate level products—flour, various mixes for preparing baked goods, soft cereals and other products that would normally require cooking or baking before eating—the level should not exceed 150 parts per billion.

**45.45(3)** For ready-to-eat products—cold cereals, snack foods, bread and all baked goods—the level should not exceed 30 parts per billion.

**45.45(4)** For baby food, zero (0) tolerance—no acceptable level of EDB is permissible.

**45.45(5)** For fruit, the level should not exceed 250 parts per billion tolerance for the total fruit and should not exceed 30 parts per billion in the edible portion of the fruit.

This rule is intended to implement Iowa Code sections 189.17, 190.2 and 206.21.

**21—45.46(206) Use of pesticide Command 6EC.** The pesticide Command 6EC Herbicide EPA Reg. No. 279-3054 (active ingredient: 2-(2-Chlorophenyl) methyl-4, 4-dimethyl-3-isoxazolidinone . . . 64.3%) or any identically formulated compound shall be soil incorporated immediately following application. The method of application shall be limited to ground equipment.

**21—45.47(206) Reporting of pesticide sales.** Commercial pesticide applicators, pesticide dealers, pesticide manufacturers and pesticide distributors with the exception of manufacturers or distributors that distribute pesticides for resale purposes only shall submit annual reports to the Iowa department of agriculture and land stewardship by October 1 of each year on forms approved by the secretary of agriculture except that pesticide manufacturers or pesticide distributors that distribute pesticides only for resale purposes shall not be required to submit a report. The reports shall include information related to the gross dollar amount for all pesticides sold at retail for use in this state. The reports shall also list the individual label name, EPA registration number and the gross dollar amount of each pesticide sold at retail for which gross retail sales are \$3000 or more.

This rule is intended to implement Iowa Code sections 206.6, 206.8 and 206.12.

**21—45.48(206) Dealer license fees.** A dealer license fee for a dealer with less than \$100,000 in gross retail pesticide sales shall be \$10 if the annual gross retail sales are less than \$10,000; \$25 if the annual gross retail sales are \$10,000 or more but less than \$25,000; \$50 if the annual gross retail sales are

\$25,000 or more but less than \$50,000; \$75 if the annual gross retail sales are \$50,000 or more but less than \$75,000; and \$100 if the annual gross retail sales are \$75,000 or more but less than \$100,000. The annual dealer license fee for a dealer with \$100,000 or more in gross retail pesticide sales shall be based on one-tenth of one percent of the gross annual sales of all pesticides sold the previous fiscal year. The fiscal year shall begin July 1 and end June 30 of the following year.

**45.48(1)** A pesticide dealer license expires on June 30 of each year. However, a three-month grace period shall be allowed for renewal of pesticide dealer licenses. A late fee of \$25 is imposed on a dealer with less than \$100,000 in gross retail pesticide sales, and a late fee of 5 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer with \$100,000 or more in gross retail pesticide sales. The application for renewal shall be considered complete once the required fees and reports have been submitted to the department.

**45.48(2)** The annual license fee for manufacturers or distributors distributing pesticides for resale purposes only shall be \$25. License fees required by this rule shall be due July 1 of each year.

This rule is intended to implement Iowa Code sections 206.6, 206.8 and 206.12.  
[ARC 3232C, IAB 8/2/17, effective 9/6/17]

**21—45.49(206) Pesticide use recommendations.** Persons making pesticide use recommendations shall be familiar with the safe and proper use of each pesticide for which recommendations are made and shall not make any recommendations which are contrary to label instructions. The employer or licensee shall be responsible for all pesticide use recommendations made by their employees which are contrary to label instructions.

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.6, 206.7 and 206.31.

**21—45.50(206) Notification requirements for urban pesticide applications.** All commercial or public applicators who apply pesticides within urban areas in municipalities shall post or affix notification signs at the start of the application and for at least 24 hours following the application or longer if required by the reentry directions on the pesticide label(s). The requirements of this rule shall not apply to the application of pesticides within a structure or within six feet of the outside perimeter of a structure and to pesticide applications made by the homeowner or tenant to their property.

For purposes of enforcement of this rule the term “municipality” shall include any city or developed residential area in the state. The term “urban” shall mean any area within or belonging to a city or developed residential area.

**45.50(1) Residential lawns.**

*a.* Notification signs shall project at least 12 inches above the top of the grass line or 18 inches to the top of the signs.

*b.* The notification sign shall be posted on a lawn or yard between two feet and five feet from the sidewalk or street. Residences that have unfenced or open backyards shall be posted within two feet to five feet from the back lot line.

*c.* When landscaping or other obstructions prohibit compliance with the minimum distances specified, the notification signs shall be posted in a manner that is reasonably within the intent of this subrule.

**45.50(2) Golf courses.** Signs including posters or placards shall be posted in a conspicuous manner near the first tee of each nine-hole course. The sign shall be constructed of a weather-resistant material and be a minimum size of 8½ inches by 11 inches. The lettering shall not be less than ½ inch. The sign shall read “Pesticides are periodically applied to the golf course. If desired, you may contact your golf course superintendent or person in charge for further information.” The sign shall be displayed prior to the application of any pesticide on the golf course and left in place for at least 24 hours following any pesticide application. Where pesticide labeling requires specific notification or reentry restrictions, the applicator shall comply with the label instructions.

**45.50(3) Parks, playgrounds and athletic fields.** For parks, athletic fields, playgrounds or other similar recreational property, the notification signs shall be posted immediately adjacent to areas within the property where pesticides have been applied and at or near the entrances to the property where

pesticides have been applied. The notification signs shall be placed in a conspicuous manner to provide a reasonable notification to the public.

**45.50(4) Public rights-of-way.**

*a.* Notice of the application of pesticides to public rights-of-way of highways, roads, streets, alleys, sidewalks and recreational trails within the corporate limits of municipalities shall be posted in a manner that provides reasonable notice to the occupants of properties immediately adjacent to the area being treated. A minimum of two signs shall be posted to denote the beginning and the end of the area being treated. Within developed residential zones, at least one sign shall be posted at the beginning and one at the end of each block. Signs shall be placed in a manner to be readable from the adjacent property.

*b.* Public rights-of-way bordered by a chain link fence, noise wall or other structures or enclosures that bar pedestrian access shall be exempt from the posting requirement.

*c.* The licensed pesticide applicator performing the application shall make pesticide application schedules and other community right-to-know information available to the public upon request at the applicator's place of business during regular business hours.

*d.* The notification signs used for posting public rights-of-way shall consist of a weather-resistant poster or placard measuring at least 10 inches by 12 inches with lettering measuring a minimum of 1 inch. Notification signs shall project at least 2 feet above the top of the grass line or 3 feet to the top of the signs. The words "This area chemically treated. Keep off" shall be used for posting public rights-of-way.

**45.50(5) Public pest control programs.** Pesticides applied for or by any municipality for the control or abatement of pests related to public health programs such as mosquitoes or other pest control programs shall be exempt from posting requirements provided that the intended dates, time and locations are announced to the public in a conspicuous manner at least 24 hours prior to the application. The announcement shall be made on a major radio station, TV station, newspaper or any other means of mass communication that would normally reach the residents of that city or developed residential area.

**45.50(6) Notification signs.**

*a.* The notification signs shall be of a material that is rain-resistant for at least a 24-hour period and shall not be removed by the applicator for at least 24 hours from the time pesticides are applied or longer if required by the label of the pesticide applied. Each property owner, tenant, agent or person in charge of the property shall be provided with instructions that the notification sign is required to remain in place for a minimum of 24 hours following the pesticide application. When the labeling of the pesticide(s) applied requires a reentry restriction more than 24 hours, the sign shall be left in place for the specified period restricting reentry. After the required posting period has elapsed, all notification signs should be removed by either a representative of the business, organization, entity or person making said application or the owner, agent, person in charge of the property, or their representative, to which the pesticide was applied.

*b.* As a minimum, unless otherwise specified, the following information shall be printed on the notification sign in contrasting colors and block letters:

(1) The name and telephone number of the business, organization, entity or person applying the pesticide; and

(2) The words: "This area chemically treated. Keep off. Do not remove sign for twenty-four hours." As an alternative, a universally accepted symbol and text approved by the secretary that is recognized as having the same meaning or intent as specified in this paragraph may be used. When the labeling of the pesticide(s) applied requires a longer reentry restriction it shall be so stated on the notification sign.

The lettering for notification signs used for posting residential, commercial or public lawns or gardens or other similar areas shall measure at least three-eighths inch. The lettering for notification signs used for right-of-way areas required to be posted shall measure at least one inch.

*c.* The notification sign used for posting residential, commercial or public lawns or gardens or other similar areas shall consist of a sign or placard measuring at least four inches by five inches with letters measuring a minimum of three-eighths inch.

*d.* The label and other information normally associated with the use of the pesticide(s) being applied to any urban area that is required to be posted shall be provided to any individual upon request.

*e.* A commercial or public applicator who applies a pesticide with labeling that requires further maintenance after application shall provide the homeowner or agent in charge of property with a copy of the complete label of the pesticide(s) applied if requested and instructions on proper maintenance procedures.

*f.* Officials of the municipalities affected by this rule shall cooperate with the department in enforcing the requirements of this rule and shall report any infractions to the department.

**45.50(7) *Prenotification registry.*** In lieu of the requirement for public notification as specified in subrule 45.50(5), a municipality may maintain a registry of persons requesting to receive notification prior to pesticide applications and provide notification to those individuals at least 24 hours prior to a pesticide application made adjacent to their property.

*a.* A municipality may also choose to make arrangements with those persons upon request to refrain from applying pesticides to adjacent properties in lieu of prenotification.

*b.* The registry shall be updated annually and contain at least the name, address, and telephone number where occupant may be reached during normal business hours. The registry shall be made available upon request to licensed commercial and public pesticide applicators.

**45.50(8) *Prior notification of pesticide application to lawns, parks, playgrounds and athletic fields located in urban areas.***

*a.* An occupant of a property adjoining property where pesticides are applied by a commercial or public applicator may receive prior notification of a pesticide application by personally contacting the applicator in writing in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) A telephone number of a location where occupant may be contacted during normal business hours and evening hours.

(3) Address of each property that adjoins occupant's property.

*b.* The applicator receiving a written request for prior notification shall provide notice at least the calendar day before a scheduled application to property adjoining the occupant's property. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application. If the notice to the occupant is in a form other than writing the applicator shall document that notice was given and maintain a record of that notice at its place of business.

*c.* When an applicator is not successful in contacting an occupant of an adjoining property as provided in paragraph "b" of this subrule, the applicator shall, at least the calendar day before a scheduled application, leave a written notice at the residence of the person requesting prior notification indicating the date and approximate time of day for the scheduled application.

*d.* A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

**45.50(9) *Prior notification of pesticide application to golf courses.***

*a.* An occupant of a property adjoining a golf course may receive prior notice of an application by contacting the golf course superintendent or other responsible person in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) Telephone number of a location where the occupant may be contacted during normal business hours and evening hours.

*b.* A golf course representative receiving a request for prior notification shall provide notice at least the day before the scheduled application. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application.

*c.* When a golf course representative is not successful in contacting an occupant of an adjoining property the day before a scheduled application, the representative shall leave a written notice at the residence of the person requesting prior notification which shall disclose the date and approximate time of day for the scheduled application.

*d.* A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

This rule is intended to implement Iowa Code section 206.19 and 1995 Iowa Acts, Senate File 256.

**21—45.51(206) Restrictions on the distribution and use of pesticides containing the active ingredient atrazine or any combination of active ingredients including atrazine.**

**45.51(1)** Atrazine is the common name for the pesticide chemical 2-chloro-4-ethylamino-6-isopropylamino-1,3,5 triazine.

**45.51(2)** All pesticides containing the active ingredient atrazine or any combination of active ingredients including atrazine distributed for sale or use in Iowa shall be classified as restricted use pesticides. All pesticides containing the active ingredient atrazine shall be restricted for retail sale to and use by certified pesticide applicators only.

**45.51(3)** A pesticide dealer selling a pesticide containing the active ingredient atrazine shall file an annual report listing the full trade name of the pesticide product, EPA registration number and total volume in gallons or pounds of product sold. This report shall be included with the annual report required under rule 21—45.47(206), Iowa Administrative Code.

**45.51(4) Atrazine use limitations.**

*a.* The application rate for the actual active ingredient atrazine shall be limited to three pounds or less actual active ingredient per acre per calendar year with the exception where further restrictions on the maximum allowable application rates of the active ingredient atrazine apply.

*b.* Pesticides or any other substance containing the active ingredient atrazine shall not be applied within 50 feet of a sinkhole (outer edge of slope), well, cistern, lake, water impoundment or other similar areas. This includes, but is not limited to, abandoned wells, agricultural drainage wells and drainage well surface inlets and drinking water wells.

*c.* Pesticides, or any other substance containing the active ingredient atrazine unless handled in the original unopened container shall not be mixed, loaded or repackaged within 100 feet of any well, cistern, sinkhole (outer edge of slope), streambed, lake, water impoundment or other similar areas. This includes, but is not limited to, any well, whether in use or abandoned, including agricultural drainage wells and drainage well inlets. This paragraph shall not apply where pesticides are handled in compliance with the secondary containment of pesticide mixing and loading sites as specified in 21—Chapter 44, Iowa Administrative Code.

*d.* Atrazine mixing, loading, and equipment cleanout shall be carried out in a manner that meets the secondary containment requirements in 21—Chapter 44, Iowa Administrative Code or in the field of application provided all other restrictions are followed regarding the application of atrazine or rinsates containing atrazine to labeled use areas. Equipment and container wash waters shall be applied to labeled use areas or used as part of dilution makeup water and applied to labeled use areas in accordance with the label instructions and any other restrictions that may apply.

*e.* The following areas shall be designated as pesticide management areas regarding the application of pesticides containing the active ingredient atrazine. The application of atrazine shall be limited to no more than one and one-half pounds of the actual active ingredient atrazine per acre per calendar year in the following designated areas:

- (1) All of Allamakee, Clayton, Dubuque, Floyd, Humboldt, Jackson and Winneshiek counties.
- (2) All areas within the townships of the following counties:

<b>COUNTIES</b>	<b>TOWNSHIPS</b>
Black Hawk	Poyner
Bremer	Douglas, Fredericka, Jackson, Jefferson, Lafayette, Polk, Washington
Butler	Bennezette, Butler, Coldwater, Dayton, Fremont, Pittsford
Cerro Gordo	Owen, Portland
Chickasaw	Bradford, Chickasaw, Deerfield
Clinton	Elk River, Hampshire
Delaware	Bremen, Colony, Delhi, Elk, Milo, North Fork, Oneida, South Fork, Union
Fayette	Auburn, Clermont, Dover, Eden, Fairfield, Illyria, Pleasant Valley, Union, Westfield, Windsor

Howard	Albion, Chester, Forest City, New Oregon, Vernon Springs
Jones	Castle Grove, Clay, Hale, Lovell, Oxford, Richland, Washington and Wyoming
Kossuth	Sherman
Linn	Marion
Mitchell	Burr Oak, Cedar, Liberty, Mitchell, Newberg, Osage, Otranto, Rock, Saint Ansgar, Union, West Lincoln
Pocahontas	Garfield
Worth	Barton, Kensett
Wright	Grant, Lincoln, Wall Lake

*f.* Persons conducting research with atrazine shall be exempt from the use limitations described in this rule provided that such research is under the supervision of a federal or state agency or educational institution authorized to conduct research and are properly certified.

**45.51(5)** Best management practices. The department of agriculture and land stewardship and the Iowa State University extension service shall jointly develop and implement a set of best management practices (BMPs) and a targeted education program aimed at preventing further contamination of groundwater with atrazine. The pesticide applicator certification training and testing programs shall include information related to the atrazine BMPs.

**45.51(6)** As new information becomes available, changes in atrazine use or management shall be reevaluated periodically.

This rule is intended to implement Iowa Code sections 206.19, 206.20, and 206.21.

**21—45.52(206) Continuing instructional courses for pesticide applicator recertification.** A certified private, commercial, noncommercial or public applicator may elect to renew the pesticide applicator certification by attending two hours of approved continuing instructional courses each year during the renewal period as specified in subrule 45.22(5) in lieu of passing an examination.

**45.52(1)** *Requirements for continuing instructional courses.*

*a.* An approved continuing instruction course for pesticide applicator recertification shall include, as a minimum, information on safe handling, application and storage of pesticides; the correct calibration of equipment used for the application of pesticides; effects of pesticides upon groundwater; and the federal standards for pesticide applicator certification outlined in 40 CFR 171.5 as revised July 1, 1992, for private applicators or 40 CFR 171.4(b) and (c) revised as of July 1, 1992, for commercial applicators.

*b.* Instructional courses and materials for recertification shall be developed or approved by the department in cooperation with the Iowa Cooperative Extension Service in agriculture and home economics of Iowa State University of Science and Technology. The instructional course content shall be selected to cover the minimum standards outlined in paragraph “*a*” of this subrule and presented in two-hour blocks in three consecutive calendar years.

*c.* The instructional courses may be conducted by the department, Iowa State University Cooperative Extension Service or other persons interested in the application of pesticides as qualified under 45.52(2) “*b*.”

*d.* An instructional course offered by a college, university, industry association or other organization may be approved for continuing instruction credit provided the instructional course meets the minimum standards for certification specified in paragraph “*a*” of this subrule.

*e.* Courses for approved continuing instruction are not intended for the sale of products or services.

*f.* An approved instructional course shall designate the certification categories that are eligible for continuing instruction credit. A two-hour program may qualify for more than one certification category. No credit shall be approved for persons not certified in the corresponding categories.

**45.52(2)** *Provider approval.* Provider means the person, industry association or other organization providing continuing instructional courses for pesticide applicator recertification. No course for

continuing instruction credit shall be approved unless the provider has first registered with the department.

*a.* Provider shall register with the department by providing the following information on forms as provided by the department:

- (1) Name and address of provider or sponsoring organization.
- (2) Name and telephone number of the contact person.
- (3) Names and qualifications of instructors.
- (4) Verification that provider has acquired adequate audiovisual or other necessary equipment and facilities conducive to a learning environment.
- (5) Verification that all instructors are qualified as provided in these rules.
- (6) Verification that a current authorized representative of the provider has completed a “train the trainer” course sponsored by the department in cooperation with Iowa State University Cooperative Extension Service.

*b.* Instructor qualifications. A qualified instructor shall meet the following minimum requirements:

- (1) Be current, knowledgeable and skillful in the subject matter.
- (2) As a minimum the equivalent of a four-year degree or experience in teaching in the specialized area within three years preceding the offering or one year of work experience in the specialized area within three years preceding the offering.
- (3) Be knowledgeable of the current state and federal pesticide laws and regulations.
- (4) Upon receipt of the required information and satisfactory verification that the provider and instructors have met the requirements as outlined in paragraphs “*a*” and “*b*” of this subrule, the department shall assign the provider a registration approval number for each qualified instructor.

*c.* A person who is the instructor of an approved continuing instructional course is entitled to the same credit as a participant completing the subject but may receive such credit only once in a calendar year, regardless of the number of times the person instructs the instructional course.

**45.52(3) Course approval.**

*a.* Any person, industry association or other organization intending to provide an instructional course for continuing instruction credit shall submit an application to the department for approval. Requests received later than 30 days prior to the date the instructional course is scheduled shall be disapproved.

*b.* The following information shall be furnished on the request for approval of a continuing instruction course:

- (1) Name and address of provider or sponsoring organization.
- (2) Name and telephone number of the contact person for the provider.
- (3) Course title.
- (4) Whether the course is new, a repeat course, or a revised course.
- (5) Course number, if course is repeat or revised.
- (6) Date(s) course shall be offered.
- (7) Location(s) where course shall be offered.
- (8) For a new or revised course, an outline of the course including a schedule of times when subjects shall be presented. The topics covered in the course shall be listed individually. Under each separate topic, a summary of the instruction given and the material covered must be included.
- (9) Names of instructors.
- (10) Number of credit hours requested.
- (11) Signature of the contact person.

*c.* Any material changes in the instructional course as submitted to the department on the request form and attachments shall automatically void the approval.

*d.* A copy of all course materials shall be provided upon request by the department.

*e.* A provider shall be notified indicating approval or disapproval. Approved courses shall be assigned a course number.

**45.52(4) Certificate of completion.**

a. The department shall adopt a standard certificate of completion form and provide the form to each registered provider. The form shall include the applicator's name, name of employer when applicable, course number, date and location of the course, the category or categories the course has been approved for and the signature of the course instructor.

b. Once a course is approved, the provider shall furnish a certificate of completion to each person who satisfactorily completes such a course. The certificate shall be signed by the course instructor. Providers shall also maintain a list of all persons who attend courses offered by providers for continuing instruction for at least three years from the end of the year in which the courses are offered. The list shall identify each participant by name, address and employer when applicable.

**45.52(5) Provider's responsibility.**

a. A provider of an approved course is responsible for both the attendance of the participants and their attention. During the approved instructional course, if the provider finds that a participant is reading unrelated materials, sleeping, talking excessively with a neighbor or is otherwise disruptive or inattentive, the provider may refuse to grant the participant any credit for attendance.

b. A provider may require participants to preregister for an approved course. In the event a provider cancels an approved course, the provider shall notify each individual registered for the course in a timely manner but not less than three business days prior, except as specified, to the scheduled date of the course.

c. A provider who cancels a course which did not require participants to preregister shall notify prospective participants in a timely manner. Notification for cancellation may be accomplished by a similar means of communication as the original notification of the course availability or any other generally accepted means of reaching the expected target participants.

d. Minimum lead time for participant notification of canceled courses shall be waived when courses are canceled because of emergency conditions such as extreme weather conditions, acts of God, military actions, or any other circumstance which is deemed to be an emergency condition. Providers shall attempt to notify prospective participants by public service announcements via radio or television broadcasts which may provide this service.

e. A provider shall notify the pesticide bureau of the department in a timely manner prior to the cancellation of an approved course. Initial notice of cancellation may be made by telephone; however, cancellations made by telephone shall be followed by written verification.

f. Provider records. The provider shall maintain a list of all persons who attend courses offered by them for continuing instruction credit for at least three years from the end of the year in which the courses are offered. The record system shall provide for secure storage and retrieval of individual attendance and information regarding each instructional course offering. The provider's record of continuing instruction credits granted shall be available within two weeks upon request from individual participants or from the department.

g. If the provider is not the instructor, the provider shall inform the instructor of the instructor's responsibilities as provided in this subrule.

**45.52(6) Enforcement—providers.**

a. The department may, upon finding any one or more of the following, revoke or suspend a provider's registration after an opportunity for hearing:

- (1) Advertising that a course is approved, prior to approval;
- (2) Presenting material not approved as provided in subrule 45.52(1) during the time of an approved course;
- (3) Failing to present a course for the total time period specified in the request form submitted to the department;
- (4) Distributing certificates of completion before the course has been completed;
- (5) Refusing to issue certificates of completion to any participant who satisfactorily completes an approved course, except when 45.52(5) "a" applies;
- (6) Failing to notify course registrants of a cancellation pursuant to 45.52(5) "b" and 45.52(5) "c";

or

- (7) Utilizing instructors who are not qualified as provided in these rules.

*b.* The department may suspend or revoke a provider's registration after notice and opportunity for hearing pursuant to 21—Chapter 2, Iowa Administrative Code.

*c.* In addition, the department may require any one or more of the following upon a finding of a violation of paragraph “*a*” of this subrule.

- (1) Upon receipt of an application to reregister, provide evidence that all violations have been cured;
- (2) Withdraw the possibility of course approvals of courses sponsored by such provider for a set period of time or indefinitely; or
- (3) Any other disciplinary action permitted by statute.

This rule is intended to implement Iowa Code Supplement section 206.5.

[ARC 2882C, IAB 1/4/17, effective 2/8/17]

#### DIVISION II

**21—45.53 to 45.99** Reserved.

#### DIVISION III CIVIL PENALTIES

This division establishes a peer review panel solely to make recommendations to the department regarding the assessment of civil penalties and sets forth the policies and procedures for establishing, accessing, and collecting civil penalties against commercial pesticide applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206. Iowa Code section 206.19(5) authorizes the assessment of civil penalties against commercial applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206. Iowa Code section 206.23A mandates the department to establish a commercial pesticide applicator peer review panel and a period for the review and response by the panel.

**21—45.100(206) Definitions.** Where used in these rules:

“*Contested case hearing*” means an evidentiary hearing pursuant to Iowa Code chapter 17A.

“*Department*” means the pesticide bureau of the Iowa department of agriculture and land stewardship.

“*Informal settlement*” means an agreement between representatives of the department and a commercial applicator providing for sanctions for a violation of Iowa Code chapter 206 or the department's rules but does not include a contested case hearing.

“*Panel*” means the peer review panel.

“*Peer review panel*” means the peer review panel appointed by the secretary to assist in the review of proposed civil penalties for commercial applicators.

“*Review period*” means the period of time during which the department or commercial applicator subject to a civil penalty may seek review by the panel.

**21—45.101(206) Commercial pesticide applicator peer review panel.** The peer review panel was created by Iowa Code section 206.23A and is charged with the responsibility of assisting the department in assessing or collecting a civil penalty pursuant to Iowa Code section 206.19(5). This section does not apply to a license revocation proceeding, a referral for criminal prosecution or a referral to the United States Environmental Protection Agency.

**45.101(1) Organization and operation location.** The panel is located within the Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319. The department's office hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

**45.101(2) Membership.** The panel consists of five members as set forth in Iowa Code section 206.23A.

**45.101(3) Staff.** Staff assistance is provided through the Iowa department of agriculture and land stewardship.

**45.101(4) Meetings.** The panel meets annually to elect a chairperson but may meet at other times at the call of the chairperson or upon written request to the chairperson of two or more members.

All panel meetings shall comply with Iowa Code chapter 21. A quorum of three-fifths of the panel members shall be present to transact business.

Action by the panel requires a vote of a majority of those on the panel. Meetings follow Robert's Rules of Order. Minutes of each meeting are available from the Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

**21—45.102(206) Civil penalties—establishment, assessment, and collection.** Commercial applicators who violate provisions of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206 may be subject to civil penalties. This rule outlines the criteria and procedures for establishing, assessing, and collecting civil penalties.

**45.102(1) Criteria.** In evaluating a violation to determine which cases may be appropriate for administrative assessment of penalties, and in determining the amount of penalty, or for purposes of assessing civil penalties, the department shall consider all of the following factors:

- a. Willfulness or recklessness of the violation.
- b. Actual or potential danger of injury to the public health, safety, or damage to the environment caused by the violation.
- c. Actual or potential cost of the injury or damage caused by the violation to the public health or safety or to the environment.
- d. Actual and potential cost incurred by the department in enforcing the provisions of Iowa Code chapter 206 and rules adopted pursuant to this chapter against the violator.
- e. Remedial action taken by the commercial applicator.
- f. Previous history of noncompliance by the commercial applicator being assessed the civil penalty.

**45.102(2) Notice and hearing.** Civil penalties may be assessed against a commercial applicator only after notice and an opportunity for a contested case hearing unless the parties agree to an informal settlement which assesses a civil penalty or other disciplinary action. The department may seek assessment of a civil penalty by serving a complaint upon the commercial applicator. The complaint shall include a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing will be held, a reference to the statute or rules involved, a statement of the matters asserted, and shall inform the applicator of the availability of review by the panel. The complaint may be served on the commercial applicator by personal service or by certified mail, return receipt requested. The contested case shall be governed by the department's rules on contested case hearings. The department's procedures for informal settlement also apply.

**45.102(3) Administrative order.** Upon finding that a commercial applicator has violated Iowa Code chapter 206 or rules adopted pursuant to this chapter, an administrative order shall be issued assessing the civil penalty. The order shall recite the facts, the legal requirements which have been violated, the rationale for the assessment of the civil penalty and the date of issuance.

**45.102(4) Amount of penalty.** The civil penalty imposed on a commercial applicator shall not exceed \$500 per violation of Iowa Code chapter 206 or to the rules promulgated pursuant to Iowa Code chapter 206. Each day a commercial applicator is in violation following receipt of written notification of such violation from the department may be considered a separate violation.

**45.102(5) Payment.** The penalty shall be paid within 30 days of the date the order assessing the civil penalty becomes final. Failure to pay the civil penalty within three months of the date the order becomes final shall be grounds for suspension or revocation of the commercial applicator's license. The department may request that the attorney general institute judicial proceedings to recover an unpaid civil penalty.

**45.102(6) Informal settlement.** These rules do not apply to any settlement reached between the commercial applicator and the department prior to the initiation of a contested case proceeding. The department shall notify the applicator that it has found a probable violation with a proposed penalty

and provide the applicator an opportunity to attend an informal settlement conference. The department and the applicator may attend an informal settlement conference and reach an agreement about the assessment of a civil penalty or other disciplinary action against the applicator. This agreement is not reviewable by the panel.

**21—45.103(206) Review period.** Either the department or commercial applicator may request peer review within 14 days following the department's notification of a probable violation and proposed penalty, if no agreement has been reached.

**45.103(1)** If the department seeks review, it shall prepare a brief summary of the case against the commercial applicator for the panel. The summary shall include the name of the applicator, a short and concise description of the facts, and the rationale for the penalty sought with reference to the factors to be considered in assessment of civil penalties as provided in these rules.

**45.103(2)** If the commercial applicator seeks review, the commercial applicator shall submit a short and concise statement of the facts of the case and a statement as to why the amount of civil penalty sought to be assessed is inappropriate under the circumstances of the case.

**21—45.104(206) Review by peer review panel.** The request for review shall be served in writing by regular mail upon the chairperson of the panel, with copies furnished to the other party. Upon receipt of the request for review, the chairperson shall schedule a meeting of the panel in Des Moines at the Henry A. Wallace Building. The panel may agree to meet telephonically, with the chairperson providing copies of the request for review to the members of the panel.

**45.104(1)** The panel shall confine its review to the department's summary or the information furnished by the commercial applicator. The department's investigative files, or parts thereof, may be made available to the panel upon request. The panel's review shall not be a contested case evidentiary hearing. The panel shall not have power to examine or cross-examine witnesses, nor shall it have power to subpoena witnesses or documents.

**45.104(2)** The panel's recommendation may include increasing the amount of civil penalty, reducing the amount of civil penalty or not imposing a penalty or that conditions be placed upon the license of the commercial applicator.

**21—45.105(206) Response by peer review panel.** The panel shall notify in writing the department and the commercial applicator of its recommendations within 30 days of receipt of a request for review. Upon receipt of the panel's recommendations, the department and the commercial applicator may reach an agreement on the amount of the civil penalty. If the parties do not agree, the department may initiate or continue the contested case proceeding. The department is not required to follow the recommendation of the panel as to assessment of the civil penalty. If the department does not receive a recommendation from the panel within 30 days of the panel's receipt of a request for review, it may proceed with the hearing.

These rules are intended to implement Iowa Code section 206.23A.

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<sup>◊</sup> Two or more ARCs

CHAPTER 67  
ANIMAL WELFARE

[Prior to 7/27/88 see Agriculture Department 30—Ch 20]

**21—67.1(162) Definitions.**

*“Acclimated”* means the animal is accustomed to a climate or environment and has the ability to maintain its body temperature.

*“Adequate feed”* means the provision at suitable intervals of not more than 24 hours or longer if the dietary requirements of the species so require, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. The foodstuff shall be served in a clean receptacle, dish or container.

*“Adequate space”* means the animals contained within the primary enclosure all must have the ability to comfortably turn about, stand erect, sit or lie with limbs fully extended.

*“Adequate water”* means reasonable access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

*“Animal shelter”* means a facility which is used to house or contain dogs or cats, or both, and which is owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

*“Animal warden”* means any person employed, contracted, or appointed by the state, municipal corporation, or any political subdivision of the state, for the purpose of aiding in the enforcement of the provisions of Iowa Code chapter 162 or any other law or ordinance relating to the licensing of animals, control of animals or seizure and impoundment of animals and includes any peace officer, animal control officer, or other employee whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal.

*“Animal Welfare Act”* means the federal Animal Welfare Act, 7 U.S.C. Ch. 54, and regulations promulgated by the United States Department of Agriculture and published in 9 C.F.R. Ch. 1.

*“Authorization”* means a state license, certificate of registration, or permit issued or renewed by the department to a commercial establishment as provided in Iowa Code section 162.2A.

*“Boarding kennel”* means a place or establishment other than a pound or animal shelter where dogs or cats not owned by the proprietor are sheltered, fed, and watered in return for a consideration.

*“Breeding male or female”* means any sexually intact adult dog or cat over 12 months of age.

*“Cleaning”* means the mechanical removal of organic matter and waste through the application of soap, detergent or other cleaning agent followed by the rinsing of all surfaces with clean water.

*“Commercial breeder”* means a person, engaged in the business of breeding dogs or cats, who sells, exchanges, or leases dogs or cats in return for consideration, or who offers to do so, whether or not the animals are raised, trained, groomed, or boarded by the person. A person who owns or harbors three or fewer breeding males or females is not a commercial breeder. However, a person who breeds any number of breeding male or female greyhounds for the purposes of using them for pari-mutuel wagering at a racetrack as provided in Iowa Code chapter 99D shall be considered a commercial breeder irrespective of whether the person sells, leases, or exchanges the greyhounds for consideration or offers to do so.

*“Commercial establishment”* or *“establishment”* means an animal shelter, boarding kennel, commercial breeder, commercial kennel, dealer, pet shop, pound, public auction, or research facility.

*“Commercial kennel”* means a kennel which performs grooming, boarding, or training services for dogs or cats in return for a consideration.

*“Commingle”* means to combine animals from different owners in a common area or enclosure.

*“Common area”* means any area where dogs are commingled for exercise or social interaction.

*“Dealer”* means any person who is engaged in the business of buying for resale or selling or exchanging dogs or cats, or both, as a principal or agent, or who claims to be so engaged.

*“Department”* means the department of agriculture and land stewardship.

*“Direct and immediate visual supervision”* means a person providing visual supervision is located on the premises and within the line of sight of the animal and is available to provide immediate attention to the animals within the group.

*“Distemper”* means canine distemper virus or feline panleukopenia virus.

*“Dog day care”* means a facility licensed as a commercial kennel or a boarding kennel and designed and operated with the intention that a dog admitted to the facility is allowed, in compliance with this chapter, to mingle and interact with other dogs in one or more playgroups operating in the facility.

*“Euthanasia”* means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during the loss of consciousness.

*“Facility”* means all buildings, yards, pens and other areas, or any portion thereof, at a single location in which any animal is kept, handled, or transported for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, rescuing or otherwise transferring.

*“Federal license”* means a license issued by the United States Department of Agriculture to a person classified as a dealer or exhibitor pursuant to the federal Animal Welfare Act.

*“Federal licensee”* means a person to whom a federal license as a dealer or exhibitor is issued.

*“Foster care home”* means a private residence that is authorized to provide temporary shelter and care for an animal that has been accepted by a foster oversight organization.

*“Foster oversight organization”* means a registered animal shelter or pound or licensed dealer which has been authorized by the department to utilize foster care homes in its operation.

*“Group housing”* means more than two animals housed together within the same primary enclosure.

*“Housing facilities”* means any room, building, or area used to contain a primary enclosure or enclosures.

*“Identification”* means breed, color, markings, sex, and age of the dog or cat. If applicable, identification can also include a microchip number, rabies tag number, tattoo, or other similar form of identification.

*“In-home facility”* means an individual required to be licensed as a boarding kennel, commercial breeder, commercial kennel, or dealer who maintains or harbors animals within the individual’s residence.

*“Isolation”* means the separation, for the period of communicability, of infected animals from other animals in such a place and under such conditions to prevent the direct or indirect transmission of the infectious agent from those infected to those that are susceptible or that may spread the agent to others.

*“Isolation facility”* means the location where animals infected with disease may be placed to contain, control and limit the spread of disease.

*“Kennel”* means a facility, location, or area where dogs or cats are brought together or commingled for the purpose of, but not limited to, boarding, grooming, or training.

*“Licensee”* means any person or facility authorized to operate pursuant to Iowa Code chapter 162.

*“Parvo”* means canine parvovirus or feline panleukopenia virus.

*“Permittee”* means a commercial breeder, dealer, or public auction to whom a permit is issued by the department as a federal licensee pursuant to Iowa Code section 162.2A.

*“Person”* means person as defined in Iowa Code chapter 4.

*“Pet shop”* means an establishment where a dog, cat, rabbit, rodent, nonhuman primate, fish other than live bait, bird, or other vertebrate animal is bought, sold, exchanged, or offered for sale. However, a pet shop does not include an establishment if one of the following applies:

1. The establishment receives less than \$500 from the sale or exchange of vertebrate animals during a 12-month period.

2. The establishment sells or exchanges less than six animals during a 12-month period.

*“Potable water”* means liquid water suitable for drinking.

*“Pound”* means a facility for the prevention of cruelty to animals operated by the state, a municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized stray, homeless, abandoned, or unwanted dogs, cats, or other animals; or a facility operated for such a purpose under a contract with any municipal corporation or incorporated society.

“*Primary enclosure*” means any structure used to immediately restrict an animal to a limited amount of space, such as a room, pen, cage, or compartment.

“*Public auction*” means any place or location where dogs or cats, or both, are sold at auction to the highest bidder regardless of whether the dogs or cats are offered as individuals, as a group, or by weight.

“*Registrant*” means a pound, animal shelter, or research facility to whom a certificate of registration is issued by the department pursuant to Iowa Code section 162.2A.

“*Rescue*” means a person or group of persons, licensed as a dealer, who holds itself out as an animal rescue, or who accepts, purchases, exchanges or solicits for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs and cats or who uses foster homes as a primary means of housing dogs or cats.

“*Rescue manager*” means any person designated by a rescue to carry out the responsibilities of the rescue.

“*Research facility*” means any school or college of medicine, veterinary medicine, pharmacy, dentistry, or osteopathic medicine, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

“*Residence*” means any area or space where a person lives or resides.

“*Sanitize*” means to disinfect inanimate objects to eliminate as many or all pathogenic microorganisms, except bacterial spores.

“*Seizure and impoundment,*” as used in this chapter, means either of the following:

1. The confinement of the animals to the property of the owner or custodian of the animals with provisions being made for the care of the animals pending review and final disposition.
2. The physical removal of the animals to another facility for care pending review and final disposition.

“*State fiscal year*” means the fiscal year described in Iowa Code section 3.12.

“*State licensee*” means any of the following:

1. A boarding kennel, commercial kennel, or pet shop to whom a state license is issued by the department pursuant to Iowa Code section 162.2A.
2. A commercial breeder, dealer, or public auction to whom a state license is issued in lieu of a permit by the department pursuant to Iowa Code section 162.2A.

“*Transfer*” means to adopt, sell, give away, trade, barter, exchange, return or convey ownership of an animal.

“*Vertebrate animal*” means those vertebrate animals other than members of the equine, bovine, ovine, and porcine species, and ostriches, rheas, or emus.

“*Veterinarian*” means a person who is validly and currently licensed to practice veterinary medicine in the state of Iowa.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

**21—67.2(162) Animals included in rules.** “Dog,” as that term is used in the rules, includes hybrid dog mixtures. “Animals,” as that term is used in rules relating to boarding kennels, commercial kennels, commercial breeders, dealers, public auctions, animal shelters, and pounds, means dogs and cats. “Animals,” as that term is used in rules relating to pet shops, means dogs, cats, rabbits, rodents, nonhuman primates, birds, fish other than live bait, or other vertebrate animals. This chapter does not apply to livestock as defined in Iowa Code section 717.1 or any other agricultural animal used in agricultural production as provided in Iowa Code chapter 717A.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

## **21—67.3(162) Housing facilities and primary enclosures.**

### **67.3(1) Housing facilities.**

- a. Buildings shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.

*b.* Shelter shall be provided to allow access to shade from direct sunlight and regress from exposure to wind, rain or snow. Heat, insulation, or clean and dry bedding adequate to provide comfort shall be provided when the atmospheric temperature is below 50°F or the temperature to which the particular animals are acclimated. Indoor housing facilities shall be provided for dogs and cats under the age of eight weeks and for dogs and cats within two weeks of whelping. Dogs and cats that are not acclimated to the temperatures prevalent in the area or region where they are kept and sick, aged, young or infirm dogs and cats cannot be housed in outdoor facilities.

*c.* Temperature.

(1) Indoor housing facilities for dogs and cats must be capable of controlling the temperature in the housing facility and sufficiently heated and cooled when necessary to protect dogs and cats from temperature or humidity extremes and to provide for their well-being.

(2) When dogs and cats are present, the ambient temperature in the indoor housing facility cannot fall below 50°F for dogs and cats not acclimated to lower temperatures, for breeds that cannot tolerate lower temperatures without stress or discomfort, and for sick, aged, young or infirm dogs and cats except as approved by the attending veterinarian. Heat, insulation, clean and dry bedding or other methods of conserving body heat that are adequate to provide comfort shall be provided when the atmospheric temperature is below 50°F. The ambient temperature must not fall below 45°F or rise above 85°F for more than four consecutive hours when dogs or cats are present.

*d.* Ventilation. Indoor and outdoor housing facilities shall at all times be provided with ventilation by means of doors, windows, vents, air conditioning or direct flow of fresh air that is adequate to provide for the good health and comfort of the animals. Such ventilation shall be environmentally provided so as to maintain adequate temperature and minimize drafts, moisture condensation, odors or stagnant vapors of excreta. Auxiliary ventilation, such as fans, blowers or air conditioning, must be provided when the ambient temperature is above 85°F. Relative humidity must be maintained at a level that ensures the health and well-being of the animals housed in the housing facility. Indoor housing facilities must be capable of the following:

(1) Maintaining humidity levels between 30 percent and 70 percent; and

(2) Rapidly eliminating odors from within the building.

*e.* Adequate lighting shall be provided by natural or artificial means, or both, during sunrise to sunset hours to allow efficient cleaning of the facilities and routine inspection of the facilities and animals contained therein.

*f.* Ceilings, walls and floors shall be constructed so as to lend themselves to efficient cleaning and sanitizing. Such surfaces shall be kept in good repair and maintained so that they are substantially impervious to moisture. Floors and walls to a height of four feet shall have finished surfaces. No sharp or jagged edges may be present that may injure an animal. Animal contact surfaces must be free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal.

*g.* Food supplies and bedding materials shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food or bedding unclean. Separate storage facilities shall be used to store cleaning and sanitizing equipment and supplies.

*h.* Washrooms, basins or sinks for maintaining cleanliness among animal caretakers and the sanitizing of food and water utensils shall be provided within or be readily accessible to each housing facility.

*i.* Equipment shall be available for removal and disposal of all waste materials from housing facilities to minimize vermin infestation, odors and disease hazards. Drainage systems shall be functional to effect the above purposes.

*j.* Group housing is permitted for animals that are compatible with one another, except as otherwise stated herein. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed in the facility. Females in estrus shall not be housed with males except for breeding purposes.

*k.* Facilities shall be provided to isolate diseased animals and to prevent exposure to healthy animals.

*l.* Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided that adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown. Dog runs and exercise areas utilizing wire floors are permissible provided that the wire floors are not injurious to the animals and are adequately maintained. Wire flooring cannot cause injury to any animal contained in a dog run or exercise area that has wire flooring and must:

- (1) Have a solid resting surface of adequate size for an animal to lay on its side;
- (2) Be in good repair, free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal;
- (3) Be free of jagged or sharp edges, and constructed so as to lend itself to efficient cleaning and sanitizing; and
- (4) Be of a gauge and construction to prevent bending and sagging and to prevent physical harm to an animal or entrapment of the feet of an animal housed within the primary enclosure.

*m.* Housing facilities and areas used for storage of food or bedding must be free of trash, garbage, waste, weeds, debris and other materials potentially harmful to animals.

*n.* Animal areas must be kept clean, neat, and free of clutter.

*o.* The department may limit the number of animals allowed in any housing facility based on, but not limited to, the number of available primary enclosures, the animal care space available within a facility, or lack of available personnel to care for the animals.

**67.3(2) Primary enclosures.**

*a.* Primary enclosures shall be of sound construction and maintained in good repair to protect the animals from injury. No sharp points or jagged edges may be present that may cause injury to an animal. Animal contact surfaces must be free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal. Animal contact surfaces must also be free of jagged edges, sharp points and anything that may cause injury to an animal.

*b.* Construction materials and maintenance shall allow the animals to be kept clean and dry. Walls and floors shall be impervious to urine and other moisture and lend themselves to efficient cleaning and sanitizing.

*c.* A primary enclosure shall provide for adequate space appropriate for the age, size, weight, breed, and temperament of the animal.

*d.* The shape and size of the enclosure shall afford adequate space for the individual animals within the enclosure. Adequate space includes, but is not limited to, allowing the animal the ability to comfortably reposition, turn about, stand erect, sit or lie while limbs are fully extended. Cats must have adequate space for a litter box so that litter does not contaminate food and water.

*e.* A nursing bitch or queen must be provided additional space. The amount of additional space required should be based on the breed and behavioral characteristics of the animal.

*f.* The department may limit the number of animals housed in a primary enclosure based on, but not limited to, the amount of available and usable floor space, personnel available to care for the animals and the compatibility of the animals within the enclosure.

*g.* Group housing.

(1) Group housing for animal shelters, pounds, commercial breeders, pet shops, dealers, public auctions or research facilities is permitted for animals that are compatible with one another, except as otherwise stated herein. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed within the primary enclosure. No more than 12 adult dogs or cats may be housed in the same primary enclosure. Dogs and cats shall not be housed in the same primary enclosure.

(2) Group housing in boarding kennels and commercial kennels is permitted only if the animals are owned by the same person and are compatible or by operating as a dog day care as required in rule 21—67.8(162).

*h.* Elevated resting surfaces are required for cats housed in groups of four or more. Elevated resting surfaces must be collectively large enough to simultaneously hold all occupants of a primary enclosure and must be impervious to moisture, easily cleaned and sanitized, easily replaced, and of sufficient elevation for the cats enclosed in the primary enclosure to comfortably lay under the elevated surfaces.

*i.* Litter boxes containing clean litter shall be provided at all times for kittens and cats. Adequate litter boxes must be provided for the number of cats within a primary enclosure. Litter boxes must:

(1) Be cleaned at minimum once daily or more often as necessary to prevent the accumulation of animal waste;

(2) Contain adequate litter and be of adequate size; and

(3) Be cleaned and sanitized in a separate sink from food and water receptacles. If a separate sink is not available, then the sink must be cleaned and sanitized after the litter boxes are washed and before anything else is washed in the sink.

*j.* Animal waste, including used cat litter, must be removed from primary enclosures at minimum once daily or more frequently to prevent the accumulation of waste and contamination of the animals contained within the primary enclosure and must be discarded in accordance with state, county and local ordinances.

*k.* Means shall be provided to maintain the temperature and ventilation that are comfortable for the species within the primary enclosure. Lighting shall be adequate to allow observation of the animals, but the animals shall be protected from excessive illumination.

*l.* Animals shall be removed from their primary enclosures at least twice in each 24-hour period and exercised unless the primary enclosure is of sufficient size to provide for sufficient exercise. The amount of exercise should be appropriate for the age, breed, and health condition of the animal. Impounded animals, animals deemed too dangerous to be removed from the primary enclosure, and animals undergoing rabies quarantine may be exempt from removal from their primary enclosure but must be housed in a primary enclosure large enough to allow for exercise within the primary enclosure. Animals under the medical supervision of a veterinarian may be exempt in writing from exercise if exemption is deemed medically appropriate by the attending veterinarian.

*m.* Doghouses with tethered restraints, including but not limited to chains, cannot be used as primary enclosures for dogs but may be used for the purpose of exercise. The tethered restraint used shall be placed or attached so that it cannot become entangled with the tethered restraints of other dogs or any other objects. Such tethered restraints shall be of a type commonly used for the size of dog involved and shall be attached to the dog by means of a well-fitted collar. Such tethered restraints shall be at least three times the length of the dog as measured from the tip of the dog's nose to the base of its tail and shall allow the dog convenient access to the doghouse.

*n.* Primary enclosures containing wire flooring cannot cause injury to any animal contained in the primary enclosure, and the wire flooring must:

(1) Have a solid resting surface of adequate size for an animal to lay on its side;

(2) Be in good repair, free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal;

(3) Be free of jagged or sharp edges, and constructed so as to lend itself to efficient cleaning and sanitizing; and

(4) Be of a gauge and construction to prevent bending and sagging and to prevent physical harm to an animal or entrapment of the feet of an animal housed within the primary enclosure.

*o.* When primary enclosures are stacked, all stacked enclosures must be secured so that the upper primary enclosure(s) cannot fall in a manner which may cause injury or harm to any animal. A means to prevent urine, feces, and other debris from passing into or being discharged into the underlying primary enclosure(s) is required.

*p.* All enclosures must be impermeable to water and easily cleaned and sanitized.

*q.* Bedding within primary enclosures must be easily cleaned and sanitized or disposable.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

**21—67.4(162) General care and husbandry standards.****67.4(1) Feeding and watering.**

a. All species covered under Iowa Code chapter 162 shall be provided with adequate feed and adequate water.

b. Young animals and animals under veterinary care shall be fed and given water at more frequent intervals and with specific diets as their needs dictate.

c. Water must be provided as often as necessary for the health and comfort of the animal. The frequency of providing water should be appropriate to the species, age, condition, and size of the animal as well as the environmental conditions.

d. Water for dogs and cats must be made available at minimum two times daily for at least one hour each time.

e. The receptacles for food and water must be:

- (1) Readily accessible;
- (2) Located to minimize contamination with excreta;
- (3) Made of durable material that can easily be cleaned and sanitized or be disposable;
- (4) Appropriate for the species, size, age and breed of animal; and
- (5) Replaced after a single use if the receptacles are disposable.

**67.4(2) Cleaning and sanitation.**

a. Housing facilities and primary enclosures shall be cleaned a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors. Dirt, hair, excreta (including but not limited to urine and feces), food waste, and other debris shall be removed from a primary enclosure daily or at a frequency to prevent their accumulation and the contamination of the animals contained within the primary enclosure.

(1) When primary enclosures are stacked, a means to prevent urine, feces and other debris from passing into or being discharged into the underlying primary enclosure(s) is required.

(2) Pressure water systems or live steam may be used for cleaning if animals are removed while the cleaning takes place.

b. Housing facilities and primary enclosures shall be sanitized at intervals not to exceed two weeks or sanitized more frequently as may be necessary to reduce disease hazards. Sanitizing shall be done by washing the surfaces with hot water and soap or detergent, followed by the application of a safe and effective disinfectant. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement of the soiled materials with clean surface materials. Dirt, hair, excreta, food waste, and other debris shall be removed before sanitizing begins. Manufacturer labels shall be followed for dilution and contact time for all soaps, detergents, disinfectants, or other chemicals used for sanitization.

c. An effective program shall be established and maintained for the control of vermin infestation.

d. Before a primary enclosure, food receptacle or water receptacle is used for another animal, the primary enclosure, food receptacle or water receptacle shall be cleaned and sanitized.

**67.4(3) Veterinary care.**

a. Programs of disease prevention and control shall be established in writing and maintained.

b. Sick, diseased or injured animals shall be provided with prompt veterinary care or disposed of by euthanasia. Euthanasia must be performed in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: 2020 Edition.

c. All species regulated under Iowa Code chapter 162 that are infected with contagious diseases shall be immediately placed into isolation facilities as provided for in this paragraph to prevent exposure to healthy animals. Isolation facilities must be an area separate from the remainder of the animals in a facility with the ability to contain disease and to reduce the risk of disease spread. Animals in isolation must be cared for separately from the remainder of the animals in a facility. All equipment and supplies used for animals in an isolation facility must be cleaned and disinfected prior to removal from the isolation facility or discarded in a manner that prevents disease spread.

d. Dogs and cats within all commercial establishments must be vaccinated for rabies when age-appropriate unless exempted by Iowa Code section 351.42.

*e.* All dogs and cats taken into the care of a dealer, or transported into housing facilities regulated under Iowa Code chapter 162, excluding pounds and animal shelters, shall have been vaccinated against distemper, parvo and rabies, unless exempted by direct written recommendation of the owner's veterinarian or exempted by Iowa Code section 351.42 before entering the housing facility or being taken into the care of a dealer. Rabies titers shall not be accepted by a commercial establishment in lieu of a rabies vaccination.

*f.* Animal shelters and pounds must vaccinate dogs and cats in their care for rabies, distemper and parvo within a reasonable time of the dog or cat entering the animal shelter or pound. Animal shelters and pounds must also keep dogs and cats current on vaccinations for rabies, distemper and parvo.

*g.* Vaccine titers shall not be accepted as a form of vaccine verification. Vaccine records and written vaccine exemptions shall be kept on file. Acceptable forms of documentation for vaccine verification for admittance of a dog or cat into a commercial establishment, excluding animal shelters and pounds, include the following:

- (1) Written documentation of vaccination from a veterinarian.
- (2) A rabies certificate signed by a veterinarian.

*h.* Dogs and cats brought into the state of Iowa must meet importation requirements under rule 21—65.10(163).

*i.* Commercial establishments, excluding commercial kennels and boarding kennels, shall enter into a written agreement with a veterinarian licensed by the state of Iowa to provide veterinary care for the animals maintained in the facility. The agreement shall include a requirement that the veterinarian visit the facility at least once every 12 months for the purpose of viewing all the animals in the facility, making a general determination concerning the health/disease status of the animals, and reviewing the facility's program for disease prevention and control. If during the course of the visit the veterinarian identifies an animal that requires a more detailed individual examination to determine the specific condition of the animal or to determine an appropriate course of treatment, then such examination shall be undertaken.

*j.* Commercial kennels and boarding kennels must have a written agreement with a veterinarian licensed by the state of Iowa to provide veterinary care for an animal in their care should veterinary care be required.

*k.* If during an inspection of a facility the department finds an animal which appears to have a physical condition or disease that, in the opinion of the inspector, requires a veterinarian's attention, the department may order that the licensee subject the animal to a veterinarian's examination at the licensee's expense. The department may require the licensee to submit written proof of the veterinarian's examination and results of the examination within a time frame set by the department.

**67.4(4) Personnel.**

*a.* The owner or personnel shall be present at least once in each 24-hour period to supervise and ascertain that the care of animals and maintenance of facilities conform to all of the provisions of Iowa Code chapter 162.

*b.* A sufficient number of qualified personnel shall be utilized to provide the required care of animals and maintenance of facilities during normal business hours.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

**21—67.5(162) Transportation.**

**67.5(1) Primary enclosures for transportation.** Primary enclosures are required within transportation vehicles.

*a.* Primary enclosures utilized in transportation shall:

- (1) Be of sound construction, maintained in good repair to ensure protection of animals from injury, and readily cleaned and sanitized;
- (2) Be free of sharp points, jagged edges or protrusions that could injure the animal; and
- (3) Securely contain the animal so that the animal cannot injure itself, its handler or any persons or animals nearby.

*b.* Floors and lower sides shall be constructed or covered on the inner surfaces so as to contain excreta and bedding materials.

*c.* Adequate space shall be provided so that the animal(s) contained in the primary enclosure may comfortably turn about, stand erect, sit and lie.

*d.* Openings shall be provided in primary enclosures so that adequate ventilation can be maintained when the primary enclosures are positioned in the transporting vehicle.

*e.* Primary enclosures shall be cleaned and sanitized before each trip and between animals.

*f.* The temperature within primary enclosures shall not be allowed to exceed the atmospheric temperature. During transportation, the ambient temperature inside the primary enclosure cannot exceed 85°F for a period of more than four hours, nor may the temperature fall below 45°F for a period of more than four hours. Auxiliary ventilation, such as fans, blowers or air conditioning, must be used in the animal space when the ambient temperature in the space reaches 85°F.

**67.5(2) Vehicles.**

*a.* Protection shall be afforded to primary enclosures transported in the vehicle, sheltering the animals from drafts and extremes of hot or cold temperatures to which they are not acclimated.

*b.* Primary enclosures used in transportation shall be securely positioned in the vehicle to protect the animals from injury.

**67.5(3) Care in transit.**

*a.* Animals in transit shall be provided adequate feed and adequate water as defined in rule 21—67.1(162).

*b.* Incompatible animals shall not be placed together during shipment. Females in estrus shall not be placed in the same primary enclosure with a male.

*c.* Animals shall be inspected at least once in each four-hour period and the primary enclosures cleaned if necessary and the emergency needs of the animals attended to immediately.

*d.* Animals shall be removed for exercise and their enclosures cleaned if the animals have been en route for a 12-hour period.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

**21—67.6(162) Purchase, sale, trade and adoption.**

**67.6(1)** Records shall be made and retained for a period of 12 months for any change of ownership of a dog, cat or nonhuman primate, including but not limited to any sale, exchange, transfer, trade, or adoption from any commercial establishment. Records shall be similarly kept on other small vertebrate animals, excluding tropical or ornamental fish, sold or transferred, except that individual identifications shall not be required. Records shall include the following:

- a.* Date of change of ownership;
- b.* Identification of animal;
- c.* Names, mailing addresses, telephone numbers, and email addresses, if available, of seller and purchaser or transferor and recipient;
- d.* State of Iowa animal welfare license number of the seller or transferor;
- e.* Source of the animal;
- f.* Date animal entered the care of and left the care of the commercial establishment;
- g.* Method and date of euthanasia, if applicable;
- h.* Transfer of animal within or between commercial establishments;
- i.* List of prophylactic immunization(s) given, including date(s) administered (if applicable);
- j.* List of internal parasite medication(s) given and date(s) administered (if applicable); and
- k.* Description of other medical care provided to the animal, including type of medical care received and date(s) of medical care.

**67.6(2)** All commercial establishments shall furnish a statement of sale, exchange, transfer, trade, or adoption to each purchaser or recipient of a dog, cat, nonhuman primate, bird, or other vertebrate animal, excluding tropical or ornamental fish. This statement shall include the following:

- a.* Names, mailing addresses, telephone numbers, and email addresses, if available, of the seller or transferor and the purchaser or recipient;
- b.* State of Iowa animal welfare license number of the seller or transferor;
- c.* Date of sale, transfer, trade, adoption, exchange or any other change of ownership;

- d. Description or identification of vertebrate sold;
- e. List of prophylactic immunization(s) given, including date(s) administered (if applicable);
- f. List of internal parasite medication(s) given and date(s) administered (if applicable); and
- g. Description of other medical care provided to the animal, including type of medical care received and date(s) of medical care.

**67.6(3)** All vertebrate animals regulated under Iowa Code chapter 162 which are known to be exposed to or show symptoms of having infectious and contagious diseases or which show symptoms of parasitism or malnutrition sufficient to adversely affect the health of the animals are restricted from sale or transfer. The secretary of agriculture may order quarantine on premises or housing facilities in which any of the conditions listed in this subrule exist. Quarantine shall be removed when at the discretion of the secretary or the secretary's designee, the disease conditions for which quarantined are no longer evident and the apparent health of the animals indicates absence of contagion.

**67.6(4)** For the purposes of determining an individual's obligation to be licensed under Iowa Code section 162.8, "breeding animal" includes any sexually intact animal over the age of 12 months. [ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 6213C, IAB 2/23/22, effective 3/30/22]

## **21—67.7(162) Boarding kennels, commercial kennels, animal shelters, pounds and dealers.**

### **67.7(1) Boarding kennels and commercial kennels.**

a. Records shall be made and retained for a period of 12 months for each animal boarded, groomed or trained. Records shall include the following:

- (1) Owner's name, address, telephone number and email address;
- (2) Identification of animal;
- (3) Duration of animal's stay;
- (4) Service(s) provided;
- (5) Any illnesses which have occurred and veterinary treatment the animal received; and
- (6) Written documentation of the animal's vaccinations or vaccination exemptions from a veterinarian.

b. All dogs and cats transported into boarding kennels and commercial kennels regulated under Iowa Code chapter 162 shall have been vaccinated against distemper, parvo and rabies, unless exempted by Iowa Code section 351.42 or the direct written recommendation of a qualified veterinarian. Vaccine records and exemptions must be kept on file for a period of 12 months for each animal boarded, groomed, or trained.

c. Vaccine titers shall not be accepted as a form of vaccine verification. Vaccine records and written vaccine exemptions shall be kept on file. Acceptable forms of documentation for vaccine verification include the following:

- (1) Written documentation of vaccination from a veterinarian;
- (2) A rabies certificate signed by a veterinarian.

d. Animals exhibiting symptoms of disease shall be promptly examined and treated by a veterinarian.

e. Group housing is permitted only if the animals are owned by the same person and are compatible or by operating as a dog day care as required in rule 21—67.8(162).

f. Grooming and training utensils and equipment shall be cleaned and sanitized between use on animals owned by different persons.

g. Primary enclosures shall be cleaned and sanitized between use in containing animals owned by different persons. Primary enclosures must be cleaned at least once daily and sanitized weekly for animals staying overnight.

h. Primary enclosures shall utilize latches that cannot be inadvertently opened or shall be equipped with some form of locking device so as to prevent the accidental release of the animal contained in the primary enclosure.

### **67.7(2) Animal shelters and pounds.**

*a.* Dogs, cats and other vertebrates upon which euthanasia may be permitted by law shall be destroyed only by euthanasia in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: 2020 Edition.

*b.* Animal shelters and pounds shall develop and implement a plan providing for the surgical sterilization of all dogs and cats released, unless exempted from this provision in accordance with Iowa Code section 162.20(5).

*c.* Sterilization agreements shall contain the following:

- (1) The name, address and signature of the person receiving custody of the dog or cat.
- (2) A complete description of the animal, including any identification.
- (3) The signature of the representative of the pound or animal shelter.
- (4) The date that the agreement is executed and the date by which sterilization must be completed.
- (5) A statement which states the following:
  1. Sterilization of the animal is required pursuant to Iowa Code section 162.20.
  2. Ownership of the dog or cat is conditioned upon the satisfaction of the terms of the agreement.
  3. Failure to satisfy the terms of the agreement constitutes a breach of contract, requiring the return

of the dog or cat.

4. A person failing to satisfy the sterilization provisions of the agreement is guilty of a simple misdemeanor.

*d.* In addition to maintaining the records required by subrule 67.6(1), animal shelters and pounds shall maintain, for a period of 12 months, the following records:

- (1) Euthanasia records, including date of entry, source of animal, and date of euthanasia.
- (2) Sterilization agreements, including confirmation in the form of a receipt furnished by the office of the attending veterinarian.
- (3) Disposition records of all animals lawfully claimed by owners, research facilities, or Class B federal dealers.

*e.* A pound or animal shelter may apply in writing for an enforcement waiver pursuant to Iowa Code section 162.20(5) “*b.*” The application shall include the specific guidelines under which the waiver is being requested and a certified copy of the ordinance providing the basis for the waiver application. A waiver application fee of \$10 shall accompany the application.

*f.* A pound or animal shelter shall be subject to civil penalties as provided in Iowa Code section 162.20(3) “*c.*” for not procuring and maintaining required records documenting compliance with the sterilization agreement, successfully seeking return of the animal from a noncompliant custodian, failing to effect a sterilization agreement when required for an animal which is released, or seeking legal recourse as provided in Iowa Code section 162.20(4). The pound or animal shelter shall be entitled to appeal pursuant to Iowa Code chapter 17A.

**67.7(3) Dealers.**

*a.* A dealer license is required to operate as a dealer in Iowa. This requirement applies to residents and nonresidents of Iowa, including dealer foster homes in Iowa.

*b.* All dogs and cats taken in by or in the possession of a dealer must be vaccinated and kept current against distemper, parvo and rabies, unless exempted by Iowa Code section 351.42 or the direct written recommendation of a qualified veterinarian. A signed rabies certificate or other written documentation from a veterinarian is required to verify vaccination compliance. Vaccine titers are not sufficient for demonstrating vaccine compliance. Dealers must provide vaccine records or exemptions to the department upon request.

*c.* Dogs and cats brought into the state of Iowa must meet the importation requirements stated in rule 21—65.10(163).

*d.* A dealer with housing facilities must meet the requirements provided for housing facilities and primary enclosures in rule 21—67.3(162) and in-home facilities in rule 21—67.9(162).

*e.* A dealer must maintain records and statement of sales as provided for in rule 21—67.6(162).

*f.* A dealer approved by the department to act as a fostering oversight organization must meet the requirements for fostering oversight organizations and foster care homes provided in rule

21—67.11(162). A dealer may not utilize or oversee a foster home without prior written authorization of the department.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

### **21—67.8(162) Dog day cares.**

**67.8(1) Purpose.** The purpose of a dog day care is to allow dogs participating in the day care to become socialized through interaction in playgroups with other compatible dogs.

**67.8(2) Subclassification of license.** Dog day cares can operate as a subclassification of a commercial kennel license or boarding kennel license by complying with rule 21—67.8(162).

**67.8(3) Approval based on number of dogs.** The department will approve a dog day care for a maximum number of dogs based on, but not limited to, available space, available staff, and staff's ability to supervise dogs.

**67.8(4) Facility requirements.** A facility licensed to be a dog day care shall meet the housing facility and primary enclosure requirements provided for in rule 21—67.3(162). The dog day care shall also comply with the following facility requirements:

*a.* Group interaction is permitted for dogs, including dogs owned by different owners, that are compatible with one another. A facility licensed as a dog day care shall comply with all requirements in this rule during all hours of operation.

*b.* The play area for dogs shall provide for a minimum of 50 square feet per dog. Play areas must have a sign placed at the entry of the play area stating the maximum number of dogs allowed in the play area at any one time.

*c.* Each dog attending a dog day care must have a primary enclosure. When not under direct supervision, dogs at a dog day care must be housed within a primary enclosure at all times. Group housing within a primary enclosure is permitted for dogs from the same household that are compatible with one another.

**67.8(5) Sanitation requirements.** A facility licensed to be a dog day care shall comply with the cleaning and sanitation standards provided for in rule 21—67.4(162) and the following requirements:

*a.* All areas to which a dog has access shall be cleaned and sanitized a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors.

*b.* Used primary enclosures and food and water receptacles must be cleaned and sanitized before they can be used to house, feed or water another animal.

**67.8(6) Operations.** A facility licensed to be a dog day care shall comply with the following operational standards:

*a.* A dog, including a dog owned by the dog day care owner or a dog day care employee, shall be admitted into a dog day care only after the day care has:

(1) Subjected the dog to a pre-entry screening process that adequately evaluates the temperament of the dog, the dog's ability to interact with other dogs in a positive manner, and the dog's ability to interact with humans in a positive manner. The screening shall include, but not be limited to, obtaining a social history of the dog from the dog's owner. A written record of the testing shall be maintained by the facility for the time the dog is enrolled in the day care. The day care shall not admit any dog into the day care if the dog has a predisposition to be possessive of either the facility or a person owning or working in the facility. The day care shall not admit any dog that is known to have a predisposition of aggression toward other dogs or people.

(2) Obtained from the dog's owner written documentation of the medical history of the dog, including the dog's current vaccination status against distemper, parvo and rabies, unless exempted by direct, written recommendation of the owner's veterinarian or exempted by Iowa Code section 351.42.

(3) Obtained written documentation that the dog has been spayed or neutered, if the dog is over six months of age.

(4) Obtained a written acknowledgment from the dog's owner that the owner understands the inherent risk of injury or disease when dogs owned by different people are allowed to commingle. This written acknowledgment shall be separately signed or initialed by the dog's owner.

b. The dog day care shall separate dogs in the dog day care into playgroups comprised of compatible dogs. Dogs of incompatible personalities or temperaments shall be maintained separately.

c. The dog day care shall make advance arrangements in writing with a veterinarian to provide emergency veterinary care for dogs at the dog day care. This agreement must be updated annually.

d. A sick, diseased or injured dog shall be immediately removed from the playgroup and isolated. If circumstances indicate that immediate veterinary care is required, the dog shall be taken to a veterinarian or a veterinarian shall be called to examine the dog. The veterinarian can be either a veterinarian whose services have been contracted for by the dog day care or the veterinarian designated by the dog's owner, if a timely examination by that veterinarian is feasible.

e. The feeding of a dog and giving of snacks to a dog shall only be provided when the dog receiving the food or snack is contained within a primary enclosure. Treats for the purpose of training or managing a group of dogs are permissible.

f. A dog day care shall not establish a playgroup composed of more than 30 dogs.

g. A dog day care shall employ sufficient staffing so that there is a minimum of one person assigned to each playgroup with 15 or fewer dogs and two people assigned to each playgroup with 16 to 30 dogs. The person(s) supervising a playgroup must provide direct and immediate visual supervision at all times.

h. At all times, a dog day care must ensure that dogs are safe within the dog day care group.

i. Rest time within a primary enclosure must be provided for a minimum of two hours per day.

Direct supervision is not required while dogs are housed within primary enclosures.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; see Delay note at end of chapter; ARC 5713C, IAB 6/16/21, effective 7/21/21]

#### **21—67.9(162) In-home facilities.**

**67.9(1) *Maximum number of animals.*** An in-home facility may not maintain or harbor more than six adult animals, including both breeding dogs or cats and surgically sterilized dogs or cats, in the individual's residence.

**67.9(2) *Standards.*** Notwithstanding subrules 67.4(1) and 67.4(2), an in-home facility shall comply with the following standards:

a. Food supplies and bedding shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food or bedding unclean. Separate storage facilities shall be used to store cleaning and sanitizing equipment and supplies.

b. Adequate lighting shall be provided by natural or artificial means, or both, during sunrise to sunset hours. Animals shall be protected from excessive illumination.

c. The building shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.

d. Facilities shall be available to isolate diseased animals to prevent exposure to healthy animals.

e. Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided that adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown.

f. Group housing is permitted for animals that are compatible with one another. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed within the facility. Females in estrus shall not be housed with males, except for breeding purposes.

g. Every animal in an in-home facility must have a designated primary enclosure.

h. Litter boxes containing clean litter shall be provided at all times for kittens and cats. Litter boxes must be maintained as provided for in paragraph 67.3(2) "j."

i. Means shall be provided to maintain the temperature and ventilation that are comfortable for the species at all times.

j. Animals shall be removed from their primary enclosures at least twice in each 24-hour period and exercised. The amount of exercise should be appropriate for the age, breed and health condition of the animal.

*k.* Housing facilities shall be cleaned as set out in subrule 67.4(2) to reduce disease hazards, and an effective program shall be established and maintained for the control of vermin infestation. All surfaces within the in-home facility must be readily cleaned and maintained in good repair.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

## **21—67.10(162) Rescues.**

**67.10(1) *Rescue manager.*** A rescue must designate a rescue manager to carry out the responsibilities of the rescue. The responsibilities of a rescue manager include, but are not limited to, the following:

- a.* Establishing criteria for approving foster homes;
- b.* Approving foster homes;
- c.* Supervising dogs and cats taken into the care of the rescue;
- d.* Monitoring and ensuring all foster homes under the rescue's oversight are providing proper care and compliance with relevant laws and rules; and
- e.* Maintaining rescue records. Such records shall include, but are not limited to, the following:
  - (1) Source of the dog or cat;
  - (2) Date of placement of the dog or cat into a foster home;
  - (3) Adoption records;
  - (4) Disposition of dog or cat (if applicable);
  - (5) Medical care received by the dog or cat; and
  - (6) Vaccination and deworming records.

**67.10(2) *Records.*** Rescue records must be made available to the department upon request. A rescue must maintain records and statement of the sale, exchange, transfer, trade or adoption as provided for in rule 21—67.6(162).

**67.10(3) *Vaccine requirements.*** All dogs and cats taken in by or in the possession of a rescue shall have been vaccinated against distemper, parvo and rabies and kept current on distemper, parvo and rabies vaccinations, unless exempted by Iowa Code section 351.42 or by direct written recommendation of a qualified veterinarian. A signed rabies certificate and written documentation of parvo and distemper vaccinations from a veterinarian are required to verify vaccination. Titers are not an acceptable form of vaccine verification. Vaccine titers are not sufficient for demonstrating vaccine compliance. Dealers must provide vaccine records or written exemptions to the department upon request.

**67.10(4) *Importation requirements.*** Dogs and cats brought into the state of Iowa must meet the importation requirements stated in rule 21—65.10(163).

**67.10(5) *Housing facilities and primary enclosures.*** A rescue with housing facilities must meet the requirements for housing facilities and primary enclosures in rule 21—67.3(162). Rescues operating as in-home facilities must meet the requirements in rule 21—67.9(162).

**67.10(6) *Foster care homes.*** A rescue approved by the department to act as a foster oversight organization must meet the requirements for foster oversight organizations and foster care homes provided in rule 21—67.11(162). A dealer may not utilize or oversee a foster care home without prior written authorization of the department.

**67.10(7) *General care and husbandry.*** A rescue must meet the general care and husbandry standards provided for in rule 21—67.4(162).

**67.10(8) *Transportation.*** A rescue transporting animals must meet the requirements provided in rule 21—67.5(162).

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

## **21—67.11(162) Foster oversight organizations and foster care homes.**

**67.11(1)** A registered animal shelter, registered pound or licensed dealer shall not operate a foster care home or operate an organization that utilizes a foster care home unless the shelter, pound or dealer is in compliance with this rule and other applicable provisions of this chapter and Iowa Code chapter 162. If an out-of-state organization is utilizing foster care homes in Iowa, that organization must also be licensed or registered in the state of Iowa as an animal shelter, pound or dealer.

**67.11(2)** A registered animal shelter, registered pound or licensed dealer may apply to the department for a permit authorizing the shelter, pound or dealer to utilize one or more foster care homes in carrying

out its mission of providing for the care and maintenance of an animal that has been taken in or entrusted to the animal shelter, pound or dealer. For purposes of this rule, an animal shelter, pound or dealer that has been granted such authorization shall be considered a foster oversight organization.

**67.11(3)** A registered animal shelter, registered pound or licensed dealer may not utilize a foster care home unless the shelter, pound or dealer has been granted authorization by the department to be a foster oversight organization. An animal shelter, pound or dealer that uses a foster care home without first obtaining a permit authorizing the shelter, pound or dealer to be a foster oversight organization shall be considered to be operating illegally, shall be subject to suspension or revocation of its license to operate, and may be subject to other penalties authorized in Iowa Code chapter 162.

**67.11(4)** A registered animal shelter, registered pound or licensed dealer seeking to obtain a permit to be a foster oversight organization shall make application to the department on a form prescribed by the department. When feasible, the application shall be submitted to the department at the same time that the registered animal shelter, registered pound or licensed dealer submits its certificate of registration renewal or license renewal application. The permit application shall provide sufficient information to allow the department to determine the ability of the proposed foster oversight organization to provide adequate screening and oversight of any foster care home operating under the authority of the foster oversight organization.

*a.* Such application shall include, but not be limited to, the following information:

(1) The proposed foster oversight organization's plan for providing oversight of the foster care home. The plan shall include the frequency of inspections of the foster care home by the foster oversight organization and the criteria to be used by the foster oversight organization in reviewing the foster care home during periodic inspections. The plan shall also include the actions to be taken by the foster oversight organization in the event that the foster oversight organization determines that the foster care home is not adequately providing for the animals in the foster care home. Foster oversight organizations shall inspect foster care homes annually, at minimum, and an annual written inspection report must be on file with the foster oversight organization. Annual inspection reports shall be retained for a minimum of two years.

(2) The name, mailing address, email address and telephone number of the staff person connected with the proposed foster oversight organization who will have primary responsibility for administering the proposed foster care program.

(3) The name, mailing address, email address and telephone number of a secondary staff person connected with the proposed foster oversight organization who will have responsibility for administering the proposed foster care program in the absence of the primary administrator.

(4) The number of foster care homes the foster oversight organization is applying for and currently oversees. During the first year of application, the foster oversight organization will be limited to a maximum of 20 foster care homes. Upon renewal of the foster oversight organization permit, the foster oversight organization may apply for more than 20 foster care homes, subject to the approval of the department.

(5) Copies of all forms utilized by the foster oversight organization. This includes, but is not limited to, inspection forms and applications.

(6) The number of paid employees, both full-time and part-time, working for the foster oversight organization, the number of volunteers serving the foster oversight organization, and the number of volunteer hours utilized per week.

(7) The criteria used to determine if a foster care home is capable of caring for an animal.

(8) The actions taken by the foster oversight organization if the foster care home is unable to care for an animal.

*b.* If the foster oversight organization changes locations, a new application must be submitted.

*c.* If the primary or secondary contact listed on the application is no longer associated with the foster oversight organization, the department must be notified and provided with the name, mailing address, email address and telephone number of the staff person administering the foster care program.

*d.* The foster oversight organization must provide documentation to demonstrate that the foster oversight organization has sufficient infrastructure to adequately supervise all foster care homes and the care of the animals within the foster care homes.

**67.11(5)** The initial approval of a foster oversight organization shall be in effect only until the next expiration date of the registered animal shelter's, registered pound's, or licensed dealer's license. Thereafter, a foster oversight organization permit renewal shall be concurrent with the facility's certificate of registration or license renewal, unless circumstances otherwise require.

Foster oversight agreements must be renewed yearly at the same time that the registered animal shelter, registered pound, or licensed dealer submits its certificate of registration renewal application. The renewal agreement must contain the number of foster care homes for which the animal shelter or pound is requesting approval.

**67.11(6)** A foster oversight organization shall require that all persons seeking to operate a foster care home under the foster oversight organization submit a written application to the foster oversight organization specifying the proposed foster care home's qualifications, including but not limited to the ability of the foster care home to provide adequate care, exercise, feed, water, shelter, space, and veterinary care.

**67.11(7)** A foster oversight organization shall not be authorized to approve more than 20 foster care homes during the first year of operation. In granting a permit to a foster oversight organization, the department may further restrict the number of foster care homes a particular foster oversight organization may utilize if the department determines that the foster oversight organization does not have adequate personnel to supervise the number of foster care homes for which authorization was sought or the adequate ability to care for all animals in foster care. The department may authorize the foster oversight organization to approve more than 20 foster care homes only if the department finds that the foster oversight organization has and maintains adequate personnel assigned to provide sufficient oversight of foster care homes.

**67.11(8)** A foster oversight organization shall not authorize a foster care home to have in its care more than six animals, including animals owned by the foster care home, with the exception of a litter of puppies or kittens under 16 weeks of age. A litter of puppies or kittens under 16 weeks of age is considered the equivalent of one dog or cat. The mother of the litter of puppies or kittens is considered one dog or cat. No more than two litters of puppies or kittens under 16 weeks of age may be in a foster home at any given point in time.

**67.11(9)** A person who has been found to have engaged in or participated in an act constituting animal abandonment, neglect, cruelty, or abuse shall not be authorized to operate a foster care home. In addition, if a person has had a license or permit issued under Iowa Code chapter 162 or under the United States Department of Agriculture's animal care program revoked or has surrendered that person's license in lieu of revocation, then that person shall not be authorized to operate a foster care home.

**67.11(10)** A foster oversight organization shall not place a sexually intact animal in a foster care home where there is a sexually intact animal of the opposite sex of the same species unless the foster oversight organization determines that the fostered animal is too young to breed. If the foster oversight organization determines that a sexually intact animal may be placed in a foster care home with another sexually intact animal of the opposite sex of the same species because the fostered animal is too young to breed, then the foster oversight organization shall monitor the physical development of the fostered animal to either remove the animal before it is capable of breeding or to neuter or spay the fostered animal.

**67.11(11)** The foster oversight organization shall retain a copy of all the following documents for a period of 24 months and shall make such documents available for inspection by the department during regular business hours:

*a.* Applications to operate a foster care home, including any written approvals, conditional approvals, or denials.

*b.* Inspections or other reports relating to the operation of a foster care home. Inspection forms must be kept on file for each foster home. Inspections of a foster care home must be conducted by the foster oversight organization at minimum yearly.

c. Any written complaints or notes written by staff of the foster oversight organization relating to an oral complaint against a foster care home.

d. Any documents relating to the investigation or other resolution of a complaint regarding a foster care home.

e. Any documents relating to the revocation or suspension of a foster care home's authorization.

f. A current list of animals in foster care homes.

**67.11(12)** The foster oversight organization shall maintain detailed records as to which animals have been placed in a foster care home, when each animal was placed in a foster care home, and the ultimate disposition of each animal.

**67.11(13)** All adoptions and euthanasias of animals placed in a foster care home shall be the responsibility of the foster oversight organization and shall not be performed by the foster care home unless an emergency euthanasia must be performed by a licensed veterinarian to prevent the needless suffering of the animal.

**67.11(14)** All deaths, injuries, or emergency euthanasias occurring within a foster care home shall be reported to the foster oversight organization within 24 hours of the event.

**67.11(15)** It is the primary responsibility of the foster oversight organization to provide for oversight and regulation of its foster care homes; however, the department may choose to inspect a foster care home if the department determines that it would be in the best interests of the animals being maintained in the foster care home to conduct the inspection or if the department deems an inspection desirable to determine whether a foster oversight organization is properly fulfilling its role of screening and oversight of foster care homes. If the department determines that either serious or chronic problems exist in a foster care home, the department may order the foster oversight organization to suspend or rescind the authorization of the foster care home. The foster oversight organization shall immediately obtain physical examinations of all animals previously placed in the foster care home.

**67.11(16)** If the department determines that a foster oversight organization is not providing adequate screening or oversight of its foster care homes, the department may suspend or rescind the foster oversight organization's authorization to use foster care homes.

**67.11(17)** If the department suspends or revokes the license of an animal shelter, pound or dealer that is also a foster oversight organization, then the authorization to operate of the foster oversight organization and that of the foster care homes operating under the foster oversight organization shall immediately cease.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

## **21—67.12(162) Public health.**

**67.12(1)** Animal wardens aiding in the enforcement of the provisions of Iowa Code chapter 162 shall enlist veterinary aid in programming control measures to protect the public from zoonotic diseases which may be suspected to be on the premises of a licensee or registrant.

**67.12(2)** Animals, housing facilities, or premises may be placed under quarantine by order of the secretary of agriculture when it is deemed necessary to protect the public from zoonotic diseases.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

## **21—67.13(162) Access, seizure and impoundment.**

**67.13(1)** *Access to facilities and records.* The premises, housing facilities and records required by Iowa Code chapter 162 and this chapter shall be open for inspection by authorized personnel of the department during normal business hours.

**67.13(2)** *Seizure and impoundment.*

a. Failure of any pound, animal shelter, pet shop, boarding kennel, commercial kennel, commercial breeder, public auction or dealer to adequately house, feed, water or care for the animals in the person's or facility's possession or custody may subject the animals to seizure and impoundment. Seizure and impoundment shall be at the discretion of the secretary of agriculture. Standards to guide discretion shall include, but not be limited to, the following:

(1) An assessment of the condition of the animals, including but not limited to direct visual examination. Such assessment may include procedures and testing necessary to accurately determine disease, nutritional, and health status.

(2) An assessment as to the likelihood that the condition of the animals will deteriorate if action is not taken.

(3) An assessment as to the degree of failure to provide for the animals. Primary consideration will be based on the general health of the animals and the adequacy with which the animals are being fed, watered and sheltered.

(4) An assessment as to the history, if any, of the facility's compliance, noncompliance, and willingness to take corrective action. Such an assessment will be based on past inspection reports completed by regulatory personnel from the appropriate licensing agency.

(5) Court determination, if any, as to the existence of cruelty, abuse or neglect under Iowa Code chapter 717B.

(6) The willingness of the facility to allow frequent monitoring and the ability of the department or local law enforcement officers to provide this service.

(7) A determination as to whether adequate impoundment facilities or resources exist and are available for use by the department for the seizure and impoundment of animals.

*b.* In proceeding under this subrule, the department may either:

(1) Petition the court in the county where the facility is located for an ex parte court order authorizing seizure and impoundment, either separately or as part of an action commenced pursuant to Iowa Code chapter 717B. The petition shall request an expedited hearing within seven days of the order for seizure and impoundment. The expedited hearing shall determine final disposition of the animals seized and impounded.

(2) Issue an administrative order authorizing seizure and impoundment. The order shall state the finding of facts on which issuance of the order was based. The order shall be personally served upon the owner or manager of the facility. If the owner or manager cannot be found after a reasonable effort to locate, the notice shall be posted conspicuously at the facility. The notice shall state the time and place of an administrative hearing to determine the appropriateness of the seizure and impoundment; and if such seizure and impoundment is upheld, then the hearing shall determine final disposition of the animals seized and impounded.

The administrative hearing shall be held within three days of the seizure unless a continuance is agreed upon by the department and the owner. A decision at the administrative hearing will not be stayed by the department for more than 48 hours pending appeal without a court order. However, the department may delay the disposition if the department determines the delay is desirable for the orderly disposition of the animals. Unless otherwise provided in this subrule, the department will follow adopted departmental rules on the conduct of the administrative hearing.

*c.* The release of animals for final disposition to the department will allow for the sale, adoption or euthanasia of the animals. Determination of the most appropriate option for final disposition of a specific animal shall reside with the department and be based on, but not limited to, the animal's physical health, the presence of any condition which would necessitate treatment of significant duration or expense, and the appropriateness of the animal as a pet. All due consideration shall be given to the sale or adoption of an animal as the preferable option of disposition.

*d.* Any moneys generated from the sale or adoption of animals shall be used to provide compensation for the cost of care of the animals while impounded or the cost of disposition. Any residual moneys shall be directed to the owner. If the moneys generated from the sale and adoption of the animals are insufficient to meet the costs incurred in caring for the animals, the difference may be recovered in an action against the owner of the animals.

*e.* The department may arrange for impoundment services, including final disposition, with any licensed facility able to adequately provide for the care and disposition of the animals. Animals for which an order is issued authorizing seizure and impoundment shall be individually identified and records maintained relating to their care and final disposition. The department, or its representatives, shall be allowed access during normal business hours to the records and impounded animals.

*f.* In lieu of seizure and impoundment, the secretary of agriculture may authorize a one-time dispersal of animals, including by sale, as a remedial option. The owner may petition the department in writing for full or partial dispersal. The petition shall address the terms and conditions for dispersal which are being requested. The department may require additional terms and conditions. The terms and conditions governing dispersal will be contingent upon department approval. Such approval shall be in writing.

*g.* Conditions of this subrule and subrule 67.13(1) and Iowa Code sections 162.13 and 162.14 shall likewise apply to all eligible licensees and registrants, whether or not they have been properly licensed by Iowa Code chapter 162.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

#### **21—67.14(162) Loss of license or denial of license.**

**67.14(1)** If the license of a licensee is revoked or is relinquished by the licensee while a revocation action is pending, the licensee shall not be eligible to reapply for a new license for at least three years from the date of the revocation or relinquishment. If a licensee has been found in court to have committed an act of animal cruelty or neglect, the licensee shall not be eligible for a new license for at least five years from the date of the revocation or relinquishment. If an applicant has been found in court to have committed an act of animal cruelty or neglect, the applicant shall not be eligible for a license for at least five years from the date of the conviction or guilty plea. The prohibition against relicensure or licensure in this subrule shall include any partnership, firm, corporation, or other legal entity in which the person has a substantial interest, financial or otherwise, and any person who has been or is an officer, agent or employee of the licensee if the person was responsible for or participated in the violation upon which the revocation or conviction was based. The department may waive the three-year bar to relicensure arising from a revocation or relinquishment of a license where a revocation action was pending. Such waiver shall be made on a case-by-case basis. Such waiver shall only be given if the department finds that the conditions which resulted in the revocation or revocation action have been addressed and there is little likelihood that they will be replicated.

**67.14(2)** If the license of a licensee is revoked or if the license is voluntarily relinquished by the licensee, the licensee shall file with the department a written plan detailing the numbers and types of animals in its facilities and how these animals are going to be legally disposed of to ensure that the animals are being humanely handled and to ensure that the remaining animals are being maintained properly. The licensee shall submit this plan to the department no later than ten calendar days from the date of revocation or relinquishment of the license.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

**21—67.15(162) Applicability to commercial establishments with federal licenses.** In addition to obtaining the permit from the department, any person who operates a commercial establishment under a current and valid federal license shall provide care ensuring adequate feed, water, and housing facilities and appropriate sanitary control, grooming practices and veterinary care. The department has the authority to inspect the premises and the required records.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

**21—67.16(162) Acceptable forms of euthanasia.** The euthanasia of all animals kept in facilities regulated under Iowa Code chapter 162 and these rules shall be performed in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: 2020 Edition. A copy of this report is on file with the department.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

**21—67.17(162) Greyhound breeder or farm fee.** A person who owns, keeps, breeds, or transports a greyhound dog for pari-mutuel wagering at a racetrack as provided in Iowa Code chapter 99D shall pay a fee of \$40 for the issuance or renewal of a state license.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

#### **21—67.18(162) Research facilities.**

**67.18(1) Definitions.** For purposes of this rule, the following definitions are used:

“*Animal rescue organization*” means a person other than an animal shelter operating on a nonprofit basis to place unwanted, abandoned, abused, or stray dogs or cats in permanent adopted homes.

“*Qualified research facility*” means the following:

1. A research facility, including but not limited to a regents institution, that conducts experiments on dogs or cats for research, education, testing, or another scientific purpose, and that receives moneys from the state or federal government.

2. A research facility that conducts experiments on dogs or cats for research, education, testing, or another scientific purpose, in collaboration with a research facility described in paragraph “1.”

“*Retired animal*” means a dog or cat confined at a qualified research facility if the dog or cat has been previously used for research, education, testing, or another scientific purpose, and the dog or cat is no longer required to be confined by the qualified research facility for any of those purposes.

**67.18(2) Adoption program required.**

a. A qualified research facility shall enter into a written agreement with an animal shelter or animal rescue organization to facilitate the placement of retired animals. The qualified research facility shall include signed copies of each agreement annually upon renewal of authorization.

b. A retired animal must have no substantial medical condition, and pose no safety risk to the public, that would prevent the dog’s or cat’s successful integration into a permanent adoptive home.

c. A qualified research facility may offer to transfer ownership and custody of the retired animal to a person for private placement in the person’s permanent adoptive home according to an arrangement agreed to by the qualified research facility and the person. The qualified research facility shall keep a record of the transfer, including contact information of the individual taking possession of the retired animal, and shall retain the record for a period of at least 12 months.

**67.18(3) Records required.** Records must be made available to the department upon request. A qualified research facility must maintain records and statement of the sale, exchange, transfer, trade or adoption as provided for in rule 21—67.6(162). Records shall be made and retained for a period of 12 months.

[ARC 6785C, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement Iowa Code chapter 162.

[Filed 12/9/74]

[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]

[Filed emergency 7/25/85—published 8/14/85, effective 7/25/85]

[Filed 9/20/85, Notice 8/14/85—published 10/9/85, effective 11/13/85]

[Filed 8/8/86, Notice 7/2/86—published 8/27/86, effective 10/1/86]

[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]

[Filed 6/7/91, Notice 3/20/91—published 6/26/91, effective 7/31/91]

[Filed 12/17/93, Notice 9/15/93—published 1/5/94, effective 2/9/94]

[Filed 8/26/94, Notice 7/20/94—published 9/14/94, effective 10/19/94]

[Filed 3/6/97, Notice 9/11/96—published 3/26/97, effective 4/30/97]

[Filed 7/10/98, Notice 5/6/98—published 7/29/98, effective 9/2/98]

[Filed 5/7/04, Notice 2/18/04—published 5/26/04, effective 6/30/04]

[Filed 2/21/07, Notice 12/20/06—published 3/14/07, effective 4/18/07]

[Filed emergency 8/15/08—published 9/10/08, effective 8/15/08]

[Filed Emergency ARC 8636B, IAB 4/7/10, effective 3/9/10]

[Filed Emergency ARC 8847B, IAB 6/16/10, effective 5/20/10]

[Filed Emergency ARC 9456B, IAB 4/6/11, effective 3/18/11]

[Filed ARC 9670B (Notice ARC 9525B, IAB 6/1/11), IAB 8/10/11, effective 9/14/11]

[Filed ARC 4789C (Notice ARC 4696C, IAB 10/9/19), IAB 12/4/19, effective 1/8/20]<sup>1</sup>

[Filed ARC 5713C (Notice ARC 5298C, IAB 12/2/20), IAB 6/16/21, effective 7/21/21]

[Filed ARC 6213C (Notice ARC 6111C, IAB 12/29/21), IAB 2/23/22, effective 3/30/22]

[Filed ARC 6785C (Notice ARC 6517C, IAB 9/7/22), IAB 1/11/23, effective 2/15/23]

- <sup>1</sup> January 8, 2020, effective date of paragraph 67.8(4)“b” delayed until the adjournment of 2020 session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 10, 2019.



CHAPTER 76  
MEAT AND POULTRY INSPECTION  
[Prior to 7/27/88 see Agriculture Department 30—Ch 43]

**21—76.1(189A) Federal Wholesome Meat Act regulations adopted.** Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, 2020, is hereby adopted in its entirety by reference; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 301.2(a) therein defining the term “Act” shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.
2. Sec. 301.2(b) therein defining the term “department” shall include the Iowa department of agriculture and land stewardship.
3. Sec. 301.2(c) therein defining the term “secretary” shall include the secretary of agriculture of the state of Iowa.
4. Sec. 301.2(e) therein defining the term “administrator” shall include the supervisor of the Iowa meat and poultry inspection service or any officer or employee of the Iowa department of agriculture and land stewardship.
5. Sec. 301.2(t) therein defining the term “commerce” shall include intrastate commerce in the state of Iowa.
6. Sec. 301.2(u) therein defining the term “United States” shall include the state of Iowa.  
[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 4261C, IAB 1/30/19, effective 3/6/19; ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.2(189A) Federal Wholesome Meat Act regulations adopted.** Part 303, Part 304, Part 305, Part 306, Parts 309 through 315, Parts 317 through 320, Part 329, Part 332, Part 412, Part 416, Part 417, Part 418, Part 424, Part 430, Part 431, Part 441 and Part 442 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, 2021, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Section 325.3 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of July 30, 2018, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2016, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

This rule is intended to implement Iowa Code sections 189A.3 and 189A.7(8).  
[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 1546C, IAB 7/23/14, effective 8/27/14; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 2880C, IAB 1/4/17, effective 2/8/17; ARC 4261C, IAB 1/30/19, effective 3/6/19; ARC 4790C, IAB 12/4/19, effective 1/8/20; ARC 5839C, IAB 8/11/21, effective 9/15/21; ARC 6786C, IAB 1/11/23, effective 2/15/23]

**21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted.** Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, 2020, is hereby adopted in its entirety with the following exceptions: Sections 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, and 381.128, Subpart R, Subpart T, Subpart V, and Subpart W; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 381.1(b)(2) therein defining the term “Act” shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.
2. Sec. 381.1(b)(3) therein defining the term “administrator” shall include the supervisor of the Iowa meat and poultry inspection service, or any officer or employee of the Iowa department of agriculture and land stewardship.
3. Sec. 381.1(b)(10) therein defining the term “commerce” shall include intrastate commerce in the state of Iowa.
4. Sec. 381.1(b) therein defining the term “department” shall include the Iowa department of agriculture and land stewardship.
5. Sec. 381.1(b)(47) therein defining the term “secretary” shall include the secretary of agriculture of the state of Iowa.

6. Sec. 381.1(b)(53) therein defining the term “United States” shall include the state of Iowa. [ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 4261C, IAB 1/30/19, effective 3/6/19; ARC 5839C, IAB 8/11/21, effective 9/15/21]

These rules are intended to implement Iowa Code sections 189A.3 and 189A.7(8).

**21—76.4(189A) Inspection required.** Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of July 30, 2018, in which slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of July 30, 2018, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5. [ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 4261C, IAB 1/30/19, effective 3/6/19]

**21—76.5(189A) Custom/exempt facilities sanitation standard operating procedures.** Iowa inspected custom/exempt facilities shall develop and implement a sanitation standard operating procedure (SSOP) in a manner consistent with Section 416.12, Title 9, Chapter III, Code of Federal Regulations.

**21—76.6(189A) Forms and marks.** Whenever an official form is designated by federal regulation, the appropriate Iowa form will be substituted, and whenever an official mark is designated, the following official Iowa marks will be substituted:

1. Iowa inspected and condemned brand:

**IOWA INSP'D AND  
CONDEMNED**

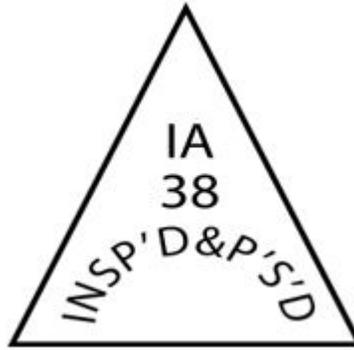
2. Iowa product label mark of inspection for amenable species:



3. Iowa inspected carcass brand for amenable species (excluding poultry): Stamp (brand) must be 1¾ inch tall. The wording shall be all the same height and fill the space inside and centered within the outline of the state of Iowa.



4. Exotic carcass brand:



5. Exotic product label mark of inspection:



6. Notwithstanding any other provision of this rule, a red meat establishment that is a selected establishment under 9 CFR Part 332 shall use the official marks, devices, and certificates in 9 CFR Part 312 for products that are intended for interstate commerce with the modifications described in 9 CFR Sec. 332.5(c).

- a. Cooperative Interstate Shipment program product label mark of inspection:



- b. Cooperative Interstate Shipment program carcass brand. Sizing of brands shall be as described in 9 CFR Sec. 312.2(a), except that the 1¼" brand shall be utilized in lieu of the ¾" brand:



7. Notwithstanding any other provision of this rule, a poultry establishment that is a selected establishment under 9 CFR Part 381, Subpart Z, shall use the official marks, devices, and certificates in 9 CFR Part 381, Subpart M, for products that are intended for interstate commerce with the modifications described in 9 CFR Sec. 381.515(c). Cooperative Interstate Shipment program poultry product label mark of inspection:



This rule is intended to implement Iowa Code section 189A.5(2).  
 [ARC 4790C, IAB 12/4/19, effective 1/8/20; ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.7(189A) Products to be marked with official marks.**

**76.7(1)** Each carcass which has been inspected and passed in an official establishment shall be marked at the time of inspection with the official inspection legend containing the number of the official establishment.

**76.7(2)** Except as provided otherwise in 9 CFR Part 316.8, each primal part of a carcass and each liver, beef tongue, and beef heart which has been inspected and passed shall be marked with the official inspection legend containing the number of the official establishment before it leaves the establishment in which it is first inspected and passed, and each such inspected and passed product shall be marked with the official inspection legend containing the number of the official establishment where it was last prepared. Additional official marks of inspection may be applied to products as desired to meet local conditions. Primal parts are the wholesale cuts of carcasses as customarily distributed to retailers. The round, flank, loin, rib, plate, brisket, chuck, and shank are primal parts of beef carcasses. Veal, mutton, and goat primal parts are the leg, flank, loin, rack, breast, and shoulder. The ham, belly, loin, shoulder, and jowl are pork primal parts. Equine primal parts are the round, flank, loin, rib, plate, brisket, chuck, and shank.

**76.7(3)** Beef livers shall be marked with the official inspection legend containing the number of the official establishment at which the cattle involved were slaughtered. Beef livers shall be marked on the convex surface of the thickest portion of the organ.

**76.7(4)** Inspected and passed parts of carcasses which are not marked with the official inspection legend under this rule shall not enter any official establishment or be sold, transported, or offered for sale or transportation in commerce except as provided in 9 CFR Part 316.8.

This rule is intended to implement Iowa Code section 189A.5(2).  
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.8(189A,167) Registration.** Every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouse of livestock or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of such animals, including poultry, that died otherwise than by slaughter, shall register with the meat and poultry section, department of agriculture and land stewardship, indicating the name and address of each place of business and all trade names.

This rule is intended to implement Iowa Code section 189A.7(7).  
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.9(189A,167) Dead, dying, disabled or diseased animals.** Persons shall not engage in the business of buying, selling, transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animal, unless they have been licensed for the purpose of disposing of the bodies of dead animals pursuant to Iowa Code section 167.2. All persons so engaged are subject to the provisions of Iowa Code chapter 167 and regulations of 21—Chapter 61, “Dead Animal Disposal,” Iowa Administrative Code.

**76.9(1)** All rendering plants engaged in processing fallen or dead animals into pet food and pet food processing plants shall be inspected by the meat and poultry section in accordance with Iowa Code chapter 167 before registration is approved.

**76.9(2)** The plant shall engage the services of a licensed veterinarian, approved by the department, to inspect carcasses for the presence of communicable disease or harmful contamination or adulteration and evidence of decomposition. Any of these conditions shall be cause for the carcass to be condemned as unfit for processing into pet animal food.

All compensation for the veterinarian employed by the rendering plant and pet animal food processing plants processing inedible meat and carcass parts for pet food shall be paid by the plant.

**76.9(3)** Fallen or dead animals which are recovered and transported to the processing plant shall be immediately skinned and eviscerated, except the lungs, heart, kidneys and liver, which shall be left attached to the carcass, and the carcasses shall be stored in a chill room with attached viscera until inspected and approved by a veterinary inspector. The stomach or stomachs, together with the entire intestinal tract, shall be tagged immediately with serially numbered tags and stamped with the word “inedible.” The word “inedible” shall be not less than one-half inch high. Condemned carcasses shall be deeply slashed on the round, rump, loin and shoulder, denatured with a ten percent solution of cresylic acid or other decharacterizing agent approved by the department of agriculture and land stewardship and removed to a rendering plant prior to the close of the working day.

**76.9(4)** The department shall inspect each place registered under Iowa Code chapter 189A or licensed under Iowa Code chapter 167 at least once a year, and as often as it deems necessary and shall see that the registrant conducts the business in conformity to both chapters and these rules.

**76.9(5)** Rendering plants and pet animal food processing plants may process fallen or dead animals into pet food where the animals are recovered and transported to a processing plant within a reasonable time following the death of an animal and before decomposition occurs.

**76.9(6)** Processing facilities, when located in or operated in conjunction with a rendering plant, shall be in a separate area equipped and used only for skinning, eviscerating, deboning, grinding, decharacterizing, packaging and labeling of inedible meat and carcass parts to be used in pet animal food. Rendering facilities approved by the department shall be available to process materials not suitable for pet animal food.

**76.9(7)** These rules shall also govern the collection, transportation and processing of other inedible material such as lungs, livers, hearts, spleens, poultry and poultry parts obtained from slaughterhouses, packing plants or other sources, to be used in the processing and manufacture of pet animal food.

This rule is intended to implement Iowa Code sections 189A.8, 167.5 and 167.14.  
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.10(189A) Denaturing and identification of livestock or poultry products not intended for use as human food.** No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified.

**76.10(1)** All inedible meat and carcass parts shall be adequately decharacterized with charcoal or with other suitable agent acceptable to the Iowa department of agriculture and land stewardship. Inedible material shall be cut into pieces or chunks no more than four inches in any dimension. Following decharacterization, inedible meat and carcass parts shall be packed in suitable containers approved by the department.

**76.10(2)** Decharacterizing shall be done to an extent acceptable to the department. Decharacterization shall be done in such a manner that each piece of material shall be decharacterized so as to preclude its being used for, or mistaken for, product for human consumption.

**76.10(3)** All containers for decharacterized inedible meat or carcass parts shall be plainly marked with the word “inedible” in letters no less than two inches high.

**76.10(4)** Decharacterized inedible meat and carcass parts shall be frozen or held at a temperature of 40°F or less in the processing plant or during transportation to the final processor.

This rule is intended to implement Iowa Code section 189A.8.  
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.11(189A,167) Transportation of decharacterized inedible meat or carcass parts.** No person engaged in the business of buying, selling or transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, shall buy, sell, transport, offer for sale or transportation or receive for transportation in such commerce, any dead, dying, disabled or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, unless such transaction or transportation is made in accordance with Iowa Code chapters 167 and 189A and 21—Chapters 61 and 76.

**76.11(1)** All carcasses and other inedible material received for processing, and all decharacterized inedible material shipped from the plant, shall be transported and delivered in closed conveyances. The conveyance shall be constructed in such a manner as to prevent the spillage of liquids and material and in accordance with rules 21—61.15(167) and 21—61.16(167), Iowa Administrative Code.

**76.11(2)** Rendering plants and pet animal food processing plants outside the state of Iowa, from which decharacterized inedible meat or carcass parts are shipped into the state of Iowa, shall be certified by the proper public officials of the state of origin that the processing plants meet at least the minimum standards as set forth in these rules.

This rule is intended to implement Iowa Code sections 189A.8 and 167.15.  
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.12(189A) Records.** Records which fully and correctly disclose all transactions involved in their business shall be kept and retained for a period of no less than two years by the following classes of persons:

Any person that engages in intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, transporting or storing any livestock or poultry products for human or animal food;

Any person that engages in intrastate commerce in business as a renderer or in the business of buying, selling or transporting any dead, dying, disabled or diseased carcasses of such animals or parts of carcasses of any such animals, including poultry, that died otherwise than by slaughter.

**76.12(1)** All such persons shall afford the secretary and authorized representatives access to such business and opportunity at all reasonable times to examine the facilities, inventory and records thereof, to copy the records and to take reasonable samples of the inventory, upon payment of the reasonable value therefor.

**76.12(2)** Records shall include the following:

*a.* The name and address of the owner, the approximate time of death of the animal and the date the animal was received for processing shall be recorded for all animals to be inspected for processing into pet animal food.

*b.* The number of cartons or containers and the approximate weight of other material received from slaughterhouses, packing plants and other sources to be used in the processing of pet animal food.

*c.* The number of cartons, packages or containers of processed inedible meat and carcass parts and the weight of each carton stored.

*d.* Date of shipment, number of containers or boxes, weight of each shipment and name and address of the consignee of all inedible and decharacterized material shipped from the plant.

This rule is intended to implement Iowa Code section 189A.5(2) "g."

[ARC 5839C, IAB 8/11/21, effective 9/15/21]

**21—76.13(189A) Voluntary inspections of exotic animals.** Every person wishing to obtain voluntary inspection of exotic animals shall comply with the regulations adopted in this rule.

Part 352 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, 2021, is hereby adopted in its entirety by reference.

This rule is intended to implement Iowa Code chapter 189A.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 6786C, IAB 1/11/23, effective 2/15/23]

**21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.**

1. All federal regulations adopted in 21—76.1(189A).

2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2016.

This rule is intended to implement Iowa Code chapters 170 and 189A.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16]

**21—76.15(189A) Fees.** Rescinded IAB 7/21/04, effective 7/2/04.

[Filed 7/12/66; amended 11/14/66, 9/26/67, 2/20/71, 4/20/72, 7/30/73]

[Filed 4/13/76, Notice 2/9/76—published 5/3/76, effective 6/7/76]

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[Filed without Notice 8/19/76—published 9/8/76, effective 10/13/76]

[Filed 2/15/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]

[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]

[Filed emergency 5/22/85—published 6/19/85, effective 5/22/85]

[Filed 7/25/85, Notice 6/19/85—published 8/14/85, effective 9/18/85]

[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]

[Filed emergency 10/9/91—published 10/30/91, effective 10/9/91]

[Filed 11/8/91, Notice 9/18/91—published 11/27/91, effective 1/1/92]

[Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]

[Filed 2/7/97, Notice 12/4/96—published 2/26/97, effective 4/2/97]

[Filed 12/24/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]

[Filed 3/30/01, Notice 1/24/01—published 4/18/01, effective 5/23/01]

[Filed emergency 9/5/03—published 10/1/03, effective 9/5/03]

[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]

[Filed emergency 7/2/04—published 7/21/04, effective 7/2/04]

[Filed 8/11/04, Notice 5/26/04—published 9/1/04, effective 10/6/04]

[Filed 10/2/08, Notice 8/13/08—published 10/22/08, effective 11/26/08]

[Filed ARC 9012B (Notice ARC 8842B, IAB 6/16/10), IAB 8/25/10, effective 9/29/10]  
[Filed ARC 0733C (Notice ARC 0634C, IAB 3/6/13), IAB 5/15/13, effective 6/19/13]  
[Filed ARC 1546C (Notice ARC 1468C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]  
[Filed ARC 2439C (Notice ARC 2369C, IAB 1/20/16), IAB 3/16/16, effective 4/20/16]  
[Filed ARC 2880C (Notice ARC 2803C, IAB 11/9/16), IAB 1/4/17, effective 2/8/17]  
[Filed ARC 4261C (Notice ARC 4150C, IAB 12/5/18), IAB 1/30/19, effective 3/6/19]  
[Filed ARC 4790C (Notice ARC 4697C, IAB 10/9/19), IAB 12/4/19, effective 1/8/20]  
[Filed ARC 5839C (Notice ARC 5652C, IAB 6/2/21), IAB 8/11/21, effective 9/15/21]  
[Filed ARC 6786C (Notice ARC 6499C, IAB 9/7/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 85  
WEIGHTS AND MEASURES

[Appeared as Ch 14, 1973 IDR]  
[Certain rules renumbered 5/3/78]

All tolerances and specifications for the weights and measures division were adopted from the  
U.S. Bureau of Standards Handbook II, 44 published September 1949.  
[Prior to 7/27/88 see Agriculture Department 30—Ch 55]

WEIGHTS

**21—85.1(215) “Sensibility reciprocal” defined.** The term “*sensibility reciprocal*” is defined as to the weight required to move the position of equilibrium of the beam, pan, pointer or other indicating device of a scale, a definite amount.

This rule is intended to implement Iowa Code section 215.18.

**21—85.2 to 85.4** Reserved.

**21—85.5(215) “Counter scale” defined.** A “*counter scale*” is a scale of any type which is especially adopted on account of its compactness, light weight, moderate capacity and arrangements of parts for use upon a counter, bench, or table.

This rule is intended to implement Iowa Code section 215.18.  
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.6(215) “Spring and computing scales” defined.** A “*spring scale*” is a scale in which the weight indications depend upon the change of shape or dimensions of an elastic body or system of such bodies.

**85.6(1)** A “*computing scale*” is a scale which, in addition to indicating the weight, indicates the total price of the amount of commodity weighed for a series of unit prices and must be correct in both its weight and value indications.

**85.6(2)** All computing scales shall be equipped with weight indicators and charts on both the dealer’s and customer’s sides.

**85.6(3)** Tolerances for both the spring scale and the computing scale shall not be greater than that for counter scales.

This rule is intended to implement Iowa Code section 215.18.

**21—85.7(215) “Automatic grain scale” defined.** The “*automatic grain scale*” is one so constructed with a mechanical device that a stream of grain flowing into its hopper can be checked at any given weight, long enough to register said weight and dump the load. The garner above the scale should have at least three times the capacity of the scale to ensure a steady flow at all times.

On automatic-indicating scales. On a particular scale, the maintenance tolerances applied shall be not smaller than one-fourth the value of the minimum reading-face graduation; the acceptance tolerances applied shall be not smaller than one-eighth the value of the minimum reading-face graduation.

However, on a prepacking scale (see D.11, D.12) having graduated intervals of less than one-half ounce, the maintenance tolerances applied shall not be smaller than one-eighth ounce and the acceptance tolerances applied shall be not smaller than one-sixteenth ounce.

This rule is intended to implement Iowa Code section 215.18.

**21—85.8(215) “Motor truck scales” defined.** “*Motor truck scales*” are scales built by the manufacturer for the use of weighing commodities transported by motor truck.

This rule is intended to implement Iowa Code section 215.18.

**21—85.9(215) “Livestock scales” defined.** “*Livestock scales*” are scales which are constructed with stock racks, or scales which are being used to weigh livestock.

This rule is intended to implement Iowa Code section 215.18.

**21—85.10(215) “Grain dump scales” defined.** “*Grain dump scales*” are scales so constructed that the truck may be unloaded without being moved from the scale platform.

The above-mentioned scales must be approved by the department. This approval being based upon blueprints and specifications submitted for this purpose.

This rule is intended to implement Iowa Code section 215.18.

**21—85.11(215) Scale pit.**

**85.11(1)** In the construction of a scale pit, walls must be of reinforced concrete. A slab floor must be installed in the pit. The floor must be at least 12 inches thick with a minimum of grade 40 reinforcement rod running into all piers and sidewalls, installed according to the manufacturer’s specifications. There shall be an approach at each end of the scale of not less than ten feet, and said approach shall be of reinforced concrete 12 inches thick on a level with the scale deck. A slope of a one-inch drop across the ten-foot span may be allowed for drainage.

**85.11(2)** Electronic scales shall have a vertical clearance of not less than four feet from the floor line to the bottom of the I-beam of the scale bridge, thus providing adequate access for inspection and maintenance. The load-bearing supports of all scales installed in a fixed location shall be constructed to ensure the strength, rigidity and permanence required for proper scale performance.

This rule is intended to implement Iowa Code section 215.15.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.12(215) Pitless scales.** A person may install pitless electronic, self-contained and vehicle scales in a permanent location provided the following conditions for the construction are incorporated:

**85.12(1)** Scale installation applications and permits must be submitted to the department of agriculture and land stewardship the same as the pit scale installation, with specifications being furnished by the manufacturer, for approval.

**85.12(2)** Piers shall extend below the frost line or be set on solid bed rock; and they shall be of reinforced concrete.

**85.12(3)** A reinforced concrete slab the width of the scale, at least six inches thick, shall run full length under the scale. Slab and piers shall be tied together with reinforcement rod, with a minimum clearance of eight inches between floor and weighbridge.

**85.12(4)** Reinforced portland cement approaches at least 12 inches thick, ten feet long and as wide as the scale, shall be provided on each end in a level plane with the scale platform.

**85.12(5)** Scale shall be installed at an elevation to ensure adequate drainage away from scale.

**85.12(6)** Scale platform and indicator shall be protected from wind and other elements which could cause inaccurate operation of the scale. Protection modifications that attach to or touch the scale or parts attached to the scale shall be approved by the department prior to installation.

This rule is intended to implement Iowa Code section 215.18.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.13(215) Master weights.** Master scale test weights used for checking scales after being overhauled must be sealed as to their accuracy once every two years. Said weights after being sealed are to be used only as master test weights.

This rule is intended to implement Iowa Code section 215.17.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.14(215) Scale design.** A scale shall be of such materials and construction that (1) it will support a load of its full nominal capacity without developing undue stresses or deflections, (2) it may reasonably be expected to withstand normal usage without undue impairment of accuracy or the correct functioning of parts, and (3) it will be reasonably permanent in adjustment.

**85.14(1) Stability of indications.** A scale shall be capable of repeating with reasonable precision its indications and recorded representations. This requirement shall be met irrespective of repeated manipulation of any scale element in a manner duplicating normal usage, including (a) displacement of

the indicating elements to the full extent allowed by the construction of the scale, (b) repeated operation of a locking device, and (c) repeated application or removal of unit weights.

**85.14(2) *Interchange or reversal of parts.*** Parts which may readily be interchanged or reversed in the course of normal usage shall be so constructed that their interchange or reversal will not materially affect the zero-load balance or the performance of the scale. Parts which may be interchanged or reversed in normal field assembly shall be (a) so constructed that their interchange or reversal will not affect the performance of the scale or (b) so marked as to show their proper positions.

**85.14(3) *Pivots.*** Pivots shall be made of hardened steel, except that agate may be used in prescription scales, and shall be firmly secured in position. Pivot knife-edges shall be sharp and straight and cone-pivot points shall be sharp.

**85.14(4) *Position of equipment, primary or recording indicating elements (electronic weighing elements).*** A device equipped with a primary or recording element shall be so positioned that its indications may be accurately read and the weighing operations may be observed from some reasonable “customer” position; the permissible distance between the equipment and a reasonable customer position shall be determined in each case upon the basis of individual circumstances, particularly the size and character of the indicating element; a window large enough should be placed in the building, and the installation should be so arranged as to afford an unobstructed view of the platform.

This rule is intended to implement Iowa Code section 215.18.

**21—85.15(215) *Weighbeams.*** All weighbeams, dials, or other mechanical weight-indicating elements must be placed on reinforced concrete footings or metal structural members. Concrete and metal must be of sufficient strength to keep mechanical weight-indicating elements in positive alignment with the lever system.

This rule is intended to implement Iowa Code section 215.18.

**21—85.16(215) *Beam box.*** Whenever a scale is equipped with a beam box, the beam uprights, shelf and cap must be made of channel irons or I-beams. The box covering the weighbeam may be constructed of wood or other material.

This rule is intended to implement Iowa Code section 215.18.

**21—85.17** Reserved.

**21—85.18(215) *Weight capacity.*** The amount of weight indicated on the beam, dial or other auxiliary weighing attachments shall not exceed the factory-rated capacity of the scale, and said capacity shall be stamped on the butt of the beam (fractional bar is not included).

**85.18(1) *Auxiliary attachment.*** If auxiliary attachment is used, the amount of the auxiliary attachment must be blocked from the beam.

**85.18(2) *Normal position.*** The normal balance position of the weighbeam of a beam scale shall be horizontal.

**85.18(3) *Uncompensated spring scales.*** A small capacity uncompensated spring scale shall be conspicuously marked to show that the scale is illegal for use in the retail sale of foodstuffs other than fruits and vegetables.

This rule is intended to implement Iowa Code section 215.16.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.19(215) *Provision for sealing coin slot.*** Provision shall be made on a coin-operated scale for applying a lead and wire seal in such a way that insertion of a coin in the coin slot will be prevented.

This rule is intended to implement Iowa Code section 215.18.

**21—85.20(215) *Stock racks.*** A livestock scale shall be equipped with a suitable enclosure, fitted with gates as required, within which livestock may be held on a scale platform; this rack shall be securely

mounted on the scale platform and adequate clearances shall be maintained around the outside of the rack.

This rule is intended to implement Iowa Code section 215.18.

**21—85.21(215) Lengthening of platforms.** The length of the platform of a vehicle scale shall not be increased beyond the manufacturer's designed dimension except when the modification has been approved by competent scale-engineering authority, preferably that of the engineering department of the manufacturer of the scale, and by the weights and measures authority having jurisdiction over the scale.

This rule is intended to implement Iowa Code section 215.18.

**21—85.22(215) Accessibility for testing purposes.** A large capacity scale shall be so located, or such facilities for normal access thereto shall be provided that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by the customary means; otherwise it shall be the responsibility of the scale owner or operator to supply such special facilities, including necessary labor, as may be required to transport the test weights to and from the scale, for testing purposes, as required by the weights and measures official.

This rule is intended to implement Iowa Code section 215.10.

**21—85.23(215) Assistance in testing operations.** If the design, construction or location of a large-capacity scale is such as to require a testing procedure involving special accessories or an abnormal amount of handling of test weights, such accessories or needed assistance in the form of labor shall be supplied by the owner or operator of the scale, as required by the weights and measures official.

This rule is intended to implement Iowa Code section 215.1A.

**21—85.24(215) Beam scale.** One on which the weights of loads of various magnitude are indicated solely by means of one or more weighbeam bars either alone or in combination with counterpoise weights.

This rule is intended to implement Iowa Code section 215.18.

**21—85.25(215) Spring scale.** An automatic-indicating scale in which the counterforce is supplied by an elastic body or system of such bodies, the shape or dimensions of which are changed by applied loads. A "compensated" spring scale is one equipped with a device intended to compensate for changes in the elasticity of the spring or springs resulting from changes in temperature, or one so constructed as to be substantially independent of such changes; an "uncompensated" spring scale is one not so equipped or constructed. A "straight-face" spring scale is one in which the indicator is affixed to the spring without intervening mechanism and which indicates weight values on a straight graduated reading-face. (The use in a scale of metal bands or strips in lieu of pivots and bearings does not constitute the scale a "spring" scale.)

This rule is intended to implement Iowa Code section 215.18.

**21—85.26(215) Weighbeam or beam.** An element comprising one or more bars equipped with movable poises or means for applying counterpoise weights or both.

This rule is intended to implement Iowa Code section 215.18.

**21—85.27(215) Livestock scale.** For purposes of the application of requirements for SR tolerances and minimum graduations, a scale having a nominal capacity of 6,000 pounds or more and used primarily for weighing livestock standing on the scale platform. (An "animal scale" is a scale adapted to weighing single heads of livestock.)

This rule is intended to implement Iowa Code section 215.18.

## SCALES

**21—85.28(215) Wheel-load weighers and axle-load scales.** The requirements for wheel-load weighers and axle-load scales apply only to such scales in official use for the enforcement of traffic in highway laws or for the collection of statistical information by government agencies.

This rule is intended to implement Iowa Code 215A.3.

**21—85.29** Reserved.

## REGISTERED SERVICERS

**21—85.30(215) Servicer's license fee.** The fee for a servicer's license shall be \$10. The license shall be valid for two years from its date of issuance.

This rule is intended to implement Iowa Code section 215.23.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.31 and 85.32** Reserved.

## MEASURES

**21—85.33(214A,208A) Motor fuel and antifreeze tests and standards.**

**85.33(1)** In the interest of uniformity, the tests and standards for motor fuel, including but not limited to renewable fuels such as ethanol blended gasoline, biodiesel, biodiesel blended fuel, and components such as an oxygenate, raffinate natural gasoline and motor vehicle antifreeze shall be those established by the ASTM international in effect on December 1, 2022, with the following exceptions:

- a. Biodiesel blended fuel classified as higher than B-20 but less than B-99.
- b. Tests and standards that are otherwise required by statute.

**85.33(2)** The components used to produce biodiesel blended fuel classified as higher than B-20 but less than B-99 must meet the following department standards:

- a. The biodiesel must meet ASTM international specification D6751.
- b. The diesel must meet ASTM international specification D975.

**85.33(3)** Diesel fuel which does not comply with ASTM international specifications may be blended with biodiesel, additives, or other diesel fuel so that the finished blended product does meet the applicable specifications.

**85.33(4)** Motor fuel that contains more than one-half of 1 percent of methyl tertiary butyl ether (MTBE) by volume shall not be sold, offered for sale, or stored in Iowa.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6, 214A.2, and 215.18.

[ARC 6805C, IAB 1/11/23, effective 2/13/23]

**21—85.34(215) Tolerances on petroleum products measuring devices.** All pumps or meters at filling stations may have a tolerance of not over five cubic inches per five gallons, minus or plus. All pumps or measuring devices of a large capacity shall have a maintenance tolerance of 50 cubic inches, minus or plus, on a 50-gallon test. Add additional one-half cubic inch tolerance per gallon over and above a 50-gallon test. Acceptance tolerances on large capacity pumps and measuring devices shall be one-half the maintenance tolerances.

This rule is intended to implement Iowa Code sections 214.2 and 215.20.

**21—85.35(215) Meter adjustment.** If a meter is found to be incorrect and also capable of further adjustment, said meter shall be adjusted, rechecked and sealed. If a seal is broken for any cause other than by a state inspector, the department of agriculture and land stewardship shall be promptly notified of same.

**85.35(1)** Companies specializing in testing and repairing gasoline and fuel oil dispensing pumps or meters, shall be registered with the division of weights and measures, upon meeting requirements set forth by the department of agriculture and land stewardship.

**85.35(2)** In accordance with the contemplated revision of National Institute of Standards and Technology Handbook 44-4th Edition, G-UR4.5 (Replacement of Security Seal), accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

**85.35(3)** If a meter is found to be inaccurate, “Repair and Placing in Service” card shall be left by the inspector.

**85.35(4)** After meter has been repaired and placed in service, the “Repair and Placing in Service” card must be returned to the Iowa Department of Agriculture and Land Stewardship, Weights and Measures Division.

This rule is intended to implement Iowa Code section 215.20.  
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.36(215) Recording elements.** All weighing or measuring devices shall be provided with appropriate recording or indicating elements, which shall be definite, accurate and easily read under any conditions of normal operation of the device. Graduations and a suitable indicator shall be provided in connection with indications and recorded representations designed to advance continuously. Graduations shall not be required in connection with indications or recorded representations designed to advance intermittently or with indications or recorded representations of the selector type.

This rule is intended to implement Iowa Code section 215.18.

**21—85.37(215) Air eliminator.** All gasoline or oil metering devices shall be equipped with an effective air eliminator to prevent passage of air or vapor through the meter. The vent from such eliminator shall not be closed or obstructed.

This rule is intended to implement Iowa Code section 215.18.

**21—85.38(215) Delivery outlets.** No means shall be provided by which any measured liquid can be diverted from the measuring chamber of the meter or the discharge line therefrom. However, two or more delivery outlets may be installed, if automatic means is provided to ensure that liquid can flow from only one such outlet at one time, and the direction of flow for which the mechanism may be set at any time is definitely and conspicuously indicated.

This rule is intended to implement Iowa Code section 215.18.

**21—85.39(189,215) Weights and measures.**

**85.39(1)** The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of January 1, 2020, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

**85.39(2)** The National Institute of Standards and Technology (NIST) Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Handbook 133, Checking the Net Contents of Packaged Goods, Type Evaluation, and all supplements to these handbooks, as published by the National Institute of Standards and Technology amended or revised as of January 1, 2020, are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

[ARC 8292B, IAB 11/18/09, effective 12/23/09; ARC 0953C, IAB 8/21/13, effective 9/25/13; ARC 4947C, IAB 2/26/20, effective 4/1/20; ARC 5415C, IAB 2/10/21, effective 3/17/21; ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.40(215) ILP inspection tag or mark.** If a meter is found to be inaccurate, an appropriate “inaccurate” card and a “repair and placing in service” card shall be left with the meter.

**85.40(1)** The “inaccurate” card is to be retained by the LP-gas dealer after repair.

**85.40(2)** The “repair and placing in service” card is to be forwarded to weights and measures division of the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.5.  
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.41(215) Meter repair.** If the meter has not been repaired within 30 days, the meter may be condemned and a red condemned tag may be attached to the meter.

This rule is intended to implement Iowa Code section 215.5.  
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.42(215) Security seal.** In accordance with the contemplated revision of National Institute of Standards and Technology Handbook 44, G-UR4.5 (Replacement of Security Seal), accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

This rule is intended to implement Iowa Code section 215.12.  
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.43(215) LP-gas meter repairs.** Companies specializing in testing and repairing LP-gas meters shall be registered with the division of weights and measures as accredited repair and testing agencies upon meeting the requirements set forth by the department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.20.

**21—85.44(215) LP-gas delivery.** In the delivery of LP-gas by commercial bulk trucks (bobtail) across state lines, it shall be mandatory for all trucks delivering products to be equipped with a meter that has been either tested by the state of Iowa or that carries the seal of an accredited meter service and proving company.

This rule is intended to implement Iowa Code section 215.20.

**21—85.45(215) LP-gas meter registration.** The location of all LP-gas liquid meters in retail trade shall be listed, by the owner, with the department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.20.

**21—85.46(215) Reporting new LP-gas meters.** Upon putting a new or used meter into service in the state of Iowa, the user shall report to the weights and measures division.

This rule is intended to implement Iowa Code section 215.20.

**21—85.47** Reserved.

**21—85.48(214A,215) Advertisement of the price of liquid petroleum products for retail use.**

**85.48(1)** Nothing in this rule shall be deemed to require that the price per gallon or liter or any grade or kind of liquid petroleum product sold on the station premises be displayed or advertised except on the liquid petroleum metering distribution pumps.

**85.48(2)** Petroleum product retailers, if they elect to advertise the unit price of their petroleum products at or near the curb, storefront or billboard, shall display the price per gallon or liter. The advertised price shall equal the computer price settings shown on the metering pump or shall be displayed in a manner clear to the purchaser for discounts offered for cash payment. Product names displayed shall match the product names on the retail motor fuel dispensers and all consumer receipts.

**85.48(3)** Notwithstanding the provisions of subrule 85.48(2), cash only prices may be posted by the petroleum marketer on the following basis:

*a.* Cash only prices must be disclosed on the posted sign as “cash only” or similar unequivocal wording in lettering 3” high and ¼” in stroke when the whole number price being shown is 36” or less in height; or in lettering at least 6” high and ½” in stroke when the whole number price is more than 36” in height.

b. Cash prices posted or advertised must be available to all customers, regardless of type of service (e.g., full service or self-service); or grade of product (e.g., regular, unleaded, gasohol and diesel).

c. Cash and credit prices or discounts must be prominently displayed on the dispenser.

d. A chart showing applicable cash discounts expressed in terms of both the computed and posted price shall be available to the customer on the service station premises.

**85.48(4)** On all outside display signs, the whole number shall not be less than 6" in height and not less than 3/8" in stroke, and any fraction shall be at least one-third of the size of the whole number in both height and width.

**85.48(5)** The price must be complete, including taxes without any missing numerals or fractions in the price.

**85.48(6)** Price advertising signs shall identify the type of product (e.g., regular, unleaded, gasohol and diesel), in lettering at least 3" high and 1/4" in stroke when the whole number price being shown is 36" or less in height, or in lettering at least 6" high and 1/2" in stroke when the whole number price is more than 36" in height.

**85.48(7)** A price advertising sign shall display, if in liters and may display if in gallons, the unit measure at least in letters of 3" minimum.

**85.48(8)** Directional or informational signs for customer location of the type of service or product advertised shall be clearly and prominently displayed on the station premises in a manner not misleading to the public.

**85.48(9)** The advertising of other commodities or services offered for sale by petroleum retailers in such a way as to mislead the public with regard to petroleum product pricing shall be prohibited.

**85.48(10)** Rescinded IAB 1/11/23, effective 2/15/23.

**85.48(11)** Ethanol blended gasoline classified as higher than E-15 shall have a department-approved visible, legible flex fuel vehicle sticker on the pump or pump handle. The updated decals need to be in place by January 1, 2018.

**85.48(12)** Rescinded IAB 1/11/23, effective 2/15/23.

**85.48(13)** Ethanol blended gasoline classified with an octane rating of 87 or higher may be labeled or advertised as "super" or "plus."

**85.48(14)** Octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place. The octane rating shall be posted for registered fuels. No octane rating shall be posted on the pump for ethanol blended gasoline classified as higher than E-15. The minimum octane rating for gasoline offered for sale by a retail dealer is 87 for regular grade gasoline and 91 for premium grade gasoline.

**85.48(15)** Any gasoline labeled as "leaded" shall be produced with the use of any lead additive or contain more than 0.05 grams of lead per gallon or more than 0.005 grams of phosphorus per gallon. As used in this subrule, "lead additive" means any substance containing lead or lead compounds.

**85.48(16)** Ethanol blended gasoline shall be designated E-xx where "xx" is the volume percentage of ethanol in the ethanol gasoline. Ethanol blended gasoline formulated with a percentage of ethanol between 68 and 83 percent by volume shall be designated as E-85. Biodiesel fuel shall be designated as B-xx where "xx" is more than 20 percent renewable fuel by volume.

**85.48(17)** A wholesale dealer selling ethanol blended gasoline or biodiesel fuel to a purchaser shall provide the purchaser with a statement indicating the actual volume percentage present. The statement may be on the sales slip provided or a similar document such as a bill of lading or invoice. This statement shall include the specific amount of biodiesel, even if the amount of renewable fuel is 5 percent or less.

This rule is intended to implement Iowa Code sections 214A.3, 214A.16 and 215.18.

[ARC 7628B, IAB 3/11/09, effective 4/15/09; ARC 8434B, IAB 12/30/09, effective 2/3/10; ARC 0079C, IAB 4/4/12, effective 3/16/12; ARC 0953C, IAB 8/21/13, effective 9/25/13; ARC 2577C, IAB 6/8/16, effective 7/13/16; ARC 6216C, IAB 2/23/22, effective 5/1/22; ARC 6784C, IAB 1/11/23, effective 2/15/23]

**21—85.49(214A,215) Gallonage determination for retail sales.** The method of determining gallonage on gasoline or diesel motor vehicle fuel for retail sale shall be on a gross volume basis. Temperature correction or any deliberate methods of heating shall be prohibited.

This rule is intended to implement Iowa Code sections 214A.3 and 215.18.

**21—85.50(214,214A,215) Blender pumps.** Motor fuel blender pumps or blender pumps installed or modified after November 1, 2008, which sell both ethanol blended gasoline classified as higher than E-15 and gasoline need to have at least two hoses per pump to separate registered gasoline fuels from flex fuels.

This rule is intended to implement Iowa Code section 214A.2.  
[ARC 7628B, IAB 3/11/09, effective 4/15/09; ARC 0079C, IAB 4/4/12, effective 3/16/12; ARC 6216C, IAB 2/23/22, effective 5/1/22]

**21—85.51** Reserved.

#### MOISTURE-MEASURING DEVICES

**21—85.52(215A) Testing devices.** All moisture-measuring devices will be tested against a measuring device which will be furnished by the department and all moisture-measuring devices will be inspected to determine whether they are in proper operational condition and supplied with the proper accessories.

This rule is intended to implement Iowa Code section 215A.2.

**21—85.53(215A) Rejecting devices.** Moisture-measuring devices may be rejected for any of the following reasons:

**85.53(1)** The moisture-measuring device tested is found to be out of tolerance with the measuring device used by the department by one of the inspectors so assigned by more than 0.7 percent on grain moisture content.

**85.53(2)** The person does not have available the latest charts for type of device being used.

**85.53(3)** The person does not have available the proper scale or scales and thermometers for use with the type of device being used.

**85.53(4)** The moisture-measuring device is not free from excessive dirt, debris, cracked glass or is not kept in good operational condition at all times.

This rule is intended to implement Iowa Code section 215A.6.

**21—85.54(215,215A) Specifications and standards for moisture-measuring devices.** The specifications and tolerances for moisture-measuring devices are those established by the United States Department of Agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the federal grain inspection service; and those recommended by National Bureau of Standards and published in National Bureau of Standards Handbook 44 as of July 1, 1985.

This rule is intended to implement Iowa Code section 215A.3.

**21—85.55 and 85.56** Reserved.

**21—85.57(215) Testing high-moisture grain.** When testing high-moisture grain the operator of a moisture-measuring device shall use the following procedure: Test each sample six times adding the six measurements thus obtained and dividing the total by six to obtain an average which shall be deemed to be the moisture content of such sample.

This rule is intended to implement Iowa Code section 215A.7.

**21—85.58 to 85.62** Reserved.

#### HOPPER SCALES

**21—85.63(215) Hopper scales.** A “hopper scale” is a scale designed for weighing bulk commodities whose load-receiving element is a tank, box, or hopper mounted on a weighing element; and includes automatic hopper scales, grain hopper scales, and construction material hopper scales.

**85.63(1) Installation.** A hopper scale used for commercial purposes shall be so located, or such facilities for normal access thereto shall be so provided that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by customary

means; otherwise it shall be the responsibility of the scale owner or operator to supply such special facilities, as required by the weights and measures official. The hopper scale shall have extended angle irons with hooks 14 inches from edge to hopper, in all four corners, to allow the inspector to hook his chain and binder to 500# weight (or 1000# weight) for testing.

**85.63(2) Method of hopper scale testing.** The method to be used in testing the scale for weighing accuracy shall be by the suspension of standard test weights at each corner of the weighbridge, suspended from a point as near as possible over the center of the main bearing. A suitable permanent device to which the suspension equipment may be connected shall be properly located and placed on each corner of the weighbridge. There is to be no obstruction, such as machinery, spouting or insufficient wall clearance, etc., that will interfere with the free suspension of the weights.

**85.63(3) Approved by department.** Newly installed hopper scales must be approved by the department; this approval shall be based upon blueprints and specifications submitted for this purpose.

This rule is intended to implement Iowa Code sections 215.10 and 215.18.

[IDR 1952, p.20, 1954, 1958, 1962]

[Amended 11/18/63, 9/14/65, 12/14/65, 11/21/66, 11/15/67, 8/30/68, 9/10/69,  
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3/16/12]

[Filed ARC 0953C (Notice ARC 0815C, IAB 6/26/13), IAB 8/21/13, effective 9/25/13]

[Filed ARC 2577C (Notice ARC 2479C, IAB 3/30/16), IAB 6/8/16, effective 7/13/16]

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[Filed ARC 6784C (Notice ARC 6581C, IAB 10/5/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 96  
HEMP

**21—96.1(204) Definitions.**

*“Acceptable hemp THC concentration”* means when an official laboratory tests a sample, the laboratory must report the delta-9 tetrahydrocannabinol (THC) content concentration on a dry weight basis and the measurement uncertainty. The acceptable hemp THC concentration is for the purpose of compliance when the application of the measurement uncertainty to the reported THC concentration on a dry weight basis produces a distribution or range that includes 0.3 percent or less. For example, if the reported THC concentration on a dry weight basis is 0.35 percent and the measurement uncertainty is +/- 0.06 percent, the measured THC concentration on a dry weight basis for this sample ranges from 0.29 percent to 0.41 percent. Because 0.3 percent is within the distribution or range, the sample is within the acceptable hemp THC concentration for the purpose of compliance. This definition of “acceptable hemp THC concentration” affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the CSA.

*“Applicant”* means any of the following:

1. An individual with 5 percent, or more, legal or equitable interest in the hemp crop.
2. An individual applying as a member of a business entity, if that individual’s legal or equitable interest in the business entity is 5 percent or more.
3. Key participants in a corporate entity at the executive levels including chief executive officer, chief operating officer and chief financial officer.
4. If an applicant is acting on behalf of an institution governed by the state board of regents, as defined in Iowa Code section 262.7, or a community college, as defined in Iowa Code section 260C.2, “applicant” means the individual, or individuals, appointed by the president or chancellor of the institution to obtain hemp permits from the department. Other institutions of higher learning may also apply by designating an appropriate authorized representative.
5. If an applicant is acting on behalf of an association, the association shall designate an authorized representative.

*“Authorized representative”* means an individual designated by an applicant to act on behalf of and represent the applicant in communicating with the department for the purposes of applying for a license, submitting reports, receiving documents and information from the department, and acting as the sole primary contact pertaining to the license. An applicant may only have one authorized representative. An authorized representative shall not be a business entity.

*“Business entity”* means an organization created or operated by one or more individuals to carry on a trade or business.

*“Cannabis”* means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

*“Certificate of analysis”* means the certificate issued by the department following the official preharvest inspection, sampling and testing for total tetrahydrocannabinol (THC) concentration if the THC concentration is 0.3 percent or less by dry weight matter. The certificate of analysis shall contain the results of the department’s official laboratory test of the postdecarboxylation value concentration of the officially sampled hemp crop following the preharvest report. The certificate of analysis shall be combined with a certificate of crop inspection.

*“Controlled Substances Act”* or *“CSA”* means the Controlled Substances Act as codified in 21 U.S.C. 801, et seq.

*“Crop site”* or *“site”* means a single contiguous parcel of land suitable for the planting, growing, or harvesting of hemp, if the tract of land does not exceed 320 acres. All the area within the contiguous tract is part of the crop site. Unplanted areas, including spacing between planted rows, are part of the crop site for purposes of determining the size of a site. The crop site shall not be a dwelling.

“*Cultivar*” means a group of cultivated plants that are not necessarily true to type, or plants whose seed will yield the same type of plant as the original plant. A cultivar may originate as a mutation or may be a hybrid of two plants. To further develop into a variety, or propagate true-to-type clones, cultivars must be propagated vegetatively through cuttings, grafting, and even tissue culture.

“*Decarboxylated*” means the completion of the chemical reaction that converts THC-acid (THCA) into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums up delta-9-THC and 87.7 percent of THCA.

“*Decarboxylation*” means the removal or elimination of a carboxyl group from a molecule or organic compound.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Destruction*” means the procedure to render unusable by burning, incorporating with other materials, or other methods approved by the department.

“*Destruction report*” means the report and notice that shall be submitted to the department on the required departmental form, no more than 48 hours after the crop has been destroyed, as ordered by the department.

“*Drug felony conviction report*” means a mandatory report submitted within 14 days of the conviction to the department on the required departmental form by any authorized representative or applicant who is convicted of a disqualifying felony offense.

“*Dry weight basis*” means the ratio of the amount of dry solid in a sample after drying to the total mass of the sample before drying, including the moisture in a sample. Dry weight basis is the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

“*Dwelling*” means a residence and all permanent or temporary structures attached to the residence.

“*Entity*” means a corporation, joint-stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization participating in the production of hemp, including but not limited to as a partner, joint venture, or other relationship.

“*Farm Service Agency*” or “*FSA*” means the Farm Service Agency of the United States Department of Agriculture.

“*Geospatial location*” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

“*Hemp*” means:

1. The plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry weight basis when tested using postdecarboxylation or other similarly reliable methods.

2. A plant of the genus *Cannabis* other than *Cannabis sativa* L., with a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry weight basis when tested using postdecarboxylation or other similarly reliable methods, but only to the extent allowed by the department in accordance with applicable federal law, including the federal hemp law.

“*Hemp bill of lading*” means a document of title evidencing the receipt of hemp for shipment issued by an individual engaged in the business of directly or indirectly transporting or forwarding hemp. The term does not include a warehouse receipt. The term does not include hemp transported within the state of Iowa by a person for that person’s sole use. A hemp bill of lading shall include the following:

1. The name and address of the owner of the hemp;
2. The point of origin;
3. The point of delivery, including name and address;
4. The kind and quantity of packages or, if in bulk, the total quantity of hemp in the shipment; and
5. The date of shipment.

“*High-performance liquid chromatography*” or “*HPLC*” means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture.

HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

*“Individual”* means a single human being. An entity is not an individual.

*“Indoor crop site”* means:

1. A structure covered with transparent material, such as glass or polyurethane, which is specifically designed, constructed and used for the culture and propagation of hemp. Common industry terms for indoor crop sites include, but are not limited to, greenhouse, glasshouse, and hothouse; or
2. A structure, or a room within a structure, used for the culture and propagation of hemp.

*“License”* means a license granted by the department to grow hemp in Iowa.

*“License application”* means the department’s form submitted to obtain a license to grow hemp in Iowa.

*“Lot”* means a contiguous area in a field, greenhouse, or indoor crop site containing the same variety, cultivar, or strain of cannabis throughout. No plant within a lot shall be planted more than 14 days after the initial plant or seed was planted. In addition, “lot” is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. For the purpose of this chapter, “lot” is to be defined by the producer in terms of farm location, field acreage, variety, cultivar or strain and to be reported as such to the FSA.

*“Map”* means a diagram depicting all borders of the crop site including the nearest roads to aid in orientation, the cardinal direction north, and the boundaries of the legally described parcel in which the crop site is located. A map designating an outdoor crop site shall clearly indicate the names, or lot numbers, of all lots and planting locations. If multiple varieties, cultivars, or strains are planted, or if the crop site shall be subdivided into separate lots for the official laboratory test, the map shall indicate the lots and sub-lots with names of the varieties, cultivars, or strains.

*“Measurement uncertainty”* or *“MU”* means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could be reasonably attributed to the particular quantity subject to measurement.

*“Official laboratory test”* means a test of postdecarboxylation value concentration performed by the department. The laboratory quantitative determination of the THC concentration shall use postdecarboxylation and be measured using gas chromatography with flame ionization detector (GS-FID), high performance liquid chromatography (HPLC) or another acceptable method as determined by the department.

*“Official sample”* means the preharvest hemp sample collected by the department, in accordance with department policy, which is used to assess the THC concentration of a single lot of hemp.

*“Order of destruction”* means the order furnished to the licensee by the department, in consultation with the department of public safety, ordering the destruction of cannabis that exceeds the acceptable hemp THC concentration.

*“Outdoor crop site”* means any crop site that is not an indoor crop site.

*“Planting report”* means the report and notice submitted to the department on the required departmental planting report form. Planting reports are required for both indoor and outdoor hemp crops.

*“Postdecarboxylation value,”* in the context of testing methodologies for THC concentration in hemp, means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol (THC) content derived from the sum of the THC and delta-9-tetrahydrocannabinolic acid (THCA) content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatographic technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THCA intact and requires a conversion calculation of that THCA to calculate total potential THC in a given sample.

“*Postharvest report*” means the report and notice that the licensee shall deliver to the department on the required departmental postharvest report form, no more than 30 days after the harvest of a lot is complete.

“*Preharvest inspection*” means the inspection to collect one or more official samples for official laboratory testing.

“*Preharvest report*” means the report and notice that the licensee shall deliver to the department on the required departmental preharvest form in order to request a preharvest inspection. The licensee shall submit the preharvest report no less than 30 days prior to the expected harvest date of any hemp crop.

“*Reverse distributor*” means a person who is registered with Drug Enforcement Administration (DEA) in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.

“*Strain*” means variations of a cultivar, generally from breeding techniques or genetic mutations.

“*Sub-lot*” means an area divided from a larger lot. A lot may be divided into multiple sub-lots.

“*Temporary harvest and transportation permit*” means a temporary and limited permit issued by the department when the official sample is taken, allowing the harvest and transportation of the officially tested crop prior to the completion of official laboratory sampling.

“*THC*” means total tetrahydrocannabinol as determined by an official laboratory test postdecarboxylation.

“*Variety*” means a plant grouping within a single botanical taxon of the lowest known rank that, without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other matter.

[ARC 5050C, IAB 6/17/20, effective 7/22/20; ARC 6807C, IAB 1/11/23, effective 1/3/23]

**21—96.2(204) Licensing.** A license to grow hemp shall be obtained from the department. In order to obtain and maintain a license, an applicant shall submit a license application, receive approval from the department, and comply with the standards contained in Iowa Code chapter 204 and these rules.

**96.2(1)** A license is nontransferable unless approved by the department.

**96.2(2)** In 2020, the license application for an outdoor crop site shall be submitted to the department on or before May 15. Indoor crop site applications may be submitted at any time.

**96.2(3)** In 2021 and thereafter, the license application for an outdoor crop site shall be submitted to the department on or before April 15. Indoor crop site license applications may be submitted at any time.

**96.2(4)** Failure to include all applicants shall preclude the license application from consideration.

**96.2(5)** Applicants shall submit an application form. A complete application form shall include, at a minimum, the following:

- a. The authorized representative’s full name and mailing address.
- b. A legal description and map of each crop site where the applicant proposes to produce hemp.
- c. The geospatial location of the center of the crop site.
- d. The number of crop acres intended for hemp production. For fractions of acres, round to the next whole number.
- e. The name of the hemp varieties, cultivars or strains proposed to be grown by the applicant.
- f. The intended hemp crop to be grown by the applicant; this includes grain, seed, fiber, cannabidiol (CBD), clones, cuttings, plantlets, or other identifying information.
- g. The type of crop site (indoor or outdoor).
- h. All parties with an ownership interest in the crop site or hemp crop. If the crop site is leased, the name and contact information of all lessors and lessees with any interest in the crop site or hemp crop shall be provided.

*i.* The destruction method the applicant intends to use to destroy the cannabis if the crop fails to meet the acceptable hemp THC concentration. The destruction method must be approved by the department prior to actual destruction.

**96.2(6)** The authorized representative and all applicants shall submit official fingerprints to the department as a part of the application process. All national criminal history record check fees shall be paid to the department.

**96.2(7)** All license applications shall be submitted to the department electronically via the online license application portal. An authorized representative may request a waiver from the department to submit an application through an alternative format.

**96.2(8)** Real-time information, including but not limited to the status and number of the producer's license, shall be accessible via the department's online license application portal. Information submitted to the department via the online license application portal shall be collected, maintained, and reported to the USDA as required by the USDA in 7 CFR Part 990, Subpart C.

**96.2(9)** A license expires on December 31 of the year the license is issued.

**96.2(10)** An applicant with a state or federal felony conviction relating to a controlled substance is subject to a ten-year ineligibility from the date of the conviction.

**96.2(11)** Any applicant who materially falsifies any information contained in an application shall be ineligible for a license.

**96.2(12)** The department may implement additional reasonable licensing requirements at its discretion.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

#### **21—96.3(204) National criminal history record check.**

**96.3(1)** Disqualifying offenses.

*a.* An applicant shall not be convicted of, or plead guilty to, a disqualifying felony offense. All applicants shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history record check.

*b.* The department or the department of public safety may request additional information to complete a background investigation and national criminal history background check. An applicant or authorized representative shall respond within 30 days to any request for additional information. Failure to timely respond shall result in a denial of the license application.

*c.* The department may deny any application for good cause.

**96.3(2)** An applicant and authorized representative shall provide fingerprints to the department. The department shall provide the fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation.

**96.3(3)** The applicant shall pay the actual cost of conducting any national criminal history record check to the department.

**96.3(4)** The results of a national criminal history check may be valid for three consecutive license years unless a drug-related felony conviction occurs after the issuance of the national criminal history record check results.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

#### **21—96.4(204) Licensee reports.**

**96.4(1)** *Planting report.*

*a. Outdoor planting report.* Within 14 days after planting an outdoor hemp crop, the authorized representative shall submit a planting report to the department. The planting report does not constitute the required preharvest report. The planting report shall be on a form prepared and distributed by the department that shall include, but is not limited to:

- (1) The authorized representative's full name and contact information.
- (2) The license number.
- (3) The anticipated harvest date.
- (4) An updated detailed map depicting any changes.

*b. Indoor planting report.* On the first day of the month following any planting activity in the immediately preceding month, the authorized representative shall submit a planting report. The planting report does not constitute the required preharvest report. The planting report shall be on a departmental form prepared and distributed by the department. The planting report form shall include, at a minimum, the following:

- (1) The authorized representative's full name and contact information.
- (2) The license number.
- (3) The anticipated harvest date.

**96.4(2) Preharvest report.** The authorized representative shall submit a preharvest report to the department no less than 30 days prior to the expected harvest date of the hemp crop produced at the licensee's crop site. The licensee shall be entirely responsible for determining the expected harvest date for the hemp crop. The preharvest report shall be on a departmental form prepared and distributed by the department. The preharvest report form shall include, at a minimum, the following:

- a.* The authorized representative's full name and contact information.
- b.* The license number.
- c.* The anticipated date range for initiating and completing harvest, recorded by lot.
- d.* A map of the outdoor crop site. If more than one harvest date is being reported for the lots within the crop site, the map shall designate the locations of the lots, and the intended harvest dates, which are to be harvested under the preharvest report.

**96.4(3) Postharvest report.** The licensee shall deliver the postharvest report to the department no less than 14 days after the harvest of a lot is complete. If any lots within a crop site are harvested at different times, each harvest date shall be independently recorded by lot. The postharvest report shall be on a departmental form prepared and distributed by the department. The postharvest report form shall include, at a minimum, the following:

- a.* The authorized representative's full name and contact information.
- b.* The license number.
- c.* The harvest date(s).
- d.* The independent harvest date of each lot.

**96.4(4) Destruction report.** The licensee shall deliver a destruction report no more than 48 hours after crop destruction, or as ordered by the department. The destruction report shall be on a form prepared and distributed by the department. The destruction report shall include, but is not limited to:

- a.* The authorized representative's full name and contact information.
- b.* The license number.
- c.* The destruction date(s).
- d.* The method of destruction.
- e.* The independent destruction date of each lot.

**96.4(5) Drug felony conviction report.** Any authorized representative or applicant who is convicted of, or pleads guilty to, a disqualifying felony offense must report the disqualifying offense to the department and any co-licensees within 14 days of the conviction. The offender shall immediately forfeit the license. In the case of multiple licensees holding a single license, the offender's interest in the license shall be immediately terminated. Failure to report the disqualifying offense may result in an order of destruction. The drug felony conviction report shall be on a form prepared and distributed by the department that shall include, but is not limited to:

- a.* The license number(s).
- b.* The name and contact information for the individual reporting the individual's conviction.
- c.* The date of conviction.
- d.* An acknowledgment that all co-licensees have been informed of the disqualifying offense, if applicable, and the co-licensees have assumed full responsibility for the hemp crop.

**96.4(6) Hemp acreage report to the FSA.** Within 30 days after the completion of planting of an outdoor crop site, or within 30 days after the first planting of hemp in the calendar year in an indoor crop site, the authorized representative shall report the hemp acreage to the FSA. At a minimum, the following information shall be reported:

- a. Street address and geospatial location for each crop site.
- b. Acreage for each crop site.
- c. The license number.

**96.4(7) Voluntary destruction report.** If a licensee chooses to destroy a lot prior to harvest, the authorized representative shall notify the department of the licensee's intent to destroy the crop within seven days prior to the destruction. The hemp crop shall not be destroyed unless the department or local law enforcement either is present during the destruction or has authorized destruction to occur unwitnessed. The voluntary destruction report shall be on a form prepared and distributed by the department that shall include, but is not limited to:

- a. The authorized representative's full name and contact information.
- b. The license number.
- c. The date(s) and method of destruction for each lot.
- d. The identification number or name of the lot(s).
- e. The reason for destruction.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

**21—96.5(204) Fees.** The department shall impose, assess, and collect fees, which shall be paid by a licensee. All fees shall be collected by the department before the department takes any action for which the fee is applicable. All fees are nonrefundable. All inspection fees shall include the collection of an official sample and an official laboratory test of that sample. Fees are set as follows:

TABLE 1  
CROP SITE LICENSE FEES

Acres	License Fee	
0 - 5	\$500 + \$5 per acre	Paid at application
5.1 - 10	\$750 + \$5 per acre	
10.1 - 320	\$1,000 + \$5 per acre	

TABLE 2  
INSPECTION FEES

Primary Inspection Fee	\$500	Paid at application
Secondary Inspection Fee	\$500	Paid upon inspection request
Supplemental Inspection Fee	\$150	Paid upon inspection request
Remediation Inspection Fee	\$500	Paid upon inspection request

TABLE 3  
RETESTING FEE

Retesting Fee	\$150	Paid upon retesting request
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**96.5(1) Fees paid at time of license application.** The license fee and primary inspection fee shall be paid prior to acceptance of a license application. License fees shall be based on the number of acres in a crop site. A primary inspection fee shall secure a preharvest inspection of one lot or sub-lot.

**96.5(2) Fees for preharvest inspection of additional hemp lots and sub-lots.** A licensee may request official sampling of additional lots and sub-lots. All inspection fees shall be paid prior to performance of any official test.

a. If the additional preharvest inspection is to occur at the same time as the primary preharvest inspection, then a supplemental inspection fee shall be paid for each additional lot or sub-lot to be inspected.

b. If the additional preharvest inspection is to occur on a different day than the primary preharvest inspection, then the licensee shall pay a secondary inspection fee for the first lot or sub-lot to be inspected, and each lot or sub-lot after that shall each be assigned a supplemental inspection fee.

**96.5(3) Retesting fee.** A licensee may request a single retest of a preharvest sample previously collected for a lot or sub-lot if the licensee believes the original official laboratory test result was in error. The licensee may not request the collection of a new sample. The licensee requesting the retest of the sample shall pay the retesting fee prior to performance of official retest.

**96.5(4) Remediation inspection fee.** A licensee may request a single post-remediation sample for a lot or sub-lot if the licensee receives permission from the department to remediate a crop with an official test result that exceeds the acceptable hemp THC concentration. The remediation inspection fee shall be paid prior to performance of official test.

[ARC 6807C, IAB 1/11/23, effective 1/3/23]

#### **21—96.6(204) Annual review of licensees to ensure licensure compliance.**

**96.6(1)** The authorized representative shall certify the licensee has operated and will continue to operate in accordance with Iowa Code chapter 204 by executing a certification of compliance as part of the harvest report, by answering the following questions:

- a. Have you operated in accordance with all license requirements?
- b. Has any of the following information changed?

(1) The authorized representative and all individual applicants' full names, titles, residential addresses, phone numbers, or email addresses.

(2) Key participant title in the business entity.

(3) The structure of or ownership interests in the business entity.

c. Were the hemp acres at the crop site reported to the FSA?

d. Have any hemp plants been harvested or removed from the crop site prior to official sampling and official testing?

**96.6(2)** Crop sites that do not harvest hemp and solely propagate cuttings and clones shall be inspected at least annually.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

#### **21—96.7(204) Sampling procedures for official testing of hemp for THC content.**

**96.7(1)** The licensee shall submit a preharvest report to the department at least 30 days prior to the anticipated harvest date.

**96.7(2)** Official samples for official testing shall be collected by the department or a third-party sampler designated by the department.

**96.7(3)** The authorized representative, or licensee, shall be present at any preharvest inspection and official sampling of the crop site.

**96.7(4)** The department inspector will verify the geospatial location coordinates submitted to the department.

**96.7(5)** The licensee must allow complete and unrestricted access to the crop site. If the licensee fails to provide unrestricted access, an official sample will not be collected.

a. If cannabis plants are observed outside of the crop site boundaries, the department shall notify law enforcement.

b. If the department inspector suspects that the licensee harvested hemp plants prior to official sampling, the department inspector will immediately cease official sampling and notify the Iowa hemp program administrator. The Iowa hemp program administrator shall determine how to proceed with an investigation, seeking law enforcement assistance as necessary.

**96.7(6)** A separate official sample shall be taken for each lot and sub-lot. In accordance with the fee schedule established by the department, a supplemental fee shall be charged for every sample after one sample.

**96.7(7)** If the licensee chooses to have official samples taken from sub-lots within a lot, the boundary between sub-lots shall be discernable. In an outdoor crop site, the minimum row space between lots and sub-lots shall be twice the normal row spacing, but no less than 36 inches.

**96.7(8)** The department inspector shall take a representative official sample of each lot and sub-lot, walking at right angles to the rows if possible. The department inspector may take more cuttings than the minimum listed in Table 4 if necessary to obtain an adequate official sample.

**96.7(9)** The official sample collected by the department shall consist of approximately 2-inch cuttings of flowering material, meaning inflorescences (the flower or bud of plant), from the top one-third of the plant, based on the following table:

TABLE 4  
NUMBER OF PLANTS SAMPLED, BASED ON LOT AND SUB-LOT ACREAGE SIZE

Number of acres	Number of plants sampled	Number of acres	Number of plants sampled	Number of acres	Number of plants sampled	Number of acres	Number of plants sampled
1 - 10	10	81 - 90	69	161 - 170	108	241 - 250	136
11 - 20	19	91 - 100	75	171 - 180	112	251 - 260	139
21 - 30	27	101 - 110	81	181 - 190	116	261 - 270	142
31 - 40	35	111 - 120	86	191 - 200	120	271 - 280	145
41 - 50	43	121 - 130	91	201 - 210	123	281 - 290	147
51 - 60	50	131 - 140	95	211 - 220	127	291 - 300	150
61 - 70	57	141 - 150	100	221 - 230	130	301 - 310	152
71 - 80	63	151 - 160	104	231 - 240	133	311 - 320	155

This table reflects a sampling scheme with a 95 percent confidence interval that no more than 1 percent of the plants in each lot would exceed the acceptable hemp THC concentration.

**96.7(10)** The plants and plant material selected for official sampling shall be determined solely by the department.

**96.7(11)** All samples shall become the property of the department and are nonreturnable.

**96.7(12)** The department inspector will place the official composite representative sample in a properly labeled paper bag. The labeled bag will be sealed with security tape, and the following information shall be placed on the paper bag:

- a. License number;
- b. Name and contact information of the sampling agent;
- c. Name and contact information of the licensee;
- d. Date sample was taken;
- e. Sample identification number for the lot or sub-lot;
- f. Parcel identification number from the FSA; and
- g. Any other information that may be required by the department.

**96.7(13)** The official sample and sampling report shall be hand-delivered or placed in a box, sealed with security tape, and overnight shipped to the department laboratory.  
[ARC 5050C, IAB 6/17/20, effective 7/22/20; ARC 6807C, IAB 1/11/23, effective 1/3/23]

#### **21—96.8(204) Approved testing methods of hemp for THC content.**

**96.8(1)** The department laboratory shall be the only official laboratory for analyzing official samples from licensed crop sites in Iowa.

**96.8(2)** An appropriate chain of custody will be maintained at all times, and the information from the sampling form will be input into the department laboratory information management system.

**96.8(3)** The official samples will be dried, the stem and seed will be separated from floral material and discarded, and the floral material will be ground.

**96.8(4)** The ground floral material will be tested for THC content.

a. Any remaining floral material will be retained by the department for three months.  
b. If a licensee requests a single retest of a lot or sub-lot, the department shall retest any remaining floral material.

**96.8(5)** The THC concentration will be determined by gas-liquid chromatography (GC) or other acceptable method as determined by the department.

**96.8(6)** The department will utilize MU in determining acceptable hemp THC concentration.

**96.8(7)** If the official laboratory test results in the acceptable hemp THC concentration, the department shall issue a certificate of analysis, as provided in Iowa Code section 204.8, and immediately send the certificate of analysis to the authorized representative.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

**21—96.9(204) Harvesting timing.**

**96.9(1)** A licensee shall not harvest any portion of a hemp crop unless the department has officially sampled the lot to be harvested.

**96.9(2)** The licensee may begin harvesting the corresponding lots and sub-lots upon receiving a temporary harvest and transportation permit. The temporary harvest and transportation permit will expire once a certificate of analysis, or destruction order, is issued.

*a.* Prior to receiving the temporary harvest and transportation permit, the licensee shall designate a storage site for the hemp crop. The licensee shall ensure that the department has unrestricted access to the crop at all times, including, if necessary, to fulfill an order of destruction. The harvested crop shall remain at the designated storage site until a certificate of analysis, or order of destruction, is issued.

*b.* The designated storage site must be within the state of Iowa.

*c.* All harvested lots and sub-lots shall be stored in a manner that preserves identity, regardless of the form, condition, or location of the crop. There shall be no commingling of separate harvested hemp lots.

**96.9(3)** Until the certificate of analysis is received, ownership of the hemp crop shall not change.

*a.* The licensee shall harvest an officially sampled hemp lot no later than 15 days after the lot was officially sampled. If the licensee has not completed harvest within 15 days and still desires to harvest any remaining crop, the licensee shall contact the department and request supplemental official sampling and official laboratory tests.

*b.* The day the crop site is officially sampled shall be considered day 0. The next day is considered day 1 after sampling, and so on, until day 15.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

**21—96.10(204) Order of destruction.**

**96.10(1)** If the official laboratory test does not result in an acceptable hemp THC concentration, the department shall order the destruction of the hemp crop to occur as ordered by the department.

**96.10(2)** If any official test exceeds acceptable hemp THC concentration, the department shall notify the department of public safety, local law enforcement, and the United States Department of Agriculture (USDA) hemp administrator.

**96.10(3)** If any official test exceeds 0.5 percent THC on a dry weight basis, the department shall notify the department of public safety, local law enforcement, the USDA hemp administrator, and the United States attorney general.

**96.10(4)** If any official test result exceeds 2.0 percent THC on a dry weight basis, the department shall notify the department of public safety, local law enforcement, the USDA hemp administrator, the United States attorney general, the county attorney, and the Iowa attorney general.

**96.10(5)** Failure to harvest any portion of a hemp lot 15 or more days after the lot was officially sampled may result in the issuance of an order of destruction.

**96.10(6)** The department may require the licensee to utilize a reverse distributor for destruction.

**96.10(7)** The department shall notify the USDA hemp administrator when the destruction is complete.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

**21—96.11(204) Negligent violations.**

**96.11(1)** Negligent violations shall include but are not limited to:

*a.* The production of hemp that exceeds the acceptable hemp THC concentration but is less than 0.5 percent THC on a dry weight basis.

*b.* Failure to submit required reports within mandated submission deadlines.

*c.* Failure to provide a legal description of the land on which the licensee produces hemp.

The department may determine additional negligent violations as needed.

**96.11(2)** All licensees associated with the license shall receive the negligent violation.

**96.11(3)** The failure to obtain a license is not a negligent violation.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

**21—96.12(204) Negligent violation program.**

**96.12(1)** The department shall require the completion of a corrective action plan for negligent violations. A licensee shall submit a corrective action plan to the department for consideration and approval. A corrective action plan shall consist of the following:

*a.* A reasonable time period, approved by the department, for correcting a negligent violation. Failure to correct a negligent violation within the reasonable time period shall be considered an additional negligent violation.

*b.* A proposed schedule for the licensee to submit periodic compliance reports to the department, when applicable. The duration for the ongoing compliance reports shall not be less than two calendar years following the violation.

*c.* Any other requirement established by the department.

**96.12(2)** The department may conduct any inspection, review, or other action to determine if the corrective action plan has been implemented as approved by the department.

**96.12(3)** The department shall issue a certificate of completion to the licensee upon the successful completion of the corrective action plan.

**96.12(4)** A licensee who is participating in, or who successfully completes, the corrective action plan shall not be subject to any criminal enforcement action pertaining to the negligent violations by the federal, state, tribal, or local government.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

**21—96.13(204) State plan.** The department has adopted a state plan, as prescribed by the United States Department of Agriculture, in order to assume primary regulatory authority over the production of hemp in Iowa.

[ARC 5050C, IAB 6/17/20, effective 7/22/20]

These rules are intended to implement Iowa Code section 204.3.

[Filed Emergency ARC 4842C, IAB 1/1/20, effective 12/11/19]

[Filed Emergency ARC 4989C, IAB 3/11/20, effective 2/24/20]

[Filed ARC 5050C (Notice ARC 4988C, IAB 3/11/20), IAB 6/17/20, effective 7/22/20]

[Filed Emergency ARC 6807C, IAB 1/11/23, effective 1/3/23]



## **BANKING DIVISION[187]**

Created within the Department of Commerce by 1986 Iowa Acts, chapter 1245. Prior to 4/22/87, for Chs 1 to 15 see Banking Department[140] Chs 1 to 4, 8, 9 and 21; for Ch 16 see Auditor of State[130], Ch 1.  
Note: Iowa Code chapter 453 renumbered as chapter 12C in 1993 Iowa Code.

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CHAPTER 1  
DESCRIPTION OF ORGANIZATION  
[Prior to 4/22/87, see Banking Department[140] Ch 1]

**187—1.1(17A,524) Definitions.** The definitions of terms listed in Iowa Code section 17A.2 shall apply for these terms as they are used throughout this chapter. In addition, as used in this chapter:

“*Division*” means the division of banking.

“*Superintendent*” means the superintendent of banking.

**187—1.2(17A,524) Scope and application.** This chapter describes the office of the superintendent and identifies the established place at which, the employees from whom, and the methods whereby the public may obtain information from, make requests of, or obtain decisions from the superintendent on matters within the authority of the superintendent.

[ARC 6795C, IAB 1/11/23, effective 2/15/23]

**187—1.3(17A,524) Division of banking.**

**1.3(1) Organization—division.** The division of banking is a subdivision of the department of commerce and consists of the superintendent and those employees who discharge the duties and responsibilities imposed upon the superintendent by the laws of this state. The superintendent has general control, supervision and regulatory authority over all entities which the division is given authority to regulate pursuant to the Code of Iowa. The division consists of three separate bureaus: the bank bureau, the finance bureau, and the professional licensing and regulation bureau. The bank bureau has primary responsibility relating to the supervision, regulation, and chartering of state banks. The finance bureau has primary responsibilities relating to the supervision, regulation, and licensing of appraisal management companies, closing agents, debt management businesses, delayed deposit services businesses, industrial loan companies, money services businesses, mortgage bankers, mortgage brokers, mortgage loan originators, real estate appraisers, and regulated loan companies. The professional licensing and regulation bureau has primary responsibilities relating to the regulation and licensing of specified professions by providing administrative support to and coordinating the activities of the following licensing boards: the Iowa accountancy examining board, the architectural examining board, the engineering and land surveying examining board, the interior design examining board, the landscape architectural examining board, and the real estate commission.

**1.3(2) Organization—superintendent.** The superintendent is the administrator of the division. The superintendent is appointed by the governor, by and with the approval of the senate, for a term of four years. The superintendent’s office is located at 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The superintendent is assisted by the following officials who are responsible to the superintendent:

*a. Bank bureau chief.* The bank bureau chief performs such duties as the superintendent prescribes, including general supervision of all bank examining personnel, administration and supervision of regulatory examinations, and administration and supervision of all matters relating to the exercise of banking powers authorized by the laws of this state.

*b. Bank analysts.* Bank analysts perform such duties as the superintendent prescribes, including advanced technical analysis and review of examination and financial reports of banks and bank holding companies; assessing, measuring, and monitoring the risk conditions in state banks and bank holding companies; assisting the superintendent and banking council in the analysis of applications submitted to the division for approval; and the review and analysis of bank examination reports.

*c. Finance bureau chief.* The finance bureau chief performs duties prescribed by the superintendent, including general supervision over all matters relating to the licensing and supervision of appraisal management companies, closing agents, debt management businesses, delayed deposit services businesses, industrial loan companies, money services businesses, mortgage bankers, mortgage brokers, mortgage loan originators, real estate appraisers, and regulated loan companies.

*d. Chief operating officer.* The chief operating officer performs duties prescribed by the superintendent, including management of the administrative functions, information technology needs,

and fiscal affairs of the division of banking. The chief operating officer is also responsible for administration of personnel policies, work rules, payrolls, and employee benefits for all employees of the division.

*e. Examiners.* Each examiner performs duties prescribed by the superintendent in a manner consistent with the laws of this state and may be predominantly trained in an area within the jurisdiction of the superintendent. Bank examinations are performed by examining personnel situated in examination regions throughout the state. Each region is headed by a regional manager who is assisted by a staff of examiners.

*f. Professional licensing and regulation bureau chief.* The professional licensing and regulation bureau chief performs such duties as the superintendent prescribes, including budgetary and personnel matters related to the licensing and regulation of several professions, by providing administrative support to and coordinating the activities of the following licensing boards: the Iowa accountancy examining board created pursuant to Iowa Code chapter 542, the engineering and land surveying board created pursuant to Iowa Code chapter 542B, the real estate commission created pursuant to Iowa Code chapter 543B, the architectural examining board created pursuant to Iowa Code chapter 544A, the landscape architectural examining board created pursuant to Iowa Code chapter 544B, and the interior design examining board created pursuant to Iowa Code chapter 544C.

[ARC 4054C, IAB 10/10/18, effective 11/14/18; ARC 6795C, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement Iowa Code sections 17A.3 and 524.208.

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[Filed ARC 6795C (Notice ARC 6602C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 2  
APPLICATION PROCEDURES  
[Prior to 4/22/87, see Banking Department[140] Ch 2]

**187—2.1(17A,524) Organization of a state-chartered bank.**

**2.1(1) Application.** Persons desiring to organize a state-chartered bank should first meet with the superintendent to discuss the proposal. An “Application to Organize a State Bank” and supplementary forms may be obtained for submission to the superintendent.

**2.1(2) Investigation.** The superintendent may conduct an investigation as deemed necessary.

**2.1(3) Preliminary approval.** The superintendent may grant preliminary approval of an application to organize a state-chartered bank. If preliminary approval is granted, the superintendent may, if it is determined that such action is necessary or desirable for the protection of the public interest, at any time withdraw that approval.

**2.1(4) Decision.** The superintendent shall approve or deny the application within 180 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

**2.1(5) Corporate organization.** The proposed state bank does not come into existence until articles of incorporation have been approved by the superintendent and filed and recorded by the secretary of state and a certificate of incorporation has been issued.

**2.1(6) Commencement of business.** If the superintendent is satisfied that the proposed state bank has met all requirements and conditions and is ready to commence business, the superintendent shall issue an Authorization To Do Business which provides that the state bank is authorized to commence business as of a specified date.

This rule is intended to implement Iowa Code section 524.303.

**187—2.2(17A,524) Conversion of national bank into state bank.**

**2.2(1) Application.** A national bank desiring to become a state bank should first meet with the superintendent to discuss the proposal. An application and supplementary forms may be obtained for submission to the superintendent.

**2.2(2) Examination and investigation.** The superintendent may conduct an examination or investigation of the national bank as deemed necessary.

**2.2(3) Decision.** The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

**2.2(4) Corporate documents.** If approval is granted, articles of conversion with a plan of conversion attached shall be delivered to the secretary of state for filing and recording.

**2.2(5) Commencement of business as state bank.** The conversion shall be effective as of the date of filing of articles of conversion in the office of the secretary of state unless a later date is specified in the articles of conversion. The superintendent’s Authorization To Do Business as a state bank will be issued to be effective on the date of conversion.

**2.2(6) Resulting state bank.** The resulting state bank shall submit the oath of directors, list of shareholders, and certificate of elections and appointments to the superintendent on forms to be provided by the superintendent. The oath of directors is to be signed prior to the first meeting of the board of directors following the effective date of the conversion. The list of shareholders is to be completed as of the effective date of conversion.

This rule is intended to implement Iowa Code sections 524.1410 and 524.1413 to 524.1415.  
[ARC 6796C, IAB 1/11/23, effective 2/15/23]

**187—2.3(17A,524) Merger or purchase and assumption.**

**2.3(1) Definition.** For purposes of this rule, the term “merger” means a merger in which the resulting bank is a state bank.

**2.3(2) Application.** State banks or national and state banks desiring to merge or a state bank desiring to purchase the assets and assume the liabilities of another bank should first meet with the superintendent

to discuss the proposal. An application and supplementary forms may be obtained for submission to the superintendent.

**2.3(3) *State bank as seller.*** In the case of a purchase and assumption, if the bank being acquired is a state bank, appropriate forms and instructions for the voluntary liquidation of the bank may be obtained from the superintendent.

**2.3(4) *Examination and investigation.*** The superintendent may conduct an examination or investigation as deemed necessary.

**2.3(5) *Decision.*** The superintendent shall approve or deny the application within 90 days after the purchase and assumption application has been accepted for processing and within 180 days after the merger application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations.

This rule is intended to implement Iowa Code sections 524.1401 to 524.1405.  
[ARC 4055C, IAB 10/10/18, effective 11/14/18; ARC 6796C, IAB 1/11/23, effective 2/15/23]

#### **187—2.4(17A,524) Establishment of a bank office.**

**2.4(1) *Application.*** A state-chartered bank desiring to establish and operate a bank office shall submit to the superintendent an “Application to Establish a Bank Office,” which is available upon request.

**2.4(2) *Investigation.*** The superintendent may conduct an investigation as deemed necessary.

**2.4(3) *Guidelines.*** In determining whether to approve or deny a bank office application for other than a mobile office, a bank-owned courier service, or a convenience office, the superintendent will consider the following factors:

*a.* Whether the convenience and needs of the public and existing customers of the applicant bank will be served by the proposed office.

*b.* Whether the population density and other economic characteristics of the area primarily to be served by the proposed office afford reasonable promise of adequate support for the office.

*c.* Whether the capital structure of the applicant bank is adequate in relation to the costs and anticipated increased business, if any, occasioned by the proposed office.

*d.* The history of operation and management of the applicant bank.

*e.* Such other factors as the superintendent may determine are relevant.

**2.4(4) *Decision.*** The superintendent shall approve or deny the application within 120 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue a bank office certificate for the establishment and operation of the bank office to be effective on a specific date and at a designated location.

This rule is intended to implement Iowa Code sections 524.312, 524.1201, 524.1303, and 524.1403.

#### **187—2.5(17A,524) Change of location of principal place of business or bank office.**

**2.5(1) *Application.*** A state bank desiring to relocate its principal place of business or a bank office shall submit to the superintendent an “Application to Relocate the Principal Place of Business” or “Application to Relocate a Bank Office,” which are available on the division’s website or upon request.

**2.5(2) *Investigation.*** The superintendent may conduct an investigation as deemed necessary.

**2.5(3) *Decision.*** The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations for the conduct of business at the new location.

This rule is intended to implement Iowa Code section 524.312.  
[ARC 4055C, IAB 10/10/18, effective 11/14/18; ARC 6796C, IAB 1/11/23, effective 2/15/23]

#### **187—2.6(17A,524) Change of control.**

**2.6(1) *Application.*** An application by any person to purchase or otherwise acquire, directly or indirectly, outstanding shares of a state bank which would result in control or a change in control

shall be submitted in the format requested by the superintendent and shall, at a minimum, contain the following information:

*a.* Copy of the agreement between the purchaser and seller for the sale of stock which results in the buyer acquiring a majority interest in the state bank.

*b.* Terms of any bank stock loan including the amount to be borrowed, rate of interest, number of years the loan is to run, collateral pledged to secure the indebtedness and any other pertinent information relating to such loan.

*c.* Financial statement of the purchaser and a résumé related to the purchaser's past experience and affiliations.

*d.* Pro forma statement of the purchaser's income and expenses during the term of the bank stock loan and a statement from the purchaser indicating which assets will be converted to cash or pledged as security to provide the initial equity.

*e.* Projections of statement of condition of the state bank to be purchased during the term of the bank stock loan.

*f.* Projections of income and expenses of the state bank to be purchased during the term of the bank stock loan.

*g.* Any plans which the purchaser may have which would represent major changes in the present staff or policies of the state bank involved.

*h.* When requested by the superintendent, an affidavit signed by the purchaser stating that the majority interest in the state bank is not being acquired for the benefit of another person or company.

**2.6(2) Investigation.** The superintendent may conduct an investigation as deemed necessary.

**2.6(3) Decision.** The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, a certificate of approval, in letter form, will be delivered to the applicant. Upon receipt of such certificate, the applicant may proceed to conclude the purchase transaction, subject to such terms and conditions as the superintendent may impose.

This rule is intended to implement Iowa Code section 524.544.

#### **187—2.7(17A,524) Renewal, amendment or restatement of articles of incorporation.**

**2.7(1) Application.** Sample forms and instructions for making application to the superintendent to renew, amend or restate existing articles of incorporation of a state bank will be furnished upon request to the superintendent. State banks desiring to effect a reverse stock split or similar change in capital structure by such renewal, amendment, or restatement should contact the superintendent to discuss the proposal prior to its adoption.

**2.7(2) Investigation.** The superintendent may conduct an investigation as deemed necessary.

**2.7(3) Reverse stock split.** Rescinded IAB 10/10/18, effective 11/14/18.

**2.7(4) Decision.** The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the renewed, amended, or restated articles of incorporation will be approved and forwarded to the secretary of state for filing and recording. Upon filing such articles, the secretary of state will return the original to the state bank and will also issue a certificate to the state bank indicating the date the filing was effective. Thereafter, the state bank will operate in accordance with its renewed, amended, or restated articles of incorporation.

This rule is intended to implement Iowa Code sections 524.314, 524.1505, 524.1508, and 524.1509. [ARC 4055C, IAB 10/10/18, effective 11/14/18; ARC 6796C, IAB 1/11/23, effective 2/15/23]

**187—2.8** Reserved.

**187—2.9(17A) Licensing of a debt management company.** Rescinded ARC 4055C, IAB 10/10/18, effective 11/14/18.

**187—2.10 and 2.11** Reserved.

**187—2.12(17A,524) Supplemental application procedures.**

**2.12(1) Scope.** This rule contains procedures by which the superintendent may reach informed decisions with respect to those applications for which the superintendent shall deem a public hearing necessary. These procedures provide a method by which all persons interested in the subject matter of such applications or other cases in which a public hearing is deemed necessary may present their views. Nothing contained herein shall be construed to prevent interested persons from presenting their views in a more informal manner when deemed appropriate by the superintendent or to prevent the superintendent from conducting such other investigation as may be deemed appropriate.

**2.12(2) Public file.** The public file in each case shall consist of the application with supporting data and supplementary information with the exception of material deemed by the superintendent to be confidential. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such application, excluding any material deemed by the superintendent to be confidential. The superintendent or the superintendent's designee shall not deem information confidential for purposes of the two immediately preceding sentences unless the person submitting the information requests that such information be deemed confidential. All factual information contained in any internal investigation report made by a bank examiner shall also be made a part of the public file, unless deemed confidential by the superintendent. The person submitting the application may not request that the entire application be deemed confidential.

*a.* The public file shall be available for inspection in the office of the superintendent upon request from a protesting person and to such other persons as the superintendent shall deem to have a direct interest therein during such periods of time as the superintendent shall prescribe.

*b.* No documentation in the public file may be removed from the superintendent's office by persons other than members of the superintendent's staff. Photocopies may be made available, on request, to protesting and other interested parties. The charge for such copies shall be made in accordance with a written schedule maintained by the superintendent.

**2.12(3) Place of hearing.** Hearings granted by the superintendent shall be heard in the office of the superintendent. The superintendent, in any matter, reserves the right to conduct hearings at any location deemed to be appropriate.

**2.12(4) Date of hearing.** An opportunity to be heard shall be given as soon as practicable after ordered.

**2.12(5) Notice of hearing.** The notice given by the superintendent concerning the hearing shall set forth the subject matter of the application, the legal authority for such hearing, and the date, time, and place of the hearing. The notice shall be sent to the person or persons requesting the hearing, to the applicant and to other interested persons who have sent written comments to the superintendent.

**2.12(6) Attendance at hearing.** Each person who wishes to be heard shall notify the superintendent within five days after the date of the notice described in subrule 2.12(5) of the person's intention to attend and shall submit the number and names of witnesses to be presented.

**2.12(7) Presiding officer.** The presiding officer at the hearing shall be the superintendent or such other person as may be designated by the superintendent.

**2.12(8) Hearing rules.** The applicant and each participant may make opening statements of a length within the discretion of the presiding officer. Such opening statements should concisely state what the participant intends to show. The applicant shall have the opportunity to present a statement first. Following the opening statements, the applicant shall present data and materials, oral or documentary. Following the applicant's presentation, the persons protesting the application shall present their data and materials, oral or documentary. The protesters may agree, with the approval of the presiding officer, to have one of their number make their presentation. Following the evidence of the applicant and the protester, the presiding officer may recognize other interested persons who may present their views with respect to the application under consideration. After all the above presentations have been concluded, the participants before the panel may make short and concise summary statements reviewing their positions. The applicant shall present a concluding summary statement.

*a.* The obtaining and use of witnesses is the responsibility of the parties. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by

any participant. The refusal of a witness to answer questions may be considered by the superintendent in determining the weight to be accorded the testimony of that witness. Witnesses shall be sworn.

*b.* The presiding officer shall have the authority to exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence shall not be applicable to these hearings. Documentary material must be of a size consistent with ease of handling, transportation and filing, and copies must be provided for each participant. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Two copies of all such documentary evidence shall be furnished to the superintendent, and one copy shall be furnished to each other person represented at the proceeding.

*c.* The superintendent or the superintendent's designee shall determine all procedural questions not governed by these rules. The superintendent or the superintendent's designee shall have the authority to limit the number of witnesses to be used by any party, and to impose such time limitations as shall be deemed reasonable.

*d.* A transcript of each proceeding shall be arranged for by the person or persons requesting the opportunity to be heard, with all expenses of such service, including the furnishing of one copy of the transcript to the superintendent, being borne by the person or persons requesting the opportunity to be heard, except for hearings ordered by the superintendent's office on its own volition, in which case the applicant will bear the expense of furnishing transcripts of the record.

*e.* The public file described in subrule 2.12(2) shall automatically be deemed a part of the record of these proceedings, as well as all evidence submitted and the transcript described in paragraph 2.12(8) "d."

**2.12(9) *Closing of the public file.*** If requested by any participant, the public file shall remain open for five days following receipt of the transcript by the superintendent, during which time the applicant and protesters may submit additional written statements. A copy of any statement so submitted during this period of time shall also be sent simultaneously to the other persons represented at the hearing.

**2.12(10) *Decision.*** The applicant and all persons so requesting in writing shall be notified of the final disposition of the application by the superintendent.

**2.12(11) *Computation of time.*** In computing any period of days provided for in this rule, the day of the event from which the period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this subrule, "legal holiday" means a day on which the office of the superintendent remains closed.

This rule is intended to implement Iowa Code sections 17A.3, 524.305, 524.312, 524.1201, 524.1303, and 524.1403.

[ARC 4055C, IAB 10/10/18, effective 11/14/18]

**187—2.13** Reserved.

**187—2.14(524) Investment in a bank service corporation or other subsidiary.**

**2.14(1) *Application.*** An application by a state bank to invest in a bank service corporation or other subsidiary for purposes of engaging in an authorized activity shall be in letter form and shall, at a minimum, contain the following information.

*a.* A detailed description of the proposed authorized activity of the bank service corporation or other subsidiary.

*b.* A detailed description of the location(s) where the bank service corporation or other subsidiary proposes to conduct its authorized activity.

*c.* Evidence that the bank service corporation or other subsidiary:

(1) Will be adequately capitalized in relation to the risks associated with the proposed authorized activity;

(2) Will have sufficient managerial resources to perform the proposed authorized activity;

(3) Will obtain all licenses and approvals from other regulatory agencies necessary to perform the proposed authorized activity;

(4) Will maintain a separate and adequate accounting system and other corporate records; and

(5) Will conduct its authorized activity pursuant to independent policies and procedures designed to inform customers and prospective customers of the bank service corporation or other subsidiary that it is a separate organization from the state bank.

*d.* A legal opinion that the proposed authorized activity of the bank service corporation or other subsidiary is permissible under state and federal laws and regulations, if requested by the superintendent.

*e.* The amount which the state bank proposes to initially invest in the bank service corporation or other subsidiary.

*f.* A copy of the resolution adopted by the state bank's board of directors authorizing the investment in the bank service corporation or other subsidiary.

**2.14(2) *Investment limitation.*** Unless state or federal statutes impose specific limitations relating to investments in the shares of a corporation by a state bank, a state bank's investment in a bank service corporation or other subsidiary shall not exceed 15 percent of its aggregate capital as defined in Iowa Code section 524.103, nor shall more than 5 percent of its total assets be invested in all bank service corporations or subsidiaries. At the superintendent's discretion, a higher investment limitation may be established for an investment by a state bank in an operations subsidiary, as defined in section 524.103. For purposes of this rule, the terms "invest" or "investment" shall include any advance of funds to a bank service corporation or other subsidiary, whether by the purchase of stock, the making of a loan or otherwise.

**2.14(3) *Investigation.*** The superintendent may conduct an investigation as deemed necessary.

**2.14(4) *Decision.*** The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

**2.14(5) *Revocation.*** The superintendent may revoke a previously granted approval to invest in a bank service corporation or another subsidiary and order divestiture of the shares, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

*a.* The financial condition of the state bank has significantly deteriorated.

*b.* The superintendent determines the authorized activity is being conducted unlawfully or in an unsafe or unsound manner.

*c.* Other relevant factors occur which the superintendent may determine are grounds for a revocation of the authorized activity.

This rule is intended to implement Iowa Code chapter 524.

### **187—2.15(524) Securities activities.**

**2.15(1) *Scope.*** Iowa law authorizes state-chartered banks to engage in any aspect of the securities business. The evolution of this authority by state banks has been confined primarily to recommending and selling interests in mutual funds, annuities, and other nondeposit investment products on bank premises. The sale of these nondeposit investment products on bank premises may be conducted directly by a state bank, through a subsidiary or an affiliate of a state bank, or through an arrangement with a third-party vendor. The sale of these retail products on the premises of a state bank, where traditionally only federally insured deposits are taken, has led to some confusion among retail customers about what is being purchased and whether or not it is insured. The purpose of this rule is to place greater emphasis on board of director involvement in any proposed securities activities on the premises of the state bank and, if retail product sales are part of that proposed activity, enhance customer protections through proper disclosures.

**2.15(2) *Board responsibilities.*** The board of directors of a state bank shall evaluate the risks associated with the securities activities proposed and the method by which the securities activities will be conducted on its premises. The board of directors shall be responsible for ensuring that any securities activities conducted on its premises will comply with all applicable state and federal laws and regulations as well as any policy statements issued which relate to securities activities. Specifically, if a state bank develops and implements a particular program where nondeposit investment products are recommended and sold to retail customers, that program shall ensure that customers are clearly and fully informed of the nature of and risks associated with those types of products. If an affiliate, a

subsidiary, or a third-party vendor is used to recommend and sell nondeposit investment products, all signs, advertisements and other promotional material should clearly identify the affiliate, subsidiary, or third-party vendor as the seller and should not suggest by use of a trade name that the state bank is the seller. The board of directors shall be responsible for complying with the joint federal Interagency Statement on Retail Sales of Nondeposit Investment Products or any substitution therefor or revision thereof.

**2.15(3) Application.** An application by a state bank to engage in any securities activities shall be in letter form and shall, at a minimum, contain the following information.

*a.* A commitment that the proposed securities activities will be conducted either directly by the state bank, through a subsidiary or an affiliate of the state bank, or through an arrangement with a third-party vendor. In specific cases, it may be necessary for the applicant to provide a legal opinion stating that the proposed activities are authorized.

*b.* A commitment that the state bank's board of directors has evaluated the risks associated with the proposed securities activities and has adopted a written statement that addresses these risks and the procedures to be used to ensure compliance with all applicable laws, regulations and policy statements. The scope and level of detail of the written statement should reflect the state bank's level of involvement in the securities activities. If securities activities are to be conducted on bank premises by an affiliate, a subsidiary, or a third-party vendor, the written statement should also address the scope of those activities, as well as the procedures for monitoring compliance by the affiliate, subsidiary, or third-party vendor with all applicable laws, regulations and policy statements.

*c.* A commitment that, if securities activities are to be conducted through an affiliate, a subsidiary, or a third-party vendor, the board of directors has performed an appropriate review of the affiliate, subsidiary, or third-party vendor. A copy of the written agreement between the parties shall accompany the application.

*d.* A commitment that the location(s) on bank premises where the proposed securities activities will be conducted will be physically distinct and separate from the area where deposits are taken. Proper signs or other means must be used to distinguish the area where the sale of retail nondeposit investments products will be conducted from the area where insured deposits are normally taken. If securities activities are to be conducted on bank premises by an affiliate, a subsidiary, or a third-party vendor, all signs or other means used to identify this area shall provide to the retail customer a clear and accurate representation of the entity conducting the securities activities.

*e.* A commitment that clear and concise oral and written disclosures will be provided to retail customers. A copy of the proposed written disclosures shall accompany the application.

*f.* A commitment that the state bank, its subsidiary or affiliate, or a third-party vendor will complete background checks on all personnel authorized to recommend and sell nondeposit investment products and that all such personnel will be properly trained and appropriately licensed prior to commencing any securities activities and thereafter while conducting securities activities on the premises of the state bank.

Notwithstanding the application requirements set forth herein, if the securities activity being conducted is limited to discount brokerage or referral services, then the state bank only needs to notify the superintendent that it intends to engage in the limited securities activity.

**2.15(4) Investigation.** The superintendent may conduct an investigation as deemed necessary.

**2.15(5) Decision.** The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

**2.15(6) Revocation.** The superintendent may revoke a previously granted approval to conduct securities activities on the premises of the state bank, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

*a.* The financial condition of the state bank has significantly deteriorated.

*b.* The superintendent determines the securities activities are being conducted unlawfully or in a unsafe or unsound manner.

c. Other relevant factors occur which the superintendent may determine are grounds for a revocation of the securities activities.

This rule is intended to implement Iowa Code section 524.825.

### **187—2.16(524) Contracts.**

**2.16(1) Scope.** Futures contracts shall be defined as standardized contracts traded on and guaranteed by organized exchanges to purchase or sell a specified security or a bank certificate of deposit on a future date at a specified price. Forward contracts shall be defined as over-the-counter contracts for forward placement or delayed delivery of securities in which one party agrees to purchase and another to sell a specified security at a specified price for future delivery. Contracts specifying settlement in excess of 30 days following the trade date shall be deemed to be forward contracts. Standby contracts shall be defined as optional forward contracts. For an example, the buyer of a standby contract (put option) pays a fee for the right or option to sell securities to the other party at a stated price at a future time. The seller of a standby contract receives the fee and must stand ready to buy the securities at the other party's option.

Futures contracts, forward contracts and standby contracts may be used by the state banks to reduce their existing interest rate risk exposure resulting from their overall investment activities and as a general hedge against interest rate exposure associated with undesired mismatches in interest-sensitive assets and liabilities. At no time shall futures, forward and standby contracts be used to speculate on future interest rate movements.

State banks may, without the prior approval of the superintendent, purchase shares in permissible investment companies, up to a maximum of 15 percent of aggregate capital, which use futures contracts, forward contracts and standby contracts, as well as repurchase agreements and securities lending arrangements as a part of their portfolio management strategies. However, it remains the responsibility of the board of directors making these purchases to ensure that a particular investment company is a proper holding for the bank's investment portfolio.

**2.16(2) Application.** An application by a state bank to engage in futures contracts, forward contracts and standby contracts shall be in letter form and shall, at a minimum, contain the following information.

- a. A description of the type(s) of contracts the state bank proposes to purchase and sell.
- b. A copy of the board of directors' resolution authorizing the specific type(s) of contracts proposed to be purchased and sold.
- c. A copy of the policy adopted by the state bank's board of directors which shall include specific policy objectives that outline permissible contract strategies and their relationship to overall investment activities and asset-liability management; the names, responsibilities, and authority limits of the personnel authorized to engage in futures, forward and standby contracts; limitations applicable to futures, forward and standby contract positions; the personnel to be used to review at least monthly the bank's contract positions to ascertain compliance with such limits; the exchanges and firms through which authorized personnel may conduct futures, forward and standby contracts; and the dollar limit on transactions with each firm.
- d. A representation that the state bank has sufficient managerial resources to engage in futures, forward and standby contracts.

**2.16(3) Investigation.** The superintendent may conduct an investigation as deemed necessary.

**2.16(4) Decision.** The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

**2.16(5) Revocation.** The superintendent may revoke the approval of the state bank to engage in futures, forward and standby contracts, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

- a. The financial condition of the state bank has significantly deteriorated.
- b. The superintendent determines the futures, forward or standby contract activities are being conducted unlawfully or in an unsafe or unsound manner.

c. Other relevant factors occur which the superintendent may determine are grounds for a revocation of the activities.

This rule is intended to implement Iowa Code section 524.901.  
[ARC 4055C, IAB 10/10/18, effective 11/14/18]

### **187—2.17(17A,524) Mobile offices, courier services, and convenience offices.**

#### **2.17(1) Definitions.**

“*Bank-owned courier service*” means a service that has the sole purpose of serving specific customers with pick-up or delivery services for banking activities such as deposits, withdrawals, and loan transactions.

“*Convenience office*” means a bank office at a fixed site that is open only at certain times or dates, such as at a nursing home, college orientation, or fair. The sole purpose of a convenience office is to serve the convenience of the bank’s customers at specified special events or who may have limited mobility.

“*Mobile office*” means a bank office that does not have a permanent site and functions out of a mobile banking unit that stops at predetermined locations to conduct banking activities.

**2.17(2) Policy.** The board of directors of a state bank that operates a mobile office, bank-owned courier service, or convenience office shall adopt a policy governing operation of the mobile office, bank-owned courier service or convenience office. The policy shall be appropriate for the nature and scope of the state bank’s use of the mobile office, bank-owned courier service, or convenience office and shall, at a minimum, include the following:

a. The policy shall address the steps the bank will take to protect the security of the office, its customers, employees, its customers’ financial information and deposits. The security plan may include implementation of customer and employee security systems such as security cameras, external lighting, and internal or attached protection zones.

b. The policy shall require the bank to maintain deposit insurance coverage for the mobile office, bank-owned courier service, or convenience office.

c. The policy shall require the bank to main adequate insurance coverage covering the bank in case of robbery, accident, other loss of items, delay in the delivery of items to other destinations, and other liabilities associated with operating the office.

d. The policy shall address types of activities the bank will conduct from the mobile office, bank-owned courier service, or convenience office.

e. The policy shall require a bank office manager or officer of the bank to be physically present at the mobile office, bank-owned courier service, or convenience office during a majority of its business hours as required by Iowa Code section 524.1201.

f. The policy shall require the bank to maintain a daily log of operations including descriptions of the time and locations of each stop made by the mobile office or bank-owned courier service, the locations and the hours a convenience office was operated and the names of the bank personnel working at the mobile office, bank-owned courier service, or convenience office during those times.

g. The policy shall address what, if any, signage the bank will place on the mobile office, bank-owned courier service, or convenience office.

h. For mobile offices and bank-owned courier services, the policy shall address how the bank will determine the locations at which it will provide services and the times it will be at those locations. The policy shall address how the bank will ensure that the mobile office, bank-owned courier service, or convenience office is located in a safe location and that it has the necessary permission of the owner of the property where the mobile office, bank-owned courier service, or convenience office is located to operate at that location.

**2.17(3) Publication requirements.** Rescinded IAB 10/10/18, effective 11/14/18.

**2.17(4) Necessary federal approval.** If the bank must receive approval from any federal agency, such as the Federal Deposit Insurance Corporation (FDIC), prior to operating a mobile office, bank-owned courier service, or convenience office, such federal approval will be a condition of approval by the superintendent of banking of the application to operate a mobile office, bank-owned courier service, or convenience office.

**2.17(5) Interstate banking.** A mobile office or bank-owned courier service shall not operate in another state unless it has obtained any required permissions from the other state and the appropriate federal regulator.

This rule is intended to implement Iowa Code section 524.1201.  
[ARC 4055C, IAB 10/10/18, effective 11/14/18]

**187—2.18(17A,524) New or innovative electronic activities.**

**2.18(1) Scope.** Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586, authorizes a state bank to engage in new or innovative electronic activities that are part of the business of banking. When considering a proposal to engage in new or innovative electronic activities, the superintendent will consider whether the activity is expressly authorized for state banks under Iowa Code chapter 524, whether the activity is the functional equivalent or a logical extension of any activity authorized for state banks, whether the state bank has the expertise necessary to understand and manage the activity and the associated risks, and whether the activity presents similar risks to those state banks already assume.

**2.18(2) Board responsibilities.** The board of directors of a state bank considering engaging in a new or innovative electronic activity shall first evaluate the risks associated with the proposed new or innovative electronic activity and ensure that the state bank conducts the proposed new or innovative electronic activities in compliance with Iowa Code section 524.802A(3) as enacted by 2022 Iowa Acts, Senate File 586.

**2.18(3) Application.** A state bank desiring to engage in new or innovative electronic activities should first meet with the superintendent to discuss the proposed electronic activities. After meeting with the superintendent, a state bank proposing to engage in new or innovative electronic activities shall submit a formal proposal to the superintendent that shall, at a minimum, contain the following information:

*a.* A description of the proposed new or innovative electronic activities, including how the proposed electronic activities align with the strategy and business objectives of the state bank.

*b.* A description of any state or federal laws and regulations expected to apply to the proposed electronic activities. Examples: compliance (terms, conditions, disclosures), Bank Secrecy Act, federal securities laws.

*c.* A description of the state bank's corporate governance process that will oversee the proposed electronic activities, including ongoing monitoring to identify and handle any problems or incidents that may arise.

*d.* A description of the resources and management information systems necessary to oversee the electronic activities.

*e.* Due diligence materials, including risk assessments (e.g., operational risk, liquidity risk, strategic risk, compliance risk) and information on third-party relationships.

*f.* A description of any other licenses or approvals required from any regulatory authority to engage in the proposed new or innovative electronic activities.

*g.* A description of the capital position of the state bank in relation to the risks associated with the proposed new or innovative electronic activities.

*h.* A description of the state bank's exit strategy for the proposed new or innovative electronic activity if the activity proves unsuccessful.

**2.18(4) Investigation.** The superintendent may investigate as deemed necessary.

**2.18(5) Decision.** The superintendent shall approve or deny the application, and the decision by the superintendent shall be conveyed in writing to the applicant.

**2.18(6) Other relevant factors.** The following provisions apply to a state bank seeking approval to engage in new or innovative electronic activities pursuant to Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586:

*a.* The state bank shall contact its primary federal regulator to determine any federal legal requirements that may apply to the proposed activity and the permissibility of the activity under applicable federal law.

b. Upon approval to engage in a new or electronic activity, a state bank that shares any electronic space, including a co-branded website, with a bank subsidiary, affiliate, or any other third party, must take reasonable steps to clearly, conspicuously, and understandably distinguish between the products and services offered by the state bank and those offered by the state bank's subsidiary, affiliate, or any other third party.

This rule is intended to implement Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586.

[ARC 6796C, IAB 1/11/23, effective 2/15/23]

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[Filed ARC 6796C (Notice ARC 6603C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 8  
GENERAL BANKING POWERS  
[Prior to 4/22/87, see Banking Department[140] Ch 8]

**187—8.1 to 8.7** Reserved.

**187—8.8(12B) Approved rating services.** Rating services approved by the superintendent as provided by Iowa Code section 12B.10 for use by the treasurer of state and the treasurer of each political subdivision in determining qualifying commercial paper investments are Moody's Investors Services and Standard & Poor's.

This rule is intended to implement Iowa Code section 12B.10.  
[ARC 4057C, IAB 10/10/18, effective 11/14/18]

**187—8.9(524) General definition of bank.** It is the superintendent's intent that the term "bank" used in Iowa Code section 524.103 means a corporation organized under Iowa Code chapter 524, a corporation organized under 12 U.S.C. §21, a corporation organized under 12 U.S.C. §1464, or an out-of-state bank as defined in Iowa Code section 524.103. The general definition of "bank" as set forth in Iowa Code section 524.103 does not include a state credit union or federal credit union.

This rule is intended to implement Iowa Code section 524.103.  
[ARC 4057C, IAB 10/10/18, effective 11/14/18; ARC 6797C, IAB 1/11/23, effective 2/15/23]

**187—8.10(524) Courier services.** A state bank may provide courier services to its bank customers by using a third-party provider operated under the provider's name or using the state bank's employees operating in the bank's own name. Customer deposits picked up by a courier service become deposits of the bank at the time the deposits are picked up by the courier service.

**8.10(1) *Third-party courier services.*** A state bank that uses a third party to provide courier services to its customers may pay the third party directly for those services and may charge its customers for third-party courier services as the state bank deems appropriate. Superintendent approval is not required for a state bank to provide courier services to its customers by using a third party.

**8.10(2) *Bank-owned courier services.*** A state bank that establishes and operates courier services in its own name using its own employees must establish the vehicle it uses to provide courier services as a bank office in accordance with the provisions of rule 187—2.17(17A,524).

This rule is intended to implement Iowa Code section 524.213.

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CHAPTER 9  
INVESTMENT AND LENDING POWERS  
[Prior to 4/22/87, see Banking Department[140] Ch 9]

**187—9.1** Reserved.

**187—9.2(17A,524) Real estate lending.** This rule is promulgated to provide more uniformity with the final guidelines adopted by the Federal Deposit Insurance Corporation, the Federal Reserve System, and the Department of the Treasury. This rule shall apply to real estate loans either originated by the state bank or acquired by purchase, assignment, or otherwise.

**9.2(1) Written policy.** The board of directors of the state bank shall formulate and maintain a written real estate lending policy that is appropriate for its size and the nature and scope of its operation. Each policy must be comprehensive and consistent with safe and sound lending practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The real estate lending policy should reflect the level of risk that is acceptable to the board and should provide clear and measurable underwriting standards that enable the state bank's lending staff to evaluate all relevant credit factors. The real estate lending policy, at a minimum, should:

- a. Identify the geographic area where the state bank will consider lending.
- b. Establish loan portfolio diversification standards.
- c. Set appropriate terms and conditions by type of real estate loan.
- d. Establish loan origination and approval procedures.
- e. Establish prudent underwriting standards which include clear and measurable loan-to-value limitations.
- f. Establish review and approval procedures for exempted loans.
- g. Establish loan administration procedures.
- h. Establish real estate appraisal and evaluation programs.
- i. Monitor the portfolio and provide timely reports to the board of directors.
- j. Establish procedures for conformance with secondary market investor requirements where applicable.

When formulating the real estate policy, the board should consider both internal and external factors, such as size and condition of the state bank, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate-related laws and rules, and general market conditions.

**9.2(2) Loan-to-value limits.** The board of directors of the state bank shall establish its own internal loan-to-value (LTV) limits for real estate loans.

**9.2(3) In transit loans.** Real estate loans made for sale into the secondary market shall be considered in transit for a period of 90 days after being sold and shall not be considered risk assets for reserving purposes during this time period.

**9.2(4) Evidence of title.** The state bank shall obtain, when lending for the purpose of acquisition or for the purpose of refinance of acquisition when a new mortgage, deed of trust, or similar instrument is filed, one of the following:

a. A written legal opinion by an attorney admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the state bank's mortgage, deed of trust, or similar instrument is a lien on the real estate. An Iowa title guaranty certificate issued by the Iowa title guaranty division of the Iowa finance authority satisfies this requirement.

b. Title insurance written by an insurance company licensed to do business in the state in which the real property is located describing any existing liens and insuring the title to the real property and the validity and enforceability of the mortgage, deed of trust, or similar instrument as a lien on the real property.

**9.2(5) Exceptions.** There are certain real estate transactions in which other factors significantly outweigh the need to apply the provisions of this rule. Therefore, the following transactions are exempt from this rule:

*a.* Loans guaranteed, insured, or for which a written commitment for such has been issued by the U.S. government or its agencies.

*b.* Loans guaranteed, insured, or for which a written commitment for such has been issued by the state of Iowa, a political subdivision, or agency thereof, provided that the state bank has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the agreement.

*c.* Acceptance of real estate as collateral to secure debts previously contracted in good faith.

*d.* Securities collateralized by real estate, but in which a state bank may invest pursuant to Iowa Code section 524.901.

*e.* With the prior approval of the superintendent, any other loans approved, issued, insured or guaranteed by any other federal or state-sponsored program.

**9.2(6) Exempted transactions.** In addition to the exemptions set forth in subrule 9.2(5), it may be appropriate, in light of all relevant credit considerations, including community reinvestment factors, for state banks, in certain instances, to originate or purchase real estate loans that do not meet the requirements of this rule. State banks shall be allowed to make such loans; however, the aggregate amount of all real estate loans that fall into this category shall not exceed aggregate capital as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent. These exempted loans must be identified by the board of directors by name and outstanding balance and must be reviewed by the board no less frequently than annually. Examiners, during the course of their examinations, will determine whether these exempted loans are adequately documented and appropriate in light of overall safety and soundness considerations. No real estate loans to directors, officers, or principal shareholders or their related interests shall be allowed in the exempted category of this subrule.

This rule is intended to implement Iowa Code section 524.905.

[ARC 4058C, IAB 10/10/18, effective 11/14/18]

### **187—9.3(17A,524) Leasing.**

**9.3(1) Definitions.** For purposes of this rule, the term:

*“Aggregate rentals payable”* shall include the total of minimum lease payments (net of unearned income) that the lessee is obligated to make or can be required to make plus any guarantee of the residual value or of rental payments beyond the lease term by an eligible guarantor, provided the guarantor is financially capable of discharging the obligation.

*“Bank officer”* means an administrative official of the bank elected by the state bank's board of directors to carry out the bank's operating rules, including the bank's loan and lease policies.

*“Full payout lease”* shall be one in which the lessor's service is limited to the financing of the asset, with the lessee paying all other costs, including maintenance and taxes, and has the option of purchasing the asset at the end of the lease for a nominal price. The lease shall be fully amortized over the term of the lease or lifetime of the asset, whichever is less.

*“Inception of the lease”* means the date of the lease agreement or commitment, if earlier, or the date the lease is purchased by the state bank. For purposes of this definition, a commitment shall be in writing, signed by the parties in interest to the transaction, and shall specifically set forth the principal terms of the transaction. However, if the property covered by the lease is a fixture yet to be constructed or has not been acquired by the lessor at the date of the lease agreement or commitment, the inception of the lease shall be the date that construction of the property is completed or the property is acquired by the lessor. The inception date of a lease assumed in a business combination accounted for as a purchase is the date the combination is recorded for accounting purposes.

*“Independent third-party appraiser”* means an individual not involved with the lease transaction, except as the appraiser, with no direct or indirect interest, financial or otherwise, in the property appraised

or the parties involved with the transaction. The bank shall take appropriate steps to ensure the appraiser exercises independent judgment and that the appraisal is adequate.

*“Lease servicer”* means an entity that collects monthly principal and interest payments from the lessee and then forwards the payments to the purchasing institution or maintains lease records for a fee.

*“Leasing company”* means an enterprise that makes leases or assembles leases for resale to a bank. Leases acquired by a state bank from an affiliated leasing company will be treated for purposes of this rule the same as if the lease was originated by the bank itself. In determining if an affiliate relationship exists, the provisions of Iowa Code section 524.1101 shall apply.

*“Lessee”* means the party using the leased property.

*“Lessor”* means the party owning the leased property.

*“Residual value”* means the estimated fair value of the leased property at the end of the lease term.

**9.3(2) General direct and purchased lease guidelines.**

*a.* The board of directors of the state bank shall formulate and maintain a written lease policy that is appropriate for the size, nature and scope of the bank’s operation. Each policy must be comprehensive and consistent with safe and sound banking practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The bank’s lease policy, at a minimum, should:

- (1) Identify acceptable lease servicers and lessors (purchased leases only).
- (2) Establish aggregate volume of paper to be purchased from approved servicers and lessors (purchased leases only).
- (3) Identify geographic area where the bank will consider purchasing or originating leases.
- (4) Establish lease portfolio diversification standards.
- (5) Set appropriate terms and conditions by type of leases.
- (6) Establish lease origination and approval procedures.
- (7) Establish prudent underwriting standards.
- (8) Establish lease administration procedures.
- (9) Establish appraisal and evaluation programs.
- (10) Monitor the portfolio and provide timely reports to the board of directors.
- (11) Set forth permitted exceptions to the policy.

When formulating the lease policy, the board should consider both internal and external factors, such as size and condition of the state bank, expertise of the lending staff, avoidance of undue concentrations of risk, and general market conditions.

*b.* Whether the bank is serving as lessor or acquiring a lease through purchase, a bank officer shall perform an independent credit analysis of the lessee.

*c.* The bank or an affiliated leasing company shall obtain collateral values, lien status, lease agreements, participation agreements, and title documentation within 45 calendar days from the date of inception with original documentation being maintained in the bank’s or affiliated leasing company’s credit files.

*d.* A bank officer, an officer of an affiliated lease originator, or an independent third-party appraiser shall conduct at inception, and then at least annually thereafter, an inspection of the leased tangible personal property, unless prior approval to waive the inspection requirements has been obtained from the superintendent.

For a lease to a governmental unit, the bank shall conduct an inspection at time of inception or maintain written verification by an official of the governmental unit to confirm the existence of the leased property.

*e.* Ongoing documentation requirements to support the lease shall be the same as if the bank had made a direct loan to the lessee for purchase of the asset being leased.

*f.* The lease shall be a full-payout, noncancelable obligation of the lessee with the obligation serving the same purpose as other forms of bank financing. For purposes of this rule, a lease to a governmental unit which contains a fiscal funding clause would be considered a noncancelable lease if the likelihood of exercise of the fiscal funding clause is assessed as being remote.

*g.* Property covered by the lease shall be limited to tangible personal property, excluding livestock. In addition, a state bank may purchase or construct a municipal building, such as a school building, or other similar public facility and, as holder of legal title, lease the same to a municipality or other public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall address liability issues and shall provide that upon its expiration the lessee will become owner of the building or facility.

*h.* The lease shall require rental payments to be made on a periodic basis, but no less frequently than annually.

*i.* The term of a lease shall not exceed seven years if made to a nongovernmental unit or ten years if made to a governmental unit without the prior approval of the superintendent.

*j.* Aggregate rentals payable by the customer under leases of personal property shall conform to the limits imposed by Iowa Code section 524.904.

*k.* All lease receivables shall be booked in accordance with the instructions for preparation of the consolidated reports of condition and income.

*l.* Unguaranteed residual value established by the lessor for any lease, whether originated by the state bank or acquired through purchase, shall not exceed 25 percent of the original cost of the leased property. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party which is not an affiliate of the bank may exceed 25 percent of the original cost of property where the bank has determined and can provide full supporting documentation that the guarantor has the resources to meet the guarantee.

While this guideline prohibits unguaranteed residual values to exceed 25 percent of the original cost, the estimated residual value shall be reasonable in relation to the type of property leased so the primary risk taken by the bank is the creditworthiness of the lessee and not the market value of the leased property. All estimated residual values shall be reviewed at least annually.

If the state bank carries the estimated residual value on its books and a review of the estimated residual value results in a lower estimate than had been previously established, the accounting for the transactions shall be revised using the new estimate. The resulting reduction in the net investment shall be recognized as a loss in the period in which the estimate is changed. An upward adjustment of the residual value shall not be made.

*m.* Consumer leases, whether originated or purchased by a state bank, shall conform to Iowa Code section 537.3202 and Chapter 5 of the Truth-in-Lending Act (15 U.S.C. 1601 et seq.).

*n.* If an affiliate of a state bank is regarded as the originator of a lease, the affiliate shall be subject to provisions of Iowa Code section 524.1105.

**9.3(3) *Specific purchased lease guidelines.***

*a.* If the obligations acquired carry full recourse endorsements, guaranty, or an agreement to repurchase of the lessor or servicer negotiating the sale of the leases, then the endorser, guarantor, or repurchaser shall also be deemed to be a customer of the bank. This customer's obligation would be limited to 15 percent of aggregate capital of the state bank.

*b.* Financial information or evidence of insurance coverage for errors, omissions, and fraudulent acts shall be obtained no less frequently than annually on any lease servicer. The financial information shall be evaluated to determine the creditworthiness of the lease servicer. The insurance coverage shall be in an amount sufficient for the volume of leases being serviced by the lease servicer. This documentation is to be maintained on file by the bank.

**9.3(4) *Specific direct leasing guidelines.*** Acceptable methods of accounting for investment tax credits shall be used.

**9.3(5) *Exempted transactions.*** In some instances, it may be appropriate, in light of all relevant credit considerations, to originate or purchase leases that do not conform with the requirements of 9.3(2) "c," "d," and "e." The outstanding aggregate rentals payable of all originated and purchased leases that fall into this category shall not exceed 25 percent of aggregate capital as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent. These exempted leases shall be identified by the board of directors by name and outstanding balance and shall be reviewed by the board no less frequently than annually.

Examiners, during the course of their examinations, will determine whether these exempted leases are adequately documented and appropriate in light of overall safety and soundness considerations. No leases to directors, officers, or substantial shareholders or their related interests shall be allowed in the exempted category of this subrule.

This rule is intended to implement Iowa Code section 524.908.

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**ECONOMIC DEVELOPMENT AUTHORITY[261]**

[Created by 1986 Iowa Acts, chapter 1245]

[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

[Prior to 9/7/11, see Economic Development, Iowa Department of[261];  
renamed Economic Development Authority by 2011 Iowa Acts, House File 590]

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STEM BEST APPROPRIATION

**261—15.1(89GA, HF871, HF2564) Purpose.** The authority is directed to adopt rules to establish criteria for the distribution of funds appropriated to the authority for the STEM BEST program.  
[ARC 6136C, IAB 1/12/22, effective 2/16/22; ARC 6794C, IAB 1/11/23, effective 2/15/23]

**261—15.2(89GA, HF871, HF2564) Definitions.** As used in this chapter, unless the context otherwise requires:

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Council*” means the Iowa governor’s STEM advisory council operated pursuant to Executive Order 74 dated July 26, 2011, and Executive Order 81 dated May 15, 2013.

“*Program administrator*” means the science, technology, engineering, and mathematics collaborative initiative established at the university of northern Iowa pursuant to Iowa Code section 268.7.

“*STEM BEST program*” or “*program*” means the grant program overseen by the council and program administrator to support curriculum development by K-12 schools and industry professionals to prepare students for careers in science, technology, engineering, or mathematics (STEM) or a related field.

[ARC 6136C, IAB 1/12/22, effective 2/16/22; ARC 6794C, IAB 1/11/23, effective 2/15/23]

**261—15.3(89GA, HF871, HF2564) Eligible uses of funds.** Funds appropriated to the authority for the STEM BEST program shall be transferred to the program administrator to fund grant awards. Awards shall be made in accordance with program guidance established by the council and program administrator. The program guidance is published at [www.iowastem.org](http://www.iowastem.org). Funds may also be used for program recruitment and applicant support.

[ARC 6136C, IAB 1/12/22, effective 2/16/22; ARC 6794C, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement 2021 Iowa Acts, House File 871, section 3(11), and 2022 Iowa Acts, House File 2564, section 3(12).

[Filed ARC 6136C (Notice ARC 5983C, IAB 10/20/21), IAB 1/12/22, effective 2/16/22]

[Filed ARC 6794C (Notice ARC 6594C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 47  
ENDOW IOWA TAX CREDITS

**261—47.1(15E) Purpose.** The purpose of endow Iowa tax credits is to encourage individuals, businesses, and organizations to invest in community foundations and to enhance the quality of life for citizens of this state through increased philanthropic activity.

[ARC 8474B, IAB 1/13/10, effective 2/17/10; ARC 0008C, IAB 2/8/12, effective 3/14/12]

**261—47.2(15E) Definitions.**

“*Authority*” means the economic development authority.

“*Community affiliate organization*” means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in the state with the intention of establishing a community affiliate endowment fund.

“*Endow Iowa qualified community foundation*” means a community foundation organized or operating in this state that substantially complies with the national standards for U.S. community foundations established by the National Council on Foundations as determined by the authority in collaboration with the Iowa Council of Foundations.

“*Endowment gift*” means an irrevocable contribution to a permanent endowment held by an endow Iowa qualified community foundation.

“*Permanent endowment fund*” means a fund held in an endow Iowa qualifying community foundation to provide benefit to charitable causes in the state of Iowa. Endowed funds are intended to exist in perpetuity, and to implement an annual spend rate not to exceed 5 percent.

“*Tax credit*” means the amount a taxpayer may claim against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

[ARC 8474B, IAB 1/13/10, effective 2/17/10; ARC 0008C, IAB 2/8/12, effective 3/14/12; ARC 6793C, IAB 1/11/23, effective 2/15/23]

**261—47.3(15E) Authorization of tax credits to taxpayers.** The authority shall authorize tax credits to qualified taxpayers who provide an endowment gift to an endow Iowa qualified community foundation or a community affiliate organization affiliated with an endow Iowa qualified community foundation for a permanent endowment fund within the state of Iowa in accordance with the following provisions:

**47.3(1)** Approved tax credits shall be allowed against taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

**47.3(2)** Tax credits will be equal to 25 percent of a taxpayer’s gift to a permanent endowment held in an endow Iowa qualified community foundation. The amount of the endowment gift for which the endow Iowa tax credit is claimed shall not be deductible in determining taxable income for state income tax purposes.

**47.3(3)** The aggregate amount of tax credits available under this rule annually is \$6 million. For tax credits issued on or before December 31, 2022, the maximum amount of tax credit that may be granted to an individual taxpayer is limited to 5 percent of the aggregate amount available each year. For tax credits issued on or after January 1, 2023, the maximum amount of tax credit that may be granted to an individual taxpayer is limited to \$100,000. If the authority receives applications for tax credits in excess of the amount available, the applications shall be prioritized by the date the authority received the applications. Applications received on or before June 30, 2023, will be placed on a waitlist for a subsequent year’s allocation of tax credits if the number of applications exceeds the amount of annual tax credits available. Applications placed on the waitlist shall first be funded in the order listed on the waitlist. Applications received on or after July 1, 2023, in excess of the amount of tax credits available will not be placed on the waitlist and will be denied by the authority. For endowment gifts made on or after June 30, 2023, a taxpayer shall submit an application to the authority for the tax credit no later than 12 months from the date of the donation which qualifies the taxpayer for the tax credit.

**47.3(4)** To receive the tax credit, a donor shall file a claim with the department of revenue in accordance with any applicable administrative rules adopted by the department.

[ARC 8474B, IAB 1/13/10, effective 2/17/10; ARC 0008C, IAB 2/8/12, effective 3/14/12; ARC 0613C, IAB 2/20/13, effective 3/27/13; ARC 6793C, IAB 1/11/23, effective 2/15/23]

**261—47.4(15E) Distribution process and review criteria.** The authority shall develop and make available a standardized application pertaining to the allocation of endow Iowa tax credits.

**47.4(1)** Twenty-five percent of the annual amount available for tax credits shall be reserved for those permanent endowment gifts made to community affiliate organizations. If by September 1 of any year the entire 25 percent reserved for permanent endowment gifts corresponding to community affiliate organizations is not allocated, the amount remaining shall be available for other applicants.

**47.4(2)** Ten percent of the annual amount available for tax credits shall be reserved for those permanent endowment gifts totaling \$30,000 or less. If by September 1 of any year the entire 10 percent reserved for permanent endowment gifts totaling \$30,000 or less is not allocated, the amount remaining shall be available for other applicants.

**47.4(3)** Applications will be accepted and awarded on an ongoing basis. The authority will make public by June 1 and December 1 of each calendar year the total number of requests for tax credits and the total amount of requested tax credits that have been submitted and awarded.

[ARC 8474B, IAB 1/13/10, effective 2/17/10; ARC 0008C, IAB 2/8/12, effective 3/14/12]

**261—47.5** Rescinded ARC 6973C, IAB 1/11/23, effective 2/15/23

[ARC 8474B, IAB 1/13/10, effective 2/17/10; ARC 0008C, IAB 2/8/12, effective 3/14/12]

These rules are intended to implement Iowa Code sections 15E.301 to 15E.303 and 15E.305 as amended by 2022 Iowa Acts, House File 2317.

[Filed 11/20/03, Notice 10/1/03—published 12/24/03, effective 1/28/04]

[Filed 10/21/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]

[Filed ARC 8474B (Notice ARC 8228B, IAB 10/7/09), IAB 1/13/10, effective 2/17/10]

[Filed ARC 0008C (Notice ARC 9748B, IAB 9/7/11), IAB 2/8/12, effective 3/14/12]

[Filed ARC 0613C (Notice ARC 0344C, IAB 10/3/12), IAB 2/20/13, effective 3/27/13]

[Filed ARC 6793C (Notice ARC 6592C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 52  
IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

**261—52.1(15) Definitions.**

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Certification*” means the process which identifies small businesses as targeted and eligible for technical assistance.

“*Contractor*” means the person who contracts to perform work for the state.

“*Cottage industry*” means a business where the principal place of business is the owner’s residence.

“*Disability*” means as defined in Iowa Code section 15.102(10)“*b.*”

“*Family*” means a group of related people as follows: father, mother, son, daughter, brother, sister, husband, wife, grandmother, grandfather, grandchild, stepfather, stepmother, stepdaughter, stepson, stepbrother, stepsister, half-sister, or half-brother.

“*Family-owned business*” means a business owned by more than one member of one family. Characteristics of a family-owned business include, but are not limited to:

1. Ownership is shared by family members;
2. Profits are disbursed among family members;
3. A business tax return is filed in the name of the company with the family members listed as officers.

“*Gross income*” means the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

“*Intention*” means an attempt has been made to perform the work.

“*Lending institution*” means any bank, savings and loan, or credit union.

“*Minority person*” means an individual who is a Black, Latino, Asian, Pacific Islander, American Indian or Alaskan Native American.

“*Owner’s residence*” means the owner’s legal residence.

“*Person*” means individual, corporation, government or governmental subdivision or agency, estate, trust, partnership or association, or any other legal entity.

“*Program*” means the targeted small business certification program described in this chapter.

“*Service-disabled veteran*” means the same as defined in 15 U.S.C. Section 632.

“*Single management*” means a business which is not a subsidiary of any other business.

“*Targeted group person*” or “*TGP*” means a person who is a minority, woman, person with a disability, or service-disabled veteran and is either an Iowa resident or a resident of a contiguous state who lives within 50 miles of the targeted small business the person owns, operates, and actively manages.

“*Targeted small business (TSB)*” means a small business which is 51 percent or more owned, operated, and actively managed by one or more targeted group persons provided the business meets all of the following requirements:

1. Is located in this state;
2. Is operated for profit;
3. Has an annual gross income of less than \$4 million, computed as an average of the three preceding fiscal years.

“*Targeted small business owner*” means one or more women, minorities, persons with disabilities, service-disabled veterans, or a combination thereof, owning at least 51 percent of a business.

“*Uniform small business vendor application*” means the application developed by the Iowa economic development authority which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses. The application contains information which can be used to determine certification as a targeted small business for participation in the Iowa targeted small business procurement program.

“*Woman*” means any female 18 years of age or older.

[ARC 3582C, IAB 1/17/18, effective 2/21/18; ARC 5907C, IAB 9/22/21, effective 10/27/21]

**261—52.2(15) Certification.** The authority is responsible for ascertaining that a small business is owned, operated, and actively managed by a targeted group person.

**52.2(1) Regular certification.** Before a small business can participate in the Iowa targeted small business program, it must be certified by the authority.

*a.* The authority shall review applications from small businesses to determine whether they are eligible to participate in the program pursuant to this chapter as in effect as of the date of application for certification.

*b.* Certification means the authority has determined that the business meets eligibility standards.

*c.* Applications for the targeted small business certification are available by contacting the authority or by visiting the authority's website:

Iowa Economic Development Authority

1963 Bell Avenue, Suite 200

Des Moines, Iowa 50315

515.348.6200

[www.iowaeda.com](http://www.iowaeda.com)

*d.* Applicants shall receive written notification of the authority's decision.

**52.2(2) Recertification.** Certified businesses shall submit verification of continued eligibility to the authority at least every two years.

*a.* The application for recertification will be provided by the authority.

*b.* Other documents will be requested to verify the continuing eligibility of the business.

*c.* The authority shall determine whether a certified business is eligible for recertification pursuant to this chapter as in effect as of the date of application for recertification.

**52.2(3) Information required in application.** Various and specific documentation may be required by the authority during the certification or recertification process. Each business shall provide relevant information upon the authority's request in order to be considered for certification or recertification. Applications shall be signed by an authorized representative of the business. An authorization to release information is part of each application and shall be signed by the applicant. This signature shall be notarized.

**52.2(4)** A business may reapply upon proof of compliance with TSB certification standards. Any company that is denied certification or decertified for any reason bears the burden of proving that all deficiencies previously cited have been corrected. Corrections shall be in accordance with requirements governing the targeted small business program. The burden of proof to recertify a business is the responsibility of the owner of that business.

**52.2(5)** The business shall notify the authority within 30 days following a change in ownership or control of a certified business. A new application shall be filed showing the change and must be accompanied by sufficient documentation to determine whether the business continues to be eligible to participate in the TSB program.

**52.2(6)** An applicant for certification as an Iowa targeted small business may indicate in writing that a similar application is pending with an agency other than the authority. When the authority considers another certification process equal to or more stringent than the process described in these rules, an applicant may submit the information required for the other process. The authority may certify a business as a TSB based on copies of the information provided to another agency. The Iowa application for certification as a TSB may still be required. Certification as a targeted small business in Iowa is granted only by the authority. Certification by any other entity does not ensure certification as a targeted small business in Iowa.

**52.2(7) Disability determinations.**

*a. Person with a disability.* In order to be considered a person with a disability for the purpose of the TSB program, the person must qualify and receive certification as having a disability from a licensed medical physician or physician assistant or must have been found eligible for vocational rehabilitation services by the department of education, division of vocational rehabilitation services, or by the department for the blind.

*b. Service-disabled veteran.* In order to be considered a service-disabled veteran for the purpose of the TSB program, the person must provide written verification from the Veterans Administration or the U.S. Department of Defense of a service-connected disability, as defined in 38 U.S.C. Section 101(16). [ARC 3582C, IAB 1/17/18, effective 2/21/18; ARC 5907C, IAB 9/22/21, effective 10/27/21; ARC 6794C, IAB 1/11/23, effective 2/15/23]

**261—52.3(15) Description of application.** The TSB application requires information about the people who own, control, and manage the applicant business.

**52.3(1)** Names, current addresses, verification of targeted group status and the employer's federal identification number, if applicable, are required. The proportion of ownership of the business and the names of stockholders or owners must be included. Documents which establish financial responsibility may be required.

**52.3(2)** The authority may require the applicant to provide any information reasonably required to assess the applicant's eligibility for the program pursuant to this chapter, including but not limited to information regarding the applicant's contracts, income, inventory, loans, personnel, payroll, taxes, and volume of business.

**52.3(3)** The information contained in the application may be reviewed by the applicant upon request to the authority. Material to be added to a file may be sent to the authority.

[ARC 3582C, IAB 1/17/18, effective 2/21/18; ARC 5907C, IAB 9/22/21, effective 10/27/21]

**261—52.4(15) Eligibility standards.** Pursuant to the authority of Iowa Code section 15.108(7), the authority has established standards to certify targeted small businesses. These standards are intended to indicate whether a business is owned, operated and actively managed by targeted group persons.

**52.4(1)** The applicant shall be an independent business. The following list describes elements of a business which indicate independent status.

*a.* The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and shall share in the risks commensurate with the owner's ownership interest. Independence of ownership shall be demonstrated by the substance rather than the form of the arrangements. Title and authority shall be commensurate with ownership and control.

*b.* The business shall be owned and operated by the same targeted group persons, a single management.

*c.* A board of directors and stockholders shall each have a membership comprised of at least 51 percent targeted group persons.

*d.* The applicant business shall be compensated for facilities, inventory, equipment, labor, or other items which it owns and shares with any other business. Compensation shall not vary from common industry practice.

*e.* The targeted group person owner(s) shall have independent authority and ability to incur liability and to decide financial and policy questions. The business arrangements of owners, directors, officers or key employees with businesses which are not minority-, woman-, person with disability-, or service-disabled veteran-owned shall not vary from common industry practice. Each industry has practices which differ from other industries.

*f.* Independent authority and ability to hire and to fire all personnel shall be vested in the targeted group person owner(s).

*g.* Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient for certification as a targeted small business.

**52.4(2)** The targeted group person owner(s) shall make the business decisions for the business without any restrictions, either formal or informal. This includes, but is not limited to, bylaw provisions, partnership agreements, charter requirements for cumulative voting rights, or employment agreements.

**52.4(3)** The targeted group person owner(s) shall direct or cause the direction of the business. The owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business. The authority will consider particular positions to determine who has major responsibility in a company. These people include, but are not limited to, those who:

*a.* Hold any applicable license;

- b. Devote substantial time to the business;
- c. Supervise or direct the supervision of management and field operations;
- d. Manage financial affairs;
- e. Prepare or approve bids or estimates;
- f. Participate in price and bidding negotiations;
- g. Make final decisions about staff and personnel;
- h. Sign contracts and checks or authorize action on behalf of the business.

**52.4(4)** Any relationship between a TSB and a business which is not a TSB, but which has an interest in the TSB, shall be carefully reviewed to determine if the interest of the non-TSB conflicts with the ownership and control requirements of this rule.

**52.4(5)** The contributions of capital and expertise by the targeted group person owner(s) to acquire interest in the business shall be real and substantial.

a. The following list includes acceptable elements of ownership.

(1) Company documents, such as stock certificates, articles of incorporation, minutes of board meetings, partnership agreements, or income tax returns reflect targeted group person ownership;

(2) Independent contributions of capital are made by the targeted group person owner(s). Proof of this independent contribution of capital made by the targeted group person owner(s) to acquire interest in the business must accompany the certification application;

(3) Independent contributions of expertise are made by the targeted group person owner(s). The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type of business in which the firm is engaged and in the firm's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business;

(4) Independent risk of loss and share of profit by the targeted group person owner(s) is commensurate with the owner's proportion of ownership.

b. Fifty-one percent or more of securities which constitute ownership or control of a corporation for purposes of establishing it as a TSB shall be held directly by targeted group persons.

c. An inherited business may be eligible for targeted small business status. Capital contribution, expertise and experience in the inherited business are not required. All other standards apply.

d. Documentation may be required to prove compliance with all standards.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

**261—52.5(15) Special consideration.** In addition to the above standards, the authority may consider other circumstances to determine eligibility. Consideration of other circumstances is intended to ensure that only bona fide targeted group person-owned businesses are certified.

**52.5(1)** A previous or continuing employer-employee relationship between present owners will be carefully reviewed to ensure that the employee-owner has substantial management and decision-making responsibilities.

**52.5(2)** At the discretion of the authority, on-site audits may be conducted to determine eligibility.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

**261—52.6(15) Family-owned business.** Businesses which are owned and operated by one or more members of the same family will be closely scrutinized to determine whether the targeted group person identified as the owner of 51 percent or more of the business does in fact set policy and make day-to-day and long-term decisions for the operation and management of the business.

**52.6(1)** If any of the circumstances below prevail, the business shall be considered a family-owned business. Nontargeted group person family-owned businesses are not eligible for certification as targeted small businesses in Iowa. Any characteristic listed below may be cause to deny targeted small business status. This list is not to be construed as complete.

a. If a nontargeted group person family member:

- (1) Is chief executive officer or president;
- (2) Provides the expertise to conduct the business;

- (3) Transfers ownership to the targeted group person owner for less than fair market value;
- (4) Receives compensation equal to or greater than the targeted group person owner, not commensurate with their ownership;
- (5) Provides occupational services for the business for less than fair market value;
- (6) Possesses powers equal to or greater than the targeted group person owner to direct management and operations.

*b.* If the targeted group person owner:

(1) Is represented to those outside the business as not possessing the final authority to direct the operations and management of the business;

(2) Cannot document the date upon which the nontargeted group person family member was hired.

*c.* A recent transfer of ownership by a nontargeted group person family member to a targeted group person will be reviewed to determine if the previous owner is still the principal decision maker on policy or actually manages the existing business. Transfers in the past two years are considered recent, and these businesses shall not be certified, unless evidence substantiating the transfer is received and approved.

**52.6(2)** If a lending institution requires a signature other than the TSB owner's, another person may sign. When this happens, the owner must have the experience and expertise to own and operate the business. If a nontargeted group person family member has the expertise and has cosigned for business loans, the business is not eligible.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

**261—52.7(15) Cottage industry.** A cottage industry business may be eligible for certification as a TSB.

**52.7(1)** Characteristics of these businesses include, but are not limited to:

*a.* At least 51 percent of business equipment shall be owned by targeted group persons.

*b.* Business risks and profits shall be borne by the targeted group person owner(s) proportionate to the owner's ownership.

**52.7(2)** The intent of targeting some small businesses is to identify those businesses which have been traditionally excluded from economic growth. Therefore, for a cottage industry business, the residence and any adjacent outbuildings used by the cottage industry may be owned jointly with other family members.

**52.7(3)** All other TSB eligibility standards apply to the cottage industry.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

**261—52.8(15) Decertification.** A business shall be decertified by the authority if it is determined the business no longer complies with the requirements of the TSB program or its owners cannot be located by the authority.

**52.8(1)** Written notice of the intent to revoke certification shall be provided when the authority determines there is reasonable cause to believe a business does not comply. Notice shall be sent by U.S. mail at least 20 days before decertification is effective.

**52.8(2)** If the authority sends a letter by first-class mail to the last-known address provided to the authority by the TSB and it is returned as undeliverable, this is considered to be grounds for decertification.

**52.8(3)** Decertification procedures may be initiated by the authority or after the investigation of a complaint filed by the general public. A request for an investigation from the public must be written and shall specify the reason(s) why the certified targeted small business no longer complies with these rules. Supporting documentation may be attached to the request.

**52.8(4)** Eligibility to participate in the TSB program continues until the final decision is issued by the authority.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

**261—52.9(15) Request for bond waiver.** A targeted small business seeking a performance, surety, or bid bond waiver shall submit a sworn statement that it is unable to secure a performance, surety, or bid bond because of lack of experience, lack of net worth, or lack of capital. Documentation will be

requested from surety companies that the TSB is unable to obtain performance, surety, or bid bonding because of the lack of experience, lack of net worth, or lack of capital.

**52.9(1)** A waiver shall be applied only to a prime contract where the project or individual transaction does not exceed \$50,000, notwithstanding Iowa Code section 573.2.

**52.9(2)** Granting a waiver shall not relieve any business from its contractual obligations. The state agency or department may pursue any remedy under law upon default or breach of contract.

**52.9(3)** The authority reviews all bond waiver documents. Information to assist the review process may be requested from the state department or agency involved. An applicant for a performance, surety, or bid bond waiver and the department or agency involved will be notified of the decision by U.S. mail.

**52.9(4)** Bond waivers will be reviewed and renewed at the time of TSB recertification.  
[ARC 3582C, IAB 1/17/18, effective 2/21/18]

**261—52.10(15) Fraudulent practices in connection with targeted small business programs.**

A violation under this rule is grounds for decertification of the TSB connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this chapter.

**52.10(1)** A person is considered to be guilty of a fraudulent practice if the person:

*a.* Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a targeted group person primarily for the purpose of obtaining benefits under TSB programs if the transferor would otherwise not be qualified for such programs.

*b.* Solicits and is awarded a state contract on behalf of a TSB for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

*c.* Knowingly falsifies information on an application for the purpose of obtaining benefits under TSB programs.

**52.10(2)** The authority may investigate allegations or complaints of fraudulent practices and will take action to decertify a TSB upon concluding that a violation has occurred. A decertification by this action may be appealed.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

These rules are intended to implement Iowa Code section 15.108(7).

[Filed ARC 3582C (Notice ARC 3378C, IAB 10/11/17), IAB 1/17/18, effective 2/21/18]

[Filed ARC 5907C (Notice ARC 5622C, IAB 5/19/21), IAB 9/22/21, effective 10/27/21]

[Filed ARC 6794C (Notice ARC 6594C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 65  
BROWNFIELD AND GRAYFIELD REDEVELOPMENT

**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. The redevelopment tax credits program for brownfields and grayfields is designed to provide financial assistance for the acquisition, remediation, or redevelopment of brownfield and grayfield sites.

[ARC 7844B, IAB 6/17/09, effective 7/22/09; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12; ARC 1827C, IAB 1/21/15, effective 2/25/15]

**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:

*“Abandoned public building”* means a vertical improvement constructed for use primarily by a political subdivision of the state for a public purpose and whose current use is outdated or prevents a better or more efficient use of the property by the current owner. “Abandoned public building” includes vacant, blighted, obsolete, or otherwise underutilized property.

*“Acquisition”* means the purchase of brownfield or grayfield property.

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

*“Affiliate”* or *“affiliated entity”* means any entity to which one or more of the following applies:

1. The entity directly, indirectly, or constructively controls another entity.
2. The entity is directly, indirectly or constructively controlled by another entity.
3. The entity is subject to the control of a common entity. A common entity is one which owns directly or individually more than 10 percent of the voting securities of the entity.

*“Authority”* means the economic development authority.

*“Board”* means the members of the economic development authority board appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

*“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.

*“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 abandoned public building or an industrial or commercial property that meets 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.

“*Political subdivision*” means a city, county, township, or school district.

“*Previously remediated or redeveloped*” means any prior remediation or redevelopment, including development for which an award of tax credits under this chapter has been made.

“*Qualifying investment*” means costs that are directly related to a qualifying redevelopment project and that are incurred after the project has been registered and approved by the board. “Qualifying investment” only includes the purchase price, the cleanup costs, and the redevelopment costs.

“*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 or grayfield site.

“*Redevelopment*” means construction or development activities associated with a qualifying redevelopment project that are undertaken either for the purpose of constructing new buildings or improvements at a site where formerly existing buildings have been demolished or for the purpose of rehabilitating, reusing or repurposing existing buildings or improvements. Redevelopment typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

“*Redevelopment tax credits program*” means the tax credits program administered pursuant to Iowa Code sections 15.293A and 15.293B.

“*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.

“*Vertical improvement,*” “*improvement*” or “*improved*” means the same as defined in Iowa Code section 15J.2.

[ARC 7844B, IAB 6/17/09, effective 7/22/09; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12; ARC 0944C, IAB 8/7/13, effective 9/11/13; ARC 1827C, IAB 1/21/15, effective 2/25/15; ARC 6042C, IAB 11/17/21, effective 12/22/21]

**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. The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance. Sponsorship is encouraged but not required for the redevelopment tax credits program for brownfields and grayfields.

**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. The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance. Prior to applying for financial assistance under the brownfield redevelopment program, an applicant who is not an owner of a site 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:

- a. The total cost for remediating the site.
- b. 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.
- c. 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.

**65.3(3) *Phased projects ineligible for tax credits.*** Tax credits for brownfield and grayfield redevelopment are only available for qualifying redevelopment projects. Because a qualifying redevelopment project does not include a previously remediated or redeveloped site, a project for subsequent redevelopment at the same site for which tax credits have already been awarded is not eligible for additional tax credits on redevelopment at that site. The authority and the council will determine whether a project constitutes subsequent redevelopment at the same site by considering the following factors:

- a. Whether the redevelopment described in multiple proposed projects is planned for a single parcel.
- b. Whether the redevelopment described in multiple proposed projects is planned for adjacent or contiguous parcels or parcels in very close physical proximity.
- c. Whether all involved parcels are owned by the same entity, different entities, or affiliated entities.
- d. Whether a proposed project is the result of the same planning process as another project.
- e. Whether the proposed projects are being developed by the same entity, different entities, or affiliated entities.
- f. Whether the development of one proposed project reflects a temporal connection to another proposed project.

[ARC 7844B, IAB 6/17/09, effective 7/22/09; ARC 0007C, IAB 2/8/12, effective 3/14/12; ARC 0944C, IAB 8/7/13, effective 9/11/13; ARC 1827C, IAB 1/21/15, effective 2/25/15]

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

**65.4(1) *Financial assistance.*** Eligible forms of financial assistance include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program and the redevelopment tax credits program for brownfields and grayfields established in Iowa Code sections 15.292 and 15.293A.

**65.4(2) *Other forms of assistance.*** The authority may provide information on alternative forms of assistance.

**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. This limitation does not apply to assistance provided in the form of tax credits pursuant to subrule 65.11(4).

**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; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12; ARC 1827C, IAB 1/21/15, effective 2/25/15]

**261—65.5(15) Repayment to economic development authority.** Under the brownfield redevelopment program only, upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the authority 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 actually disbursed to the applicant by the authority.

[ARC 7844B, IAB 6/17/09, effective 7/22/09; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12]

**261—65.6(15) General procedural overview.**

**65.6(1)** Subject to availability of funds, applications to the brownfield redevelopment program will be accepted, reviewed and scored by economic development authority staff and by the advisory council on an annual basis. Brownfield redevelopment funds will be scored on a competitive basis by the council, which will make recommendations on award amounts to the board.

**65.6(2)** Subject to availability of funds, applications to the redevelopment tax credits program for brownfields and grayfields will be accepted and reviewed by economic development authority staff and scored by the advisory council on an annual basis. For the fiscal year beginning July 1, 2014, applications must be received by March 1, 2015. For each fiscal year thereafter, applications will be accepted beginning on July 1 and must be received by September 1. Subject to the availability of funding, the authority may set additional application deadlines after September 1 and before the end of a fiscal year.

**65.6(3)** Applications for all forms of financial assistance 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.

**65.6(4)** Application forms for the brownfield redevelopment program and the redevelopment tax credits program for brownfields and grayfields are available on the authority's website.

**65.6(5)** The authority may provide technical assistance as necessary to applicants. Authority staff may conduct on-site evaluations of proposed activities.

[ARC 7844B, IAB 6/17/09, effective 7/22/09; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12; ARC 1827C, IAB 1/21/15, effective 2/25/15; ARC 6792C, IAB 1/11/23, effective 2/15/23]

**261—65.7(15) Application to the brownfield redevelopment program—agreements.**

**65.7(1)** Every application for assistance shall include evidence of sponsorship and any other information the authority deems necessary in order to process and review the application. An application shall be considered received by the authority only when the authority deems it to be complete. Applications for assistance shall also 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 authority shall accept and review applications in conjunction with the council and the board. The council shall consider applications in the order complete applications are received and make application recommendations to the board. The council will score applications according to the application review criteria established pursuant to rule 261—65.9(15). The board shall approve or deny applications.

**65.7(3)** Approved applicants shall enter into an agreement with the authority.

[ARC 7844B, IAB 6/17/09, effective 7/22/09; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12; ARC 1827C, IAB 1/21/15, effective 2/25/15]

**261—65.8(15) Application to the redevelopment tax credits program—registration of projects—agreements.**

**65.8(1)** *System for application, review, registration, and authorization of projects.* The authority will administer a system for application, review, registration, and authorization of projects as described in this subrule and will only issue tax credit certificates pursuant to subrule 65.11(3).

*a.* The authority will accept and, in conjunction with the council, review applications for tax credits provided in Iowa Code section 15.293A and, with the approval of the council, make tax credit award recommendations regarding the applications to the board.

*b.* Applications for redevelopment tax credits will only be accepted during the established application period as provided in subrule 65.6(2).

*c.* Upon review of an application, the authority may register the project with the redevelopment tax credits program. If the authority registers the project, the authority may, in conjunction with the council, make a preliminary determination as to the amount of tax credit for which an award recommendation will be made to the board.

*d.* After registering the project, the authority will notify the investor of successful registration under the redevelopment tax credits program. The notification may include the amount of tax credit for which an award recommendation will be made to the board. If an award recommendation is included in the notification, such notification will include a statement that the award recommendation is a recommendation only. The amount of tax credit included on a tax credit certificate issued pursuant to this rule shall be contingent upon an award by the board and upon completion of the requirements in this rule.

*e.* (1) All completed applications will be reviewed and scored, pursuant to subrule 65.8(2), on a competitive basis by the council and the board. In reviewing and scoring applications, the council and the board may consider any factors the council and board deem appropriate for a competitive application process, including but not limited to the financial need, quality, and feasibility of a qualifying redevelopment project.

(2) For purposes of this rule:

1. “*Feasibility*” means the likelihood that the project will obtain the financing necessary to allow for full completion of the project and the likelihood that the proposed redevelopment or improvement that is the subject of the project will be fully completed.

2. “*Financial need*” means the difference between the total costs of the project less the total financing that will be received for the project.

3. “*Quality*” means the merit of the project after considering and evaluating its total characteristics and measuring those characteristics in a uniform, objective manner against the total characteristics of other projects that have applied for the tax credit provided in this chapter during the same established application period.

*f.* Upon reviewing and scoring all applications that are part of an annual application period, the board may award tax credits provided in this chapter.

*g.* If the applicant for a tax credit provided in this chapter has also applied to an agency of the federal government or to the authority, the board, or any other agency of state government for additional financial assistance, the authority, the council, and the board will consider the amount of funding to be received from such public sources when making a tax credit award pursuant to this rule.

*h.* An applicant that is unsuccessful in receiving a tax credit award during an established application period may make additional applications during subsequent application periods. Such applicants must submit a new application and must be competitively reviewed and scored in the same manner as other applicants in that same application period.

**65.8(2)** *Scoring criteria.*

*a.* Each application for tax credits during each established application period will be scored according to criteria set forth in this paragraph. Points will be added together and the resulting score averaged with the scores of applications evaluated by all council members. Scoring criteria include:

(1) The project’s feasibility: 25 points.

(2) The project’s financial need: 25 points.

(3) The project's quality: 25 points.

b. There is no minimum score required for a project to receive a recommendation for funding, but a higher score indicates that the council views a project more favorably. The council's funding recommendation will reflect its overall view of the project in relation to other applying projects.

**65.8(3) Required information.** An investor applying for a tax credit shall provide the authority with all of 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 are directly related to the qualifying redevelopment project for which the investor is seeking approval for a tax credit, as provided in this chapter.

c. Any other information deemed necessary by the board and the council to review and score the application pursuant to this rule.

**65.8(4) Agreement required—recapture of credits.** If an investor is awarded a tax credit pursuant to this rule, the authority and the investor shall enter into an agreement concerning the qualifying redevelopment project. If the investor fails to comply with any of the requirements of the agreement, the authority may find the investor in default under the agreement and may revoke all or a portion of the tax credit award. The department of revenue, upon notification by the authority of an event of default, shall seek repayment of the value of any such tax credit already claimed in the same manner as provided in Iowa Code section 15.330(2).

**65.8(5) Project completion.** A registered project shall be completed within 30 months of the date the project was registered unless the authority provides additional time to complete the project. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit pursuant to this chapter.

**65.8(6) Audit required.**

a. Upon completion of a registered project, an audit of the project, completed by an independent certified public accountant licensed in this state, must be submitted to the authority.

b. Upon review of the audit and verification of the amount of the qualifying investment, the authority will issue a tax credit certificate to the investor stating the amount of tax credit that the investor may claim.

[ARC 1827C, IAB 1/21/15, effective 2/25/15; ARC 4511C, IAB 6/19/19, effective 7/24/19; ARC 6042C, IAB 11/17/21, effective 12/22/21]

**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 the authority. 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 the authority within 45 days of transmittal of the final contract from the authority. 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 the authority's receipt and approval of an implementation plan for the funded activity.

[ARC 7844B, IAB 6/17/09, effective 7/22/09; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12]

### **261—65.11(15) Redevelopment tax credit.**

**65.11(1) Purpose.** The purpose of the redevelopment tax credits program is to make tax credits available for a redevelopment project investment. The authority 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 authority 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, and tax identification number; the amount of the credit; the name of the qualifying investor; whether the taxpayer has satisfied the requirements for the credit to be refundable; 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. Claims.* To claim a tax credit under this rule, a qualified investor shall file a claim with the department of revenue pursuant to the department's applicable rules. The qualified investor must include one or more tax credit certificates with the qualified investor's tax return. A tax credit certificate shall not be used or included with a return filed for a taxable year beginning prior to the tax year listed on the certificate. The tax credit certificate or certificates included with 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.

*c. Transfer.* Tax credit certificates issued under this rule may be transferred to any person or entity pursuant to the department of revenue's applicable rules, except a tax credit certificate that is refundable pursuant to Iowa Code section 15.293A(1)"c"(2) as amended by 2022 Iowa Acts, House File 2317, shall not be transferable.

**65.11(4) Tax credit amount and limitations.**

*a. Refundability.* A tax credit in excess of the taxpayer's liability for the tax year is refundable only to the extent indicated in Iowa Code section 15.293A(1)"c"(2) as amended by 2022 Iowa Acts, House File 2317.

*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, 2021, and for each subsequent fiscal year, the maximum amount of tax credits allocated to the program by the authority shall be an amount determined by the board but not in excess of the amount established pursuant to Iowa Code section 15.119. Tax credits awarded pursuant to paragraph 65.11(7) "b" shall not be counted against the allocation determined by the board pursuant to this paragraph.

**65.11(5) 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(6) 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, shall not qualify for a tax credit under this rule.

*b.* A registered project shall be completed within 30 months of the project's approval unless the authority, with the approval of the board, provides additional time to complete the project. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit.

*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(7) Tax credit carryover.**

*a.* 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 authority may prorate the remaining credit amount among other eligible applicants.

*b.* Tax credits revoked under subrule 65.8(4) including tax credits revoked up to five years prior to July 1, 2021, and tax credits not awarded under subrules 65.8(5) and 65.8(6), may be awarded in the next annual application period established in Iowa Code section 15.293B(1) "c."

**65.11(8) Authority registration and authorization.** The authority shall develop a system for registration and authorization of tax credits. The authority 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(9) Other financial assistance considerations.** If a qualified investor has also applied to the authority, the board, or any other agency of state government for additional financial assistance, the authority, 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; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12; ARC 1827C, IAB 1/21/15, effective 2/25/15; ARC 4511C, IAB 6/19/19, effective 7/24/19; ARC 6042C, IAB 11/17/21, effective 12/22/21; ARC 6792C, IAB 1/11/23, effective 2/15/23]

**261—65.12(15) Review, 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 authority, and applications shall be reviewed by 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 to the authority, the council and the board all of 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; ARC 9746B, IAB 9/7/11, effective 8/19/11; ARC 0007C, IAB 2/8/12, effective 3/14/12]

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

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CHAPTER 5  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[481—Chapter 5 renumbered as 481—Chapter 11, IAB 2/10/88, effective 3/16/88]

The department of inspections and appeals adopts, with the following exceptions and amendments, rules of the Governor’s Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices, which are published on the Iowa general assembly’s website at [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf).

**481—5.1(17A,22) Definitions.** As used in this chapter:

“*Agency.*” In lieu of the words “(official or body issuing these rules)”, insert “department of inspections and appeals”.

“*Custodian*” means an agency, which owns and exercises control over public records. The originating agency, if any, is the custodian of records which are used to perform work or a service for the originating agency.

“*Originating agency*” means any government agency which has requested the department to perform work or a service on its behalf. An originating agency retains custody of all records provided by the originating agency to the department.

**481—5.3(17A,22) Requests for access to records.**

**5.3(1) Location of record.** In lieu of the words “(insert agency head)”, insert “director”. In lieu of the words “(insert agency name and address)”, insert “Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319”.

**5.3(2) Office hours.** In lieu of the words “(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m. Monday through Friday except legal holidays.”

**5.3(7) Fees.**

*c. Supervisory fee.* In lieu of “(specify time period)” insert “one hour”.

**481—5.6(17A,22) Procedure by which a subject may have additions, dissents, or objections entered into the record.** In lieu of the words “(designate office)” insert “the originating agency, or to the director’s office”.

**481—5.9(17A,22) Disclosures without the consent of the subject.**

**5.9(1)** Open records are routinely disclosed without the consent of the subject.

**5.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as defined in rule 481—5.10(17A,22) or in the notice for a particular record system.

*b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

*c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

*d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

*e.* To the legislative services agency under Iowa Code section 2A.3.

*f.* Disclosures in the course of employee disciplinary proceedings.

*g.* In response to a court order or subpoena.

**481—5.10(17A,22) Routine use.** “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the department or the originating agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
2. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
3. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
4. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
5. Any disclosure specifically authorized by the statute under which the record was collected or maintained.
6. Information transferred to any originating agency when inspections and appeals department has completed the authorized audit, investigation, or inspection.

**481—5.11(17A,22) Consensual disclosure of confidential records.**

**5.11(1) Consent to disclosure by a subject individual.** To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 481—5.7(17A,22).

**5.11(2) Complaints to public officials.** A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**5.11(3) Obtaining information from a third party.** The department of inspections and appeals occasionally requests personally identifiable information from third parties during the course of its authorized audits, investigations, hearings or inspections. Requests to third parties for this information involve the release of confidential identifying information. These requests shall be made according to the following rules:

481—21.3(10A) indicates when the department may review trust account records.

481—72.3(10A) describes investigation procedures including forms used by food stamp investigators.

481—73.6(10A) explains audit investigative procedures used in Medicaid provider audits or investigations.

481—74.3(10A) describes procedures used to investigate possible public assistance fraud.

**5.11(4) Child support recovery unit.** Under the provision of Iowa Code Supplement section 252J.2(4), the department may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying licensees or license applicants subject to enforcement under Iowa Code Supplement chapter 252J or 598.

**481—5.12(17A,22) Release to subject.**

**5.12(1)** A written request to review confidential records may be filed by the subject of the record as provided in rule 481—5.6(17A,22). The department need not release the following records to the subject:

- a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney, or a hearing officer's personal notations to be used by the hearing officer and not intended for public dissemination; or they are otherwise privileged.

c. Investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5).)

d. Others authorized by law.

**5.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject. [ARC 6802C, IAB 1/11/23, effective 2/15/23]

**481—5.13(17A,22) Availability of records.** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**5.13(1) Confidential records.** The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- b. Tax records made available to the agency.
- c. Exempt records under Iowa Code section 22.7.
- d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."
- f. Those portions of department staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by department staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3)

g. Confidential records are also described in the rules of each division as follows:

- (1) Inspection records—Chapters 50 to 69.
- (2) Investigation records—Chapters 70 to 74.
- (3) Audit records—Chapters 21 and 22.
- (4) Hearing records—Chapters 10 and 11.

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Any other records made confidential by law.

Iowa Code sections 10A.105, 22.7, 135B.12, 135C.19, 217.30, and 272C.6 contain specific authority.

**5.13(2)** Reserved.

**481—5.14(17A,22) Authority to release confidential records.** The department may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 481—5.4(17A,22). If the department initially determines that it will release these records, the department may notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

**481—5.15(17A,22) Personnel files.** The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include

payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

**481—5.16(17A,22) Personally identifiable information.** The department maintains systems of records which contain personally identifiable information.

**5.16(1) Rule making.** Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information. It cannot be retrieved by an individual identifier. It is not stored in a computer system.

During the rule-writing process, committees are occasionally used to gather basic information. Minutes of committee meetings are available for public inspection. The minutes are retained. Minutes of meetings are not retrievable by personal identifier. Minutes collected and stored in the health facilities division are available from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, in compliance with Iowa Code section 135C.14.

**5.16(2) Appeals and fair hearings division.** Contested case records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records.

Records are collected by authority of Iowa Code section 10A.202. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded on magnetic cassette tapes or in written transcripts.

**5.16(3) Appellate defender.** By authority of Iowa Code chapter 13B, the appellate defender maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases, and are maintained in paper files. Case information is not stored in a data processing system and cannot be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the appellate defender shall not disclose the names of child victims. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

Litigation files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain material which is confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

**5.16(4) Audits division.** Paper files stored according to a person's or company's name are collected for purposes of auditing gaming, beer, wine, liquor, or real estate licenses. In each case the name of the licensee is part of the record. The list below shows Iowa Code authority for collection of information about those who hold:

Gaming licenses, 99B.2(2)

Beer permits, 123.138

Liquor control licenses, 123.33

Wine permits, 123.185

Real estate broker licenses, 543B.46

The audits division can also access computer records about real estate brokers or sales people by name. The data processing system is owned by the department of commerce. Historical information regarding licensure, audits, and disciplinary action is stored in this system.

All of these records are used to conduct audits according to Iowa Code section 10A.302.

**5.16(5) Investigations division.** Paper and data processing files are stored and are retrievable using a name, social security number, or state identification number. Computer records are also kept on

microfiche. Personal computer floppy disks are used to monitor referral information and civil or small claims actions.

All records are collected and stored by the investigations division pursuant to Iowa Code section 10A.402. All records are collected to decrease mispayments in human services programs or to help collect funds paid in error.

Comparisons between record systems are explained in rule 481—71.8(10A).

**5.16(6)** *Inspections division.*

*a.* By authority of Iowa Code chapters 232 and 217, child protective investigation records are collected in paper files and may contain names and social security numbers of people involved in child protective investigations. The division does not compare these records with information on a data processing system.

*b.* Names or social security numbers collected during license processing are stored in paper and computer files pursuant to Iowa Code section 10A.501(2).

*c.* The records in health facilities are not retrievable by personal identifier. A list of records considered confidential is available in rule 481—50.8(10A).

These rules are intended to implement Iowa Code sections 10A.105, 22.7, 22.11, 135B.12, 135C.19, 217.30 and 272C.6.

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CHAPTERS 38 and 39  
Reserved

CHAPTER 40  
FOSTER CARE FACILITY INSPECTIONS  
Rescinded **ARC 6802C**, IAB 1/11/23, effective 2/15/23



CHAPTER 52  
DEPENDENT ADULT ABUSE IN FACILITIES AND PROGRAMS

**481—52.1(235E) Definitions.** The definitions set forth in Iowa Code section 235E.1 are incorporated herein by reference. For purposes of this chapter, unless the context otherwise requires, the following definitions apply:

“*Caretaker*” means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court. For the purpose of an allegation of exploitation, if the caretaker-dependent adult relationship started when a staff member was employed in the facility, the staff member may be considered a caretaker after employment is terminated.

“*Confidentiality*” means the withholding of information from any manner of communication, public or private.

“*Dependent adult abuse*” means any of the following as a result of the willful misconduct or gross negligence or reckless act or omission of a caretaker, taking into account the totality of the circumstances: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, neglect, or personal degradation.

“*Gross negligence*” means an act or omission that signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and, in other words, means an extreme departure from the ordinary standard of care.

“*Immediately*,” for purposes of mandatory reporters’ reporting of suspected dependent adult abuse, means within 24 hours.

“*Inspector*” means a surveyor, monitor or investigator with the department or any department designee.

“*Misappropriates*” means taking unfair advantage of or wrongfully or dishonestly exercising control over property.

“*Physical injury*” means a physical injury, or injury which is at a variance with the history given of the injury, which involves a breach of skill or care or learning ordinarily exercised by a caretaker in similar circumstances. “Physical injury” includes damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage.

“*Registry*” means the central registry for dependent adult abuse information established in Iowa Code section 235B.5.

“*Report*” means a verbal or written statement, made to the department, which alleges that dependent adult abuse has occurred.

“*Resident*” means a resident of a health care facility as defined in Iowa Code chapter 135C, a patient in a hospital as defined in Iowa Code chapter 135B, a tenant of an assisted living program as defined in Iowa Code chapter 231C, a tenant in an elder group home as defined in Iowa Code chapter 231B, or a participant in an adult day services program as defined in Iowa Code chapter 231D.

“*Sexual exploitation*” means any consensual or nonconsensual sexual conduct with a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. “Sexual exploitation” includes but is not limited to:

1. Kissing;
2. Touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals;
3. A sex act as defined in Iowa Code section 702.17;
4. The transmission, display or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment, care, monitoring, assessment or diagnosis or as part of an ongoing investigation.

“Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of

reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

“*Sexual offense*” means the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

“*Staff member*” means an individual who provides direct or indirect treatment or services to residents in a facility or program. Specifically included in the definition of “staff member” is an employee, health care employment agency worker, or other independent contractor who otherwise meets the definition. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the definition of “staff member” are individuals such as part-time volunteers, building contractors, repair workers or others who are in a facility or program for a very limited purpose, are not in the facility or program on a regular basis, or do not provide any treatment or services to the residents of the facility or program.

“*Unreasonable confinement*” means confinement that includes but is not limited to the use of restraints, either physical or chemical, for the convenience of staff. “Unreasonable confinement” does not include the use of confinement and restraints if the methods are employed in conformance with state and federal standards governing confinement and restraint or as authorized by a physician or physician extender.

“*Unreasonable punishment*” means a willful act or statement intended by the caretaker to punish, agitate, confuse, frighten, or cause emotional distress to the dependent adult. Such willful act or statement includes but is not limited to intimidating behavior, threats, harassment, deceptive acts, or false or misleading statements.

“*Willful misconduct*” means an intentional act of unreasonable character committed with disregard for a known or obvious risk that is so great as to make it highly probable that harm will follow.

[ARC 8294B, IAB 11/18/09, effective 1/1/10; ARC 3235C, IAB 8/2/17, effective 9/6/17; ARC 6801C, IAB 1/11/23, effective 2/15/23]

#### **481—52.2(235E) Persons who must report dependent adult abuse and the reporting procedure for those persons.**

**52.2(1)** Persons who must report dependent adult abuse. The following persons shall report suspected dependent adult abuse in accordance with subrule 52.2(2) below.

*a.* A staff member. Specifically excluded from the definition of “staff member” only for purposes of the requirements set forth in this subrule are individuals who have no contact or de minimis contact with residents in a facility or program.

*b.* A health care employment agency in accordance with 481—Chapter 55.

**52.2(2)** Reporting suspected dependent adult abuse in facilities or programs.

*a.* If a staff member or employee is required to make a report pursuant to this rule, the staff member or employee shall immediately notify the person in charge or the person’s designated agent who shall then notify the department within 24 hours of such notification or the next business day.

*b.* If the person in charge is the alleged dependent adult abuser, the staff member shall directly report the abuse to the department within 24 hours or the next business day.

*c.* Nothing in this subrule prevents a mandatory reporter or any other person from notifying the department directly of any suspected abuse.

*d.* The employer or supervisor of a person who is required to or may make a report pursuant to this rule shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

*e.* When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person should also immediately make an oral report to an appropriate law enforcement agency.

*f.* A report of suspected dependent adult abuse shall contain as much of the following information as the person making the report is able to furnish:

(1) The date and time of the incident;

- (2) The name, date of birth and diagnoses of the dependent adult;
- (3) Whether the dependent adult sustained an injury and, if yes, whether photographs of the injury were taken;
- (4) The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse allegations;
- (5) A list of the staff members working at the time of the incident, including each staff member's full name, title, date of birth, address and telephone number;
- (6) The alleged perpetrator's full name, title, date of birth, social security number, address and telephone number;
- (7) Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse or helpful in providing assistance to the dependent adult; and
- (8) The name, address and telephone number of the person making the report.

**52.2(3)** A report shall be accepted whether or not it contains all of the information requested. When the report is made to any agency other than the department, that agency shall promptly refer the report to the department.

**52.2(4)** A person required to report abuse who knowingly and willfully fails to do so within 24 hours may be subject to criminal penalties and civil liability as provided for by statute.

**52.2(5)** Interference with a person required to report.

*a.* It is unlawful for any person or employer to discharge, suspend, or otherwise discipline a person for any of the following:

- (1) For reporting suspected dependent adult abuse;
- (2) For cooperating with or assisting the department in evaluating or investigating a case of dependent adult abuse; or
- (3) For participating in judicial proceedings relating to dependent adult abuse.

*b.* A person or employer found in violation of this subrule is guilty of a simple misdemeanor.

[ARC 8294B, IAB 11/18/09, effective 1/1/10; ARC 6801C, IAB 1/11/23, effective 2/15/23]

#### **481—52.3(235E) Reports and registry of dependent adult abuse.**

**52.3(1)** *Receipt and evaluation of reports.* The department shall receive and evaluate reports of dependent adult abuse in facilities and programs. The department shall inform the department of human services of such evaluations and dispositions for inclusion in the central registry for dependent adult abuse information pursuant to Iowa Code section 235B.5.

**52.3(2)** *Reports sent to the department or the department of human services.* Any person who believes that a dependent adult has suffered dependent adult abuse may report the suspected dependent adult abuse to the department. The department shall transfer any reports received of dependent adult abuse in the community to the department of human services in accordance with Iowa Code section 235E.2(5).

**52.3(3)** *Reports of abuse that is minor, isolated, and unlikely to reoccur.*

*a. Minor, isolated, and unlikely to reoccur—first instance.* A report of dependent adult abuse that meets the definition of “dependent adult abuse” as defined in Iowa Code section 235E.1(5) “a”(1)(a) or (d), or section 235E.1(5) “a”(3), which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department of human services for a five-year period, shall not be included in the central registry, and shall not be considered founded dependent adult abuse.

*b. Minor, isolated, and unlikely to reoccur—subsequent instance(s).* A subsequent report of dependent adult abuse that meets the definition of “dependent adult abuse” as defined in Iowa Code section 235E.1(5) “a”(1)(a) or (d), or section 235E.1(5) “a”(3), that occurs within the five-year period, and that is committed by the same caretaker may also be considered minor, isolated, and unlikely to reoccur, depending on the totality of circumstances.

*c. Retention of reports.* All initial and subsequent reports are collected and maintained by the department of human services until a five-year period has expired, so long as no additional reports have been filed.

[ARC 8294B, IAB 11/18/09, effective 1/1/10; ARC 5004C, IAB 3/25/20, effective 4/29/20; ARC 6801C, IAB 1/11/23, effective 2/15/23]

**481—52.4(235E) Financial institution employees and reporting suspected financial exploitation.** Rescinded ARC 6801C, IAB 1/11/23, effective 2/15/23.

**481—52.5(235E) Evaluation of report.** Upon receipt of a report as defined in rule 481—52.1(235E), the department shall conduct an intake sufficient to determine whether the allegation constitutes dependent adult abuse as defined in rule 481—52.1(235E).

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

**481—52.6(235E) Separation of victim and alleged abuser.** Upon receiving a claim of dependent adult abuse of a dependent adult in a facility or program, the facility or program shall separate the victim and the alleged abuser immediately and shall maintain that separation until the department's abuse investigation is completed and the abuse determination is made.

NOTE: Facilities that participate in the federal Medicare or Medicaid program may be subject to additional federal requirements regarding separation.

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

**481—52.7(235E) Interviews, examination of evidence, and investigation of dependent adult abuse allegations.**

**52.7(1) Entering and examining evidence at a facility or program.** An inspector of the department may enter any facility or program without a warrant and may examine all records and items pertaining to residents, employees, former employees, and the alleged dependent adult abuser and any other records and items necessary to ensure the integrity of the investigation unless the record or item is protected by some other legal privilege.

**52.7(2) Interviews.**

*a.* An inspector of the department may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged dependent adult abuse.

*b.* An alleged dependent adult abuser may request to have an attorney present at the alleged dependent adult abuser's expense at any time during the interview, but the request may not unreasonably delay the investigation. An employee organization representative or union representative may observe an investigative interview conducted by the department of an alleged dependent adult abuser if all of the conditions set forth in Iowa Code section 235E.2(13) "a" are met.

The purpose of the interview is a civil administrative dependent adult abuse investigation under applicable law.

**52.7(3) Photographs of victim, vicinity and related matters.** An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved in accordance with Iowa Code section 235E.2(12).

**52.7(4) Evaluating information.** An inspector shall consider the information as reported, other known or discovered information, and any information gathered as a result of the inspector's contact with collateral sources, including prior abuse allegations and disciplinary actions.

[ARC 8294B, IAB 11/18/09, effective 1/1/10; ARC 6801C, IAB 1/11/23, effective 2/15/23]

**481—52.8(235E) Notification to subsequent employers.** The department shall notify a facility or program that subsequently employs an alleged or founded dependent adult abuser in accordance with Iowa Code section 235E.2(11).

[ARC 8294B, IAB 11/18/09, effective 1/1/10; ARC 6801C, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement Iowa Code chapter 235E.

[Filed ARC 8294B (Notice ARC 7828B, IAB 6/3/09; Amended Notice ARC 7939B, IAB 7/1/09), IAB 11/18/09, effective 1/1/10]

[Filed ARC 3235C (Notice ARC 3110C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]  
[Filed ARC 5004C (Notice ARC 4890C, IAB 1/29/20), IAB 3/25/20, effective 4/29/20]  
[Filed ARC 6801C (Notice ARC 6633C, IAB 11/2/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 1  
ADMINISTRATION

**493—1.1(13B) Scope.** This chapter sets forth the organizational structure of the state public defender system and describes its purpose. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—1.2(13B) Function.** The position of state public defender is established by Iowa Code chapter 13B. The state public defender is charged with the supervision of the operation of the state public defender system and with the coordination of the provision of legal defense representation of indigent persons in the state of Iowa.

**493—1.3(13B) Overall organization and method of operations.**

**1.3(1) State public defender system.** The state public defender system is administered by the state public defender. The system consists of three divisions: an administrative division, a local public defender division, and an appellate division.

**1.3(2) Types of cases.** Based on statutes and appropriate case law, the state public defender system provides representation for persons found to be indigent in the following types of cases:

- a. Felonies;
- b. Misdemeanors, if an accused faces the possibility of imprisonment under the applicable criminal statute or ordinance;
- c. Juvenile matters, including delinquency, termination of parental rights, child in need of assistance (CINA), judicial bypass proceedings, filing by an indigent party of an adoption petition under Iowa Code section 600.3 to adopt a child who was the subject of a termination of parental rights proceeding under Iowa Code chapter 232, and juvenile commitments;
- d. Probation and parole revocation cases;
- e. Civil commitment proceedings under Iowa Code chapter 229A; and
- f. Other matters authorized by law.

**1.3(3) State public defender.** The state public defender is appointed by the governor, subject to confirmation by the senate. The state public defender is the chief administrative officer of the state public defender system and in that capacity coordinates the legal representation of indigent clients in criminal, juvenile and related cases in Iowa. The duties of the state public defender include, but are not limited to:

- a. Supervising the operations of the local public defender offices;
- b. Acting as chief legal officer of the state public defender system;
- c. Preparing and submitting the annual budget, personnel and employment policies, and preparing an annual report of the activities of the office;
- d. Determining locations for establishing future local public defender offices;
- e. Coordinating the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, in a proceeding to obtain postconviction relief when ordered to do so by the court, against whom a contempt action is pending, in proceedings under Iowa Code chapter 229A, in juvenile cases under Iowa Code chapters 232 and 600A, in probation or parole violations under Iowa Code chapter 908, in the filing by an indigent party of an adoption petition under Iowa Code section 600.3 to adopt a child who was the subject of a termination of parental rights proceeding under Iowa Code chapter 232, or in any other matters authorized by law;
- f. Filing with the clerk of court in each county served by a public defender a designation of which local public defender office shall receive notice of appointment of cases;
- g. Contracting with licensed attorneys in the state to provide legal services to indigent persons where there is no local public defender available to provide such services; and
- h. Reviewing claims for indigent defense services and costs and participating in hearings regarding claims.

**1.3(4) Administrative division.** The administrative division carries out all the duties of the state public defender including, but not limited to: budget preparation, processing claims for payment of

public defender-related costs and expenses, coordinating hiring and disciplinary matters, maintaining statistics regarding case management and handling of cases, and all other administrative matters.

**1.3(5) *Local public defender division.*** The local public defender division provides legal representation at the trial level to qualified persons charged with adult crimes or in juvenile matters in counties where local public defender services are provided. The division also provides representation to qualified persons in juvenile appeals and in civil commitment proceedings under Iowa Code chapter 229A at the trial and appellate levels and in any other matters authorized by law.

The local public defender division consists of independent local offices and branch offices. Each independent local office is under the direct supervision of a local public defender. A local public defender may supervise a branch office. If so, the branch office may be considered part of the local office.

**1.3(6) *Appellate division.*** The appellate division is administered by the state appellate defender who reports directly to the state public defender. The appellate division provides legal representation to indigent clients in posttrial matters in the appellate courts of the state of Iowa.

**1.3(7) *Civil commitment unit.*** Rescinded IAB 12/28/11, effective 2/1/12.  
 [ARC 9938B, IAB 12/28/11, effective 2/1/12; ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 2378C, IAB 2/3/16, effective 3/9/16; ARC 6800C, IAB 1/11/23, effective 2/15/23]

**493—1.4(13B) Information.** Information concerning the office of the state public defender or the state public defender system may be obtained by contacting the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; or by telephone (515)242-6158 or fax (515)281-7289. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays. The state public defender's website address is [spd.iowa.gov](http://spd.iowa.gov).  
 [ARC 9938B, IAB 12/28/11, effective 2/1/12]

**493—1.5(13B) Information.** Rescinded IAB 12/28/11, effective 2/1/12.

These rules are intended to implement Iowa Code chapter 13B and Iowa Code section 17A.3(1)“a.”

[Filed emergency 10/7/92 after Notice 8/19/92—published 10/28/92, effective 10/7/92]

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[Filed 1/15/03, Notice 9/4/02—published 2/5/03, effective 3/12/03]

[Filed ARC 9938B (Notice ARC 9817B, IAB 11/2/11), IAB 12/28/11, effective 2/1/12]

[Filed ARC 1512C (Notice ARC 1437C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]

[Filed ARC 2378C (Notice ARC 2233C, IAB 11/11/15), IAB 2/3/16, effective 3/9/16]

[Filed ARC 6800C (Notice ARC 6671C, IAB 11/16/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 2  
PETITIONS FOR RULE MAKING

The state public defender adopts the petitions for rule making segments of the Uniform Administrative Rules which are published on the general assembly's website at [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) with the following amendments:

**493—2.1(17A) Petition for rule making.** In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087”.

In lieu of the words “(AGENCY NAME)”, the heading on the petition should read:

“BEFORE THE STATE PUBLIC DEFENDER”

**493—2.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; telephone (515)242-6158; email [spdadminoffice@spd.state.ia.us](mailto:spdadminoffice@spd.state.ia.us).

[ARC 6800C, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement Iowa Code section 17A.7.

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[Filed 1/31/02, Notice 12/26/01—published 2/20/02, effective 4/1/02]

[Filed ARC 6800C (Notice ARC 6671C, IAB 11/16/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 3  
DECLARATORY ORDERS

The state public defender adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are published on the general assembly's website at [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) with the following amendments.

**493—3.1(17A) Petition for declaratory order.** In lieu of the words “(designate agency)”, insert “state public defender”. In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE STATE PUBLIC DEFENDER

**493—3.2(17A) Notice of petition.** In lieu of the words “ \_\_\_ days (15 or less)”, insert “15 days”. In lieu of the words “(designate agency)”, insert “state public defender”.

**493—3.3(17A) Intervention.**

**3.3(1)** In lieu of the words “within \_\_\_ days”, insert “within 15 days”. Strike the words “(after time for notice under X.2(17A))”. In lieu of the number “X.8(17A)”, insert “3.8(17A)”.

**3.3(2)** In lieu of the words “(designate agency)”, insert “state public defender”.

**3.3(3)** In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”. In lieu of the words “(designate agency)”, insert “state public defender”. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE STATE PUBLIC DEFENDER

**493—3.4(17A) Briefs.** In lieu of the words “(designate agency)”, insert “state public defender”.

**493—3.5(17A) Inquiries.** In lieu of the words “(designate official by full title and address)”, insert “the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”.

**493—3.6(17A) Service and filing of petitions and other papers.**

**3.6(2)** In lieu of the words “(specify office and address)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”. In lieu of the words “(agency name)”, insert “state public defender”.

**3.6(3)** In lieu of the words “(uniform rule on contested cases X.12(17A))”, insert “rule 481—10.12(17A)”.

**493—3.7(17A) Consideration.** In lieu of the words “(designate agency)”, insert “state public defender”.

**493—3.8(17A) Action on petition.**

**3.8(1)** In lieu of the words “(designate agency head)”, insert “state public defender”.

**3.8(2)** In lieu of the words “(contested case uniform rule X.2(17A))”, insert “rule 481—10.1(10A)”.

**493—3.9(17A) Refusal to issue order.**

**3.9(1)** In lieu of the words “(designate agency)”, insert “state public defender”.

**493—3.12(17A) Effect of a declaratory order.** In lieu of the words “(designate agency)”, insert “state public defender”.

These rules are intended to implement Iowa Code chapter 17A.

[Filed emergency 10/7/92 after Notice 8/19/92—published 10/28/92, effective 10/7/92]  
[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]  
[Filed ARC 6800C (Notice ARC 6671C, IAB 11/16/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 4  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The state public defender adopts the fair information practices segments of the Uniform Administrative Rules which are published on the general assembly's website at [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) with the following amendments:

**493—4.1(17A,22) Definitions.** As used in this chapter:

*“Agency.”* In lieu of the words “(official or body issuing these rules)”, insert “state public defender”.

**493—4.3(17A,22) Requests for access to records.**

**4.3(1) Location of record.** In lieu of the words “(insert agency head)”, insert “state public defender”. In lieu of the words “(insert agency name and address)”, insert “Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087”.

**4.3(2) Office hours.** In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays”.

**4.3(7) Fees.**

*c. Supervisory fee.* In lieu of the words “(specify time period)”, insert “one hour”.

**493—4.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records.** In lieu of the words “(designate office)”, insert “the office of the state public defender”.

**493—4.9(17A,22) Disclosures without the consent of the subject.**

**4.9(1)** Open records are routinely disclosed without the consent of the subject.

**4.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without the consent of the subject:

*a.* For a routine use as defined in rule 493—4.10(17A,22) or in the notice for a particular record system.

*b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

*c.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

*d.* To the legislative services agency under Iowa Code section 2A.3.

*e.* Disclosures in the course of employee disciplinary proceedings.

*f.* In response to a court order or subpoena.

**493—4.10(17A,22) Routine use.** “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

2. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

3. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

4. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**493—4.11(17A,22) Consensual disclosure of confidential records.**

**4.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 493—4.7(17A,22).

**4.11(2)** *Complaints to public officials.* A letter from the subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**493—4.12(17A,22) Release to subject.**

**4.12(1)** A written request to review confidential records may be filed by the subject of the record as provided in rule 493—4.6(17A,22). The agency need not release the following records to the subject:

*a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

*b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

*c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

*d.* Others authorized by law.

**4.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the state public defender may take reasonable steps to protect confidential information relating to another subject.

**493—4.13(17A,22) Availability of records.**

**4.13(1)** *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**4.13(2)** *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

*b.* Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

*c.* Records which are exempt from disclosure under Iowa Code section 22.7.

*d.* Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

*e.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

*f.* Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 1.503, the rules of evidence, the Code of Professional Responsibility, and case law.

*g.* Criminal investigative reports. (Iowa Code section 22.7(5))

*h.* A claim for compensation and reimbursement for legal assistance and supporting documents submitted to the state public defender for payment of costs incurred in the legal representation of an indigent person pursuant to Iowa Code section 13B.4B, except as disclosure is authorized under that section.

*i.* Any other records considered confidential by law.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—4.14(22) Personally identifiable information.** The state public defender maintains systems of records which contain personally identifiable information.

**4.14(1)** By authority of Iowa Code chapter 13B, the appellate defender division maintains information and records relating to criminal and postconviction relief cases that are being appealed.

Records contain names and identifying numbers of persons involved in these cases. Case information is stored in a data processing system and may be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the names of child victims shall not be disclosed. Confidential juvenile records under Iowa Code section 232.147 shall not be disclosed except as otherwise permitted by law. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

**4.14(2) Litigation files.** Litigation files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

**4.14(3) Contracts.** Contractual agreements are maintained by the state public defender. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address, and social security number of the contracting attorney. Other information in these records may include the proposal of the contracting attorney, budget figures, correspondence, and business information. Personally identifiable information is contained in a data processing system and may be compared with information in any data processing system.

**4.14(4) Personnel files.** Personnel files contain information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—4.15(17A,22) Other groups of records.** Other groups of records are maintained by the state public defender other than the records described in rule 493—4.14(22). These records are routinely available to the public; however, the agencies' files may contain confidential information. The records may contain information about individuals. All records are stored on paper and in some cases in automated data processing systems.

**4.15(1) Rule making.** Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is available for public inspection and is not stored in an automated data processing system.

**4.15(2) Commission records.** Agendas, minutes, and materials presented to the indigent defense advisory commission are available from the office of the state public defender, except those records concerning closed sessions exempt under Iowa Code section 21.5(4). Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

**4.15(3) Statistical reports.** Periodic reports on the state public defender system and the delivery of indigent defense services are available from the office of the state public defender.

[ARC 9938B, IAB 12/28/11, effective 2/1/12]

These rules are intended to implement Iowa Code sections 17A.3, 22.7 and 22.11.

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[Filed ARC 1512C (Notice ARC 1437C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]

[Filed ARC 6800C (Notice ARC 6671C, IAB 11/16/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 5  
AGENCY PROCEDURE FOR RULE MAKING

The state public defender adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure published on the general assembly's website at [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) with the following amendments.

**493—5.3(17A) Public rule-making docket.**

**5.3(2) *Anticipated rule making.*** In lieu of the words “(commission, board, council, director)”, insert “state public defender”.

**493—5.4(17A) Notice of proposed rule making.**

**5.4(3) *Copies of notices.*** In lieu of the words “(specify time period)”, insert “one calendar year”.

**493—5.5(17A) Public participation.**

**5.5(1) *Written comments.*** Strike the words “(identify office and address) or”.

**5.5(5) *Accessibility.*** In lieu of the words “(designate office and telephone number)”, insert “the office of the state public defender at (515)242-6158”.

**493—5.6(17A) Regulatory analysis.**

**5.6(2) *Mailing list.*** In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”.

**493—5.10(17A) Exemptions from public rule-making procedures.**

**5.10(2) *Categories exempt.*** In lieu of the words “(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)”, insert the following:

“a. Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

“b. Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

“c. Rules which confer a benefit or remove a restriction on licensees, the public or some segment of the public;

“d. Rules which are necessary because of imminent peril to the public health, safety or welfare; and

“e. Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules.”

**493—5.11(17A) Concise statement of reasons.**

**5.11(1) *General.*** In lieu of the words “(specify the office and address)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”.

**493—5.13(17A) Agency rule-making record.**

**5.13(2) *Contents.***

c. In lieu of the words “(agency head)”, insert “state public defender”.

These rules are intended to implement Iowa Code chapter 17A and section 25B.6.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed ARC 6800C (Notice ARC 6671C, IAB 11/16/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 10  
ELIGIBILITY GUIDELINES FOR COURT-APPOINTED COUNSEL

[Prior to 2/20/02, see 493—Chapter 13]

**493—10.1(815) Eligibility.** The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant's legal assistance to the extent provided by law.  
[ARC 6800C, IAB 1/11/23, effective 2/15/23]

**493—10.2(815) Income guidelines.** Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

**493—10.3(815) Designation of eligibility reviewer.** The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of a person for legal assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

**493—10.4(815) Application.** Any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation before being provided legal representation. The applicant should provide information on an affidavit of financial status. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

**10.4(1) Affidavit.** The applicant shall provide information required by the affidavit of financial status under penalty of perjury.

**10.4(2) Family.** The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

**10.4(3) Income.** The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

**10.4(4) Household income.** The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse need not be included if the spouse is the alleged victim of the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

**10.4(5) Assets.** The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

**10.4(6) Liabilities.** The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

**10.4(7) Nature of proceedings.** In a criminal case, the affidavit of financial status shall contain a statement of the charge(s) against the defendant. In a juvenile or civil case, a statement of the nature of the proceedings shall be included.

**10.4(8) Child applicant.** If the applicant is a child, the child's parent, guardian or custodian shall complete the affidavit of financial status. The affidavit of financial status shall include a statement of the income, assets and liabilities of the person or persons having a legal obligation to support the child.

**10.4(9) Additional information.** The applicant shall provide such additional information as may be required by the court to determine the applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the affidavit of financial status to reflect changes in the information previously provided.

**493—10.5(815) Evaluation of affidavit of financial status.** In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

**10.5(1) Family size.** The total size of the applicant's household shall be used to determine eligibility for appointed counsel.

**10.5(2) Household income.** The applicant's income, or the combined income of the applicant and the applicant's spouse if they are living in the same residence, shall be used in determining an applicant's household income, subject to the following:

*a.* The income of the applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

*b.* The income of a child shall not be considered unless the child is requesting representation in a delinquency case or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

*c.* In a juvenile proceeding, the income of both parents shall be considered in determining whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

**10.5(3) DHHS poverty income guidelines.** The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is 125 percent or less of the poverty level; between 125 percent and 200 percent of the poverty level; or 200 percent or greater of the poverty level.

**10.5(4) Income 125 percent or less of the poverty level.** If the applicant's household income is 125 percent or less of the poverty level, the applicant is entitled to appointed counsel unless the court determines that the applicant is able to pay for the cost of an attorney to represent the applicant on the pending charge. In determining whether the applicant is able to pay for the cost of an attorney, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

**10.5(5) Income between 125 percent and 200 percent of the poverty level.** If the applicant's household income is greater than 125 percent, but less than 200 percent of the poverty level, the applicant is not entitled to appointed counsel unless the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial financial hardship. In determining whether substantial financial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

**10.5(6) Income 200 percent or greater of the poverty level.** If the applicant's household income is 200 percent or greater of the poverty level, the applicant is not entitled to appointed counsel unless the applicant is charged with a felony and the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial financial hardship. In determining whether substantial financial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

**10.5(7) Applicability to juvenile cases.** In evaluating whether to appoint counsel for a parent in a juvenile proceeding, the court shall consider not only the applicant's income, but also the availability of any assets subject to execution and the nature of the proceeding in determining whether the parent is financially unable to employ counsel.

#### **493—10.6(815) Payment procedures.**

**10.6(1) Payment to clerk.** An applicant who has been determined eligible for appointed counsel shall pay to the office of the clerk of the district court any sums ordered by the court. This order for payment may be entered during or following the pendency of the action.

**10.6(2) Wage assignments.** If the applicant is employed, the applicant shall execute an assignment of the applicant's wages. A portion of the applicant's wages, as determined by the court, shall be paid to the office of the clerk of the district court for recovery of attorney fees. This assignment of wages may be entered during or following the pendency of the action.

**493—10.7(815) Forms.** The state public defender shall promulgate forms to be used in court proceedings, including an Adult Affidavit of Financial Status, Juvenile Affidavit of Financial Status, Wage Assignment, and such other forms as the state public defender deems appropriate. Such forms

shall be available at the administrative office of the state public defender and published on the state public defender's website at [spd.iowa.gov](http://spd.iowa.gov).

[ARC 9938B, IAB 12/28/11, effective 2/1/12]

These rules are intended to implement Iowa Code section 815.9.

[Filed emergency 9/1/93—published 9/29/93, effective 9/1/93]

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[Filed ARC 9938B (Notice ARC 9817B, IAB 11/2/11), IAB 12/28/11, effective 2/1/12]

[Filed ARC 6800C (Notice ARC 6671C, IAB 11/16/22), IAB 1/11/23, effective 2/15/23]



CHAPTER 11  
ATTORNEY FEE CONTRACTS

**493—11.1(13B) Scope.** This chapter sets forth the rules for private attorneys entering into contracts for indigent defense legal services with the state public defender. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—11.2(13B) Contracts.** An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons.

**11.2(1) Eligibility.** To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa and must meet the minimum qualification requirements for contracting as set forth in rule 493—11.3(13B) for the types of cases for which the attorney is contracting.

**11.2(2) Contract copy.** A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the web at [spd.iowa.gov](http://spd.iowa.gov).

**11.2(3) Notice of contract opportunities.** The state public defender will give notice to attorneys of the availability of contracts for indigent defense legal services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

**11.2(4) Contract types.** Unless the attorney and state public defender agree in writing to a contract covering a different type of case, the contract shall cover one or more of the following categories of case types:

- a. Juvenile cases, including juvenile petitions on appeal;
- b. Appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level;
- c. Postconviction relief cases at the trial level;
- d. Class A and B felony cases at the trial level;
- e. Class C and D felony cases at the trial level, and Class A felony cases in which another attorney who meets the minimum requirements for such cases is also appointed as the lead counsel;
- f. Misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level.

**11.2(5) Written approval required.** A contract can only be in force and effect when a contract acceptance form is signed by the contracting attorney and approved by the state public defender. The approved contract is only effective for those types of cases and those counties requested by the attorney and approved by the state public defender in writing on the acceptance and approval form, renewal form, or a subsequent written amendment. Nevertheless, a contract covering appellate cases is effective for all 99 counties.

**11.2(6) Independent contractor.** The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

**11.2(7) Notification to clerks.** On a monthly basis, the state public defender shall notify the clerks of court in each county of those attorneys who have an approved contract for each type of case in each respective county.

**11.2(8) Contract terms.** A contract between the state public defender and an attorney shall cover, but is not limited to, the following subjects:

- a. The types of cases in which the attorney is to provide services;
- b. The counties in which the attorney is to provide services;
- c. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;
- d. Identification of the attorney who will perform legal representation under the contract;

- e.* A prohibition against assignment of the obligations undertaken pursuant to the contract and a description of the manner in which temporary substitute counsel may be utilized;
- f.* The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;
- g.* A description of the compensation to be paid and the manner of payment;
- h.* A description of any expenses which may be provided under the contract;
- i.* A description of the record-keeping and reporting requirements under the contract;
- j.* A description of the manner in which the contract may be terminated;
- k.* A description of the manner of disposition of ongoing obligations following termination of the contract.

**11.2(9) Compensation.** Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815).

**11.2(10) Contract form.** Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Indigent Defense Legal Services Contract No. 493-14 shall constitute the agreement between the parties for the provision of legal services.

**11.2(11) No guarantee of appointments.** An attorney under contract with the state public defender is not guaranteed any minimum number of court appointments. The process by which attorneys under contract with the state public defender are appointed to specific cases is governed by Iowa Code chapters 814 and 815. The state public defender shall retain sole authority to determine the length of each contract or contract renewal.

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.3(13B) Attorney minimum qualifications.** To be eligible to contract with the state public defender for a type of case, the attorney must meet the minimum qualification requirements established by this rule for the particular type of case. Prior to contracting with the state public defender, an attorney shall certify the attorney's compliance with these requirements and, prior to renewal of the contract, shall certify compliance with any ongoing requirements. Satisfying these minimum requirements does not guarantee an attorney a contract with the state public defender. The state public defender retains the discretion to deny or terminate contracts if the state public defender determines that such action is in the best interests of the state.

**11.3(1) Juvenile cases.** To be eligible to contract to represent indigent persons in juvenile cases, including juvenile petitions on appeal, an attorney must be in compliance with Rule 8.36 of the Iowa Rules of Juvenile Procedure, regardless of whether the attorney seeks to represent parents or children or serve as guardian ad litem in juvenile court. An attorney contracting to represent indigent persons in juvenile cases must:

- a.* Participate in three hours of continuing legal education related to juvenile court proceedings prior to contracting with the state public defender; and
- b.* Continue to participate in three hours of continuing legal education related to juvenile court proceedings each year.

The state public defender shall review juvenile contract renewals and may apply juvenile-related continuing legal education hours in the same manner as criminal-related continuing legal education hours.

**11.3(2) Appellate cases.** To be eligible to contract to represent indigent persons in appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and appeals from any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level except in cases where the attorney is statutorily appointed for purposes of the appeal, an attorney must:

- a.* Participate in the basic criminal appeals training sponsored by the state public defender within one year of entering into the contract, unless the attorney has already handled a criminal appeal in Iowa state court; and

*b.* Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

**11.3(3) *Postconviction relief cases.*** To be eligible to contract to represent indigent persons in postconviction relief cases at the trial level, an attorney must:

*a.* Have practiced criminal law or served as a judicial law clerk for two years or more in any state or federal court;

*b.* Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract;

*c.* Participate in a postconviction relief basic training sponsored by the state public defender prior to entering into the contract, unless the attorney has previously handled at least three postconviction relief proceedings to completion; and

*d.* Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in postconviction relief cases.

An attorney who has not met all the requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements, and may be approved for contracting by the state public defender at the state public defender's sole discretion.

**11.3(4) *Class A felonies.*** To be eligible to contract to represent indigent persons in Class A felony cases at the trial level, an attorney must:

*a.* Have practiced criminal law for four years or more in any state or federal court;

*b.* Have tried at least five criminal jury trials involving indictable offenses to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

*c.* Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

*d.* Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class A felony cases.

If an attorney satisfies the requirements for Class B felonies or Class C and Class D felonies, the attorney may contract to serve as the second attorney representing an indigent person in a Class A felony in a case where the first appointed attorney meets these requirements. An attorney who does not meet all the requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

**11.3(5) *Class B felonies.*** To be eligible to contract to represent indigent persons in Class B felony cases at the trial level, an attorney must:

*a.* Have practiced criminal law for three years or more in any state or federal court;

*b.* Have tried at least three criminal jury trials involving indictable offenses to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

*c.* Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

*d.* Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class B felony cases.

An attorney who has not met all requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

**11.3(6) Class C and D felonies.** To be eligible to contract to represent indigent persons in Class C and Class D felony cases at the trial level, an attorney must:

- a. Have practiced criminal law for two years or more in any state or federal court;
- b. Have tried at least one criminal jury trial to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;
- c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class C and Class D felony cases.

An attorney who has not met all requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

**11.3(7) Misdemeanor and other cases.** To be eligible to contract to represent indigent persons in misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, an attorney must:

- a. Participate in the basic criminal defense training sponsored by the state public defender within one year of entering into the contract, unless the attorney already has an active indigent defense contract or has practiced criminal law for more than two years; and
- b. Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

However, an attorney who has a contract to handle any felony offense may accept appointments in misdemeanor cases, probation and parole revocation cases, and contempt cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, but the attorney with the contract to handle the felony offense will not be added to the list disseminated to the clerks of court to handle misdemeanor cases, probation and parole cases, or contempt cases unless the attorney has secured an amendment to the attorney's contract to handle those types of cases.

**11.3(8) Amended charges.** An attorney who is appointed to a case that is initially within the scope of the attorney's contract but is subsequently amended to contain more serious charges that are outside the scope of the attorney's contract shall request that the court authorize the attorney's withdrawal from the case and appoint an attorney with a contract that covers the amended charges in the county in which the action was pending unless the court determines that no such attorney with an applicable contract is available or the state public defender consents to the continued representation by the original attorney.

[ARC 1514C, IAB 6/25/14, effective 7/30/14; ARC 2378C, IAB 2/3/16, effective 3/9/16; ARC 5574C, IAB 4/21/21, effective 5/26/21; ARC 6800C, IAB 1/11/23, effective 2/15/23]

#### **493—11.4(13B) Contract approval or denial.**

**11.4(1)** The state public defender or a person designated by the state public defender may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, compliance with the minimum qualification requirements set forth in rule 493—11.3(13B), and ability to provide services to eligible individuals and may conduct such additional investigation as deemed warranted in the sole discretion of the state public defender. The information received may be taken into consideration in determining whether it would be in the best interests of the state to enter into an initial or renewal contract with the potential contracting attorney.

**11.4(2)** The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to determine the attorney's qualifications and ability to perform the conditions of an initial or renewal contract.

**11.4(3)** The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to establish under

an initial or renewal contract the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

**11.4(4)** The state public defender may decline to award an initial or renewal contract to a proposed contracting attorney if the state public defender determines that the contract would not be in the best interests of the state, as described in rule 493—11.8(13B). The state public defender may limit the contract to specific types of cases, a specified geographic area, or both. The state public defender shall give written notice of this action to the attorney. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

**11.4(5)** Nothing contained in this rule shall obligate the state public defender to enter into an initial or renewal contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.5(13B) Contract elements.** Rescinded ARC 1514C, IAB 6/25/14, effective 7/30/14.

**493—11.6(13B) Contract renewal.** Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled and may conduct such additional investigation as is described in rule 493—11.4(13B). If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the contract renewal and returning it to the state public defender prior to the date that the existing contract expires. If the contracting attorney does not sign and return the contract renewal, the contract shall terminate on its expiration date without regard to whether the contracting attorney receives any further notice. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.7(13B) Termination.**

**11.7(1) Termination at will.** Either the state public defender or the contracting attorney may terminate a contract upon 30 days' advance written notice to the other party for any reason or no reason. Such termination may affect the entire contract, or may relate solely to a particular county or geographical area, or particular type of case.

**11.7(2) Termination for cause.**

*a. License suspension or revocation.* A contract for indigent defense shall automatically terminate without notice upon the suspension or revocation of the attorney's license to practice law in the state of Iowa.

*b. Default.* The state public defender may issue a notice of default based on any of the grounds described in rule 493—11.8(13B). A notice of default shall state the grounds of default and, if feasible, request that the contracting attorney remedy the default within 10 days of the date of the notice. If the events triggering the notice of default continue to be evidenced more than 10 days beyond the date of written notice, the state public defender may immediately terminate the contract without further notice by issuing a notice of termination. An attorney may seek reconsideration of the state public defender's decision to terminate a contract based on the attorney's default in the manner described in rule 493—11.9(13B).

*c. Improper billing practices.* The state public defender may notify the attorney that the state public defender is considering the exercise of the state public defender's contract right to terminate the contract for improper billing practices. The notification shall explain the basis for the state public defender's concern and provide the attorney at least 14 days to provide a response. After consideration of the response, the state public defender may terminate the contract for improper billing practices if the state public defender determines that the attorney has engaged in a pattern of willful, intentional, reckless, or negligent submission of false, abusive, or unreasonably excessive fee claims. An attorney

may seek reconsideration of the state public defender's decision to terminate a contract for improper billing practices in the manner described in rule 493—11.9(13B).

**11.7(3) Termination by mutual consent.** Upon the mutual consent, confirmed in writing, of the state public defender and the contracting attorney, the contract may be terminated on less than 30 days' notice. Such termination may affect the entire contract or may relate solely to a particular county or geographical area or to a particular type of case.

[ARC 1514C, IAB 6/25/14, effective 7/30/14; ARC 2378C, IAB 2/3/16, effective 3/9/16]

**493—11.8(13B) Grounds to deny or terminate a contract.** In determining whether the award, renewal, or termination of a contract is in the best interests of the state, the state public defender may take into consideration factors such as, but not limited to, the following:

1. The attorney's eligibility for contracting pursuant to rule 493—11.2(13B) for the type of case in which the attorney is to provide services or the attorney's failure to comply with such requirements;
2. The attorney's compliance with the terms of an existing or prior contract to represent indigent persons;
3. Any form of dishonesty or deception directed to judicial officials, the state public defender, indigent persons, other clients, or any other person in the practice of law;
4. Unprofessional or unethical conduct, or other act or omission that is or may be detrimental or harmful to indigent representation;
5. An attorney's failure to attend, or untimely attendance at, hearings, depositions, or other case-related proceedings;
6. An attorney's failure to abide by a court order, applicable statutes or administrative rules governing indigent representation, or local or state rules of procedure applicable to the cases in which the attorney has been appointed;
7. Repetitive, willful, deceptive, unexplained or uncorrected errors in claims for fees;
8. Disciplinary action against a legal or other professional license or conviction of a crime in any jurisdiction when the disciplinary action or conviction implicates an attorney's honesty, trustworthiness, or competence to practice law, or is otherwise related to the practice of indigent defense;
9. Use of alcohol or controlled substances during court proceedings or in a manner impairing competent performance;
10. Judicial orders or rulings finding that an attorney engaged in untruthful, incompetent, unprofessional, or unethical behavior in the practice of indigent defense, submission of fee claims, or otherwise in the practice of law; or
11. Any other behavior implicating an attorney's competence, effectiveness, or trustworthiness in the practice of indigent defense.

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.9(13B,17A) Reconsideration.**

**11.9(1) Written notice.** A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten business days of the date of mailing of the notice of denial of an initial or renewal contract or the notice of termination. A request for reconsideration must be in writing and must specify the factual or legal errors the attorney contends were made by the state public defender. The attorney may provide such additional information, explanation or documentation as the attorney believes would be relevant to the reconsideration decision. The request for reconsideration is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender.

**11.9(2) Exhaustion of administrative remedies.** A request for reconsideration of the state public defender's decision to deny or terminate a contract is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

**11.9(3) Informal conference.** Upon receipt of a request for reconsideration, the state public defender or a person designated by the state public defender may schedule an informal conference with the attorney if in the state public defender's judgment such a conference may foster resolution of the dispute. To the extent that the participation of the state public defender or a person designated by the state public defender

in an informal conference could be considered personal investigation as that term is used in Iowa Code section 17A.17, an attorney agreeing to participate in an informal conference waives the right to seek to disqualify the state public defender or a person designated by the state public defender from acting as presiding officer or advising the presiding officer in a subsequent contested case proceeding based solely on the ground of personal investigation during an informal conference. The attorney does not waive the right to raise any other type of disqualification.

**11.9(4) *Reconsideration decision.*** The state public defender shall issue a written reconsideration decision which may uphold, reverse, or modify the initial decision to deny or terminate a contract. The reconsideration decision is final agency action, unless an attorney timely requests a contested case hearing pursuant to rule 493—11.10(13B,17A).

[ARC 2378C, IAB 2/3/16, effective 3/9/16]

**493—11.10(13B,17A) Contested case hearing.**

**11.10(1) Written request for contested case hearing.** An attorney who is aggrieved by a reconsideration decision and who desires to contest the factual basis for the reconsideration decision shall request a contested case hearing within 10 days of the date the reconsideration decision is mailed. The request for contested case hearing shall identify the fact issues in dispute and any other claimed error, and shall state the manner in which the state public defender is alleged to have relied upon erroneous facts.

**11.10(2) Procedures.** The request for contested case hearing is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender. A contested case hearing shall be conducted pursuant to the procedures set forth in 481 IAC Chapter 10.

**11.10(3)** A timely request for contested case hearing is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

**11.10(4) Presiding officer.** The state public defender or a person designated by the state public defender may preside over the contested case hearing and issue a final decision, or the state public defender may request that the hearing be conducted by an administrative law judge from the department of inspections and appeals who shall issue a proposed decision subject to review by or appeal to the state public defender. If the notice of hearing does not identify an administrative law judge as the presiding officer, an attorney may file a written request that an administrative law judge serve as the presiding officer at hearing. Such request must be filed within 20 days after service of the notice of hearing by certified mail, return receipt requested, to the attorney's last-known address. The state public defender may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision.
- b. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- c. Funds are unavailable to pay the costs of an administrative law judge and possible resulting interagency appeal.
- d. The request was not timely made.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

**493—11.11(13B,17A) Judicial review.**

**11.11(1)** The final decision by the state public defender to deny an attorney's request to enter into an initial or renewal contract for indigent representation, to terminate such a contract for cause following issuance of a notice of default, or to terminate such contract for improper billing practices is reviewable pursuant to Iowa Code chapter 17A.

**11.11(2)** Nothing in this rule shall prevent the informal resolution of a decision to deny or terminate an initial or renewal contract through mutually agreeable settlement at any stage of the proceeding.

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

These rules are intended to implement Iowa Code chapter 13B.

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<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.

CHAPTER 12  
CLAIMS FOR INDIGENT DEFENSE SERVICES

**493—12.1(13B,815) Scope.** This chapter sets forth the rules for submission, payment and court review of indigent defense fee claims. See 493—Chapter 7 for definitions of terms used in this chapter.

**12.1(1)** The state public defender will pay from the indigent defense fund attorney fees and costs for the following types of cases: commitment of sexually violent predators under Iowa Code chapter 229A; contempts; postconviction relief proceedings to the extent authorized under Iowa Code chapter 822; juvenile justice under Iowa Code section 232.141(3)(c); guardians ad litem for children in juvenile court under Iowa Code chapter 600 or respondents under Iowa Code chapter 600A; filing by an indigent party of an adoption petition under Iowa Code section 600.3 to adopt a child who was the subject of a termination of parental rights proceeding under Iowa Code chapter 232; fees for appellate attorneys under Iowa Code section 814.11; fees to attorneys under Iowa Code section 815.7; fees for court-appointed counsel under Iowa Code section 815.10; violation of probation or parole under Iowa Code chapter 908; indigent's right to transcript on appeal under Iowa Code section 814.9; indigent's application for transcript in other cases under Iowa Code section 814.10; and special witnesses for indigents under Iowa Code section 815.4.

**12.1(2)** The state public defender will not pay for the costs for any type of administrative proceeding or any other proceeding under Iowa Code chapter 598, 600, 600A, 633, or 915 or other provisions of the Iowa Code.

**12.1(3)** The Iowa Code requires the state public defender to approve only those indigent defense fee claims that are reasonable and appropriate under applicable statutes. In exercising this duty, the state public defender publishes rules and makes judgments considering what is statutorily permitted, fair for claimants, fair for indigent clients (who, by law, are required to reimburse the state for the costs of their defense to the extent they are reasonably able to pay such costs), and consistent with good stewardship of public appropriations.

[ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 6055C, IAB 11/17/21, effective 12/22/21]

**493—12.2(13B,815) Submission and payment of attorney claims.**

**12.2(1) Required claim documents.** Court-appointed attorneys shall submit electronic indigent defense fee claims to the state public defender for review, approval and payment. These claims shall include the following:

*a.* The completion of the appropriate claim type on the online submission website of the state public defender, [spdclaims.iowa.gov](http://spdclaims.iowa.gov).

(1) Adult fee claims, including all trial-level criminal and postconviction relief proceedings, misdemeanor appeals to district court, and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for all criminal and postconviction relief appeals, work performed after the granting of an application for discretionary review or for interlocutory appeal, and work performed after full briefing is ordered following a juvenile petition on appeal, must be submitted on an Appellate form.

(2) The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website.

*b.* A copy of all orders appointing the attorney to the case.

(1) The appointment order must be signed by the court and either dated by the court or have a legible file-stamp.

(2) If, at the time of appointment, the attorney does not have a contract to represent indigent persons in the type of case and the county in which the action is pending, the appointment order must include either a finding that no attorney with a contract to represent indigent persons in that specific type of case and that county is available or a finding that the state public defender was consulted and consented to the appointment.

(3) Claims for probation or parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these cases. Appointment orders in parole violation cases must also contain the following findings:

1. The alleged parole violator requests appointment of counsel;
2. The alleged parole violator is indigent as defined in Iowa Code section 815.9;
3. The alleged parole violator, because of lack of skill or education, would have difficulty in presenting the alleged violator's version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and

4. The alleged parole violator has a colorable claim that the alleged violation has not been committed, or there are substantial reasons which justify or mitigate the violation and make revocation inappropriate.

(4) If the venue is changed in a juvenile case, an order appointing the attorney in the new county must be submitted.

(5) A new appointment order is not necessary for trial counsel to request or resist an interlocutory appeal or an application for discretionary review.

(6) A new appointment order is not necessary to pursue or respond to a juvenile petition on appeal if the attorney was properly appointed to represent the client in juvenile court. If the original trial counsel withdraws or is removed from the case, the new appellate counsel must attach an order appointing the attorney for the appeal.

(7) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

*c.* A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

*d.* A copy of any court order that affects the amount to be paid or the client's right to counsel.

*e.* A copy of the dispositional order, the order granting a motion to withdraw prior to disposition, procedendo, or other court order documenting the "date of service" for the claim.

*f.* An itemization detailing all work performed on the case for which the attorney seeks compensation and all expenses incurred for which the attorney seeks reimbursement.

(1) The itemization must state the date and amount of time spent on each activity. Time must be reported in tenths of an hour. Time shall be rounded to the nearest tenth of an hour. For example, an attorney spending ten minutes performing an activity shall bill 0.2 hours, while an attorney spending seven minutes performing an activity shall bill 0.1 hours. The time spent on each activity must be separately itemized, except that one or more activities on the same day, each taking less than 0.1 hours, must be aggregated together with other activities so that the aggregate amount billed is at least 0.1 hours. If an attorney performs only a single activity taking less than 0.1 hours for a client on a day, the attorney may bill 0.1 hours regardless of the precise length of time spent on the activity. If an attorney performs multiple related activities on the same day, such as multiple email or telephone exchanges, the activities must be aggregated together if separately itemizing the activities would result in claiming more time than the attorney actually spent performing the activities.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) If another attorney performed any of the work, the itemization shall specify the name of the attorney performing each activity and the named attorney's AT number.

(4) The itemization must be in chronological order.

(5) If the attorney seeks reimbursement for expenses incurred, the itemization must separately state each expense incurred, including any specific information required by rule 493—12.8(13B).

(6) The itemization shall be submitted electronically via the Attorney Hours grid on the appropriate claims submission page on the online claims website. Separate electronic attachments of itemizations will not be accepted.

*g.* If the attorney was privately retained to represent the client prior to appointment, a copy of any representation agreement, written notice of the dollar amount paid to the attorney, and an itemization

of services performed and how any funds provided were spent during the period prior to the court appointment. The state public defender will review the amount paid and hours spent before and after the court appointment in determining the appropriate attorney compensation on the claim.

**12.2(2) *Failure to submit required documents.*** Submitted claims for which the entire claim form has not been properly completed or which do not include the documents required by subrule 12.2(1) may be returned to the attorney for additional information and resubmission within the time required by paragraph 12.2(3) “d.” If the attorney fails to submit all the required documentation to support a claim, the state public defender may request additional information or may deny all or a portion of the claim.

**12.2(3) *Timely claims required.*** Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule may be denied, in whole or in part, as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3) “f.” Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the “same case” as the underlying proceeding.

*a. Adult claims.* For adult claims, “date of service” means the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of filing of an order granting a deferred judgment or prosecution, the date of filing of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of filing of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, or mistrial. The filing of a notice of appeal is not a date of service. If a motion for reconsideration is filed, either the date of filing of the motion or the date on which the court rules on that motion is the date of service. In a probation, parole or contempt proceeding, the date of service is the date of filing of the disposition order or an order granting a continued disposition. In a subsequent review or compliance proceeding under the same appointment, a new date of service is created if the new proceeding generates an order. In a probation revocation proceeding that results in the revocation of a deferred judgment, a judgment of conviction is entered and the date of service is the date of the judgment. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

*b. Juvenile claims.* For juvenile claims, “date of service” means the date of filing of an order as a result of the dispositional hearing or most recent postdispositional hearing that occurs while the client is still an active party in the case, the date on which the client ceased to be a party, the date of a court order authorizing the attorney’s withdrawal from a case prior to the filing of the final ruling with respect to the client, the date jurisdiction is waived to adult court, the date on which the venue is changed, the date of dismissal, or the file-stamped date of a procedendo resulting from a petition on appeal. The date of a family drug court meeting, family team meeting, staffing, or foster care review board hearing is not a date of service.

*c. Appellate claims.* For appellate claims, “date of service” means the date of a court order authorizing the attorney’s withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

*d. Notices of action and returned claims.* For claims of any type that are filed as a result of a notice of action letter or a returned fee claim letter, “date of service” means the date of the notice of action letter or returned fee claim letter. But a claim that is denied as untimely does not become timely merely because it was resubmitted within 45 days of a returned fee claim letter. A timely claim returned to the attorney for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

*e. Court orders.* For claims of any type that are filed as a result of a court order after hearing for review of the fee claim, “date of service” means the file-stamped date of the order.

*f. Exceptions to the 45-day rule.* The state public defender may in the state public defender’s sole discretion approve a claim that was not submitted within 45 days of the date of service only if the delay in submitting the claim was caused by one of the following circumstances:

- (1) The death of the attorney;
- (2) The death of the spouse of the attorney, a child of the attorney, or an employee of the attorney who was responsible for assisting in the preparation of the attorney's fee claims;
- (3) A serious illness, injury, or other medical condition that prevents the attorney from working for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims;
- (4) The attorney's need to care for the attorney's spouse or child with a serious illness, injury, or other medical condition that prevents the spouse or child from working, attending school, or performing other regular daily activities for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims.
- (5) Other circumstances in which the state public defender determines, in the sole discretion of the state public defender, that enforcement of the 45-day rule would impose an undue burden and that payment of the claim should in fairness be made, in whole or in part. The state public defender, in the exercise of such discretion, may consider factors including, but not limited to:
  1. The extent to which the 45-day rule was violated;
  2. The justification provided by the attorney;
  3. The attorney's claim history;
  4. The extent of prejudice likely to be experienced by the attorney, the state public defender, and any party to the proceeding, including the attorney's client.

Any claim submitted pursuant to subparagraph (1) must be submitted within 45 days of the death of the attorney. Any claim submitted pursuant to subparagraph (2) must be submitted within 30 days of the death that caused the delay. Any claim submitted pursuant to subparagraph (3) or (4) must be submitted within 15 days of the end of the illness, injury, or medical condition that caused the delay. An attorney claiming an exception to the 45-day rule shall submit with the claim a letter explaining the applicable exception and written documentation supporting the exception.

**12.2(4) *Valid appointment required.*** Claims for compensation from an attorney appointed as counsel or guardian ad litem may be denied if the attorney was appointed contrary to Iowa Code section 814.11 or 815.10. Claims for which court-appointed counsel at state expense is not statutorily authorized or which are not payable from the indigent defense fund created by Iowa Code section 815.11 shall be denied.

*a. Appellate appointments.* Claims for compensation from an attorney whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 may be denied in whole or in part.

*b. Trial-level designations.* Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, may be denied in whole or in part if the state public defender filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed, unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

- (1) The state public defender's designee and any successor designee have withdrawn from the case or have been offered and declined to take the case; or
- (2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

*c. Trial-level contract attorney preference.* Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, may be denied in whole or in part unless:

- (1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the action was pending; or
- (2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment; or

(3) After the appointment, the attorney entered into a contract with the state public defender, or amended the attorney's existing contract, to represent indigent persons in the specific type of case and the county in which the action was pending, in which case only the portion of the claim for the services performed prior to the effective date of the contract shall be denied.

**12.2(5) *Scope of appointment.*** Claims shall only be paid for services rendered and expenses incurred within the scope of the attorney's court appointment. Any other fees or expenses claimed shall be denied.

*a. Services prior to appointment.* Claims for services rendered or expenses incurred prior to the effective date of the attorney's appointment are not payable within the scope of the attorney's appointment and shall be denied.

*b. Representation of parents after termination of parental rights.* Claims for services rendered or expenses incurred by an attorney for representing a parent in a child in need of assistance case or termination of parental rights case for work performed after the date on which the termination of that parent's parental rights becomes final, either on appeal or because no appeal was taken, are not payable within the scope of the attorney's appointment and shall be denied.

*c. Guardian ad litem for children over the age of 18.* Claims for services rendered or expenses incurred by a guardian ad litem for a child who is aged 18 or older and involved in a juvenile court proceeding are only within the scope of appointment if the court enters an order appointing the guardian ad litem for the limited purposes of continuing a relationship with the child and to provide advice to the child relating to the child's transition plan under Iowa Code section 232.2 beyond the child's eighteenth birthday. The appointment shall end on the date a court order relieving the guardian ad litem of further duties or the date of a court order closing the juvenile case, whichever occurs first, and claims for services rendered or expenses incurred after such date shall be denied. Neither a parent nor guardian of the child in interest is entitled to court-appointed counsel during the post-age 18 transition period.

**12.2(6) *Rate of compensation.*** Claims for compensation in excess of the applicable rate of compensation established by rule 493—12.4(13B,815) or in the attorney's contract with the state public defender are not payable and shall be reduced to the applicable rate of compensation.

**12.2(7) *Excessive claims.*** The amount of a claim for services provided or expenses incurred that is excessive shall be reduced by the state public defender to an amount which is not excessive. Only reasonable and necessary compensation and expenses will be approved for payment.

**12.2(8) *Review of claims after contract termination for improper billing practices.*** A claim submitted by an attorney whose contract with the state public defender is terminated for improper billing practice shall be paid only to the extent that the claim is supported by authentic, independent, written documentation originating from sources other than the attorney, even if such a claim would otherwise be payable under this chapter. Any portion of a claim for a service performed or expense incurred that is not independently verified by such documentation is not payable under the contract and shall be denied.

*a. Acceptable documentation.* Independent, written documentation that may support a claim for services performed or expenses incurred by the attorney includes, but is not limited to:

(1) Affidavits of clients, witnesses, prosecutors, service providers, department of human services staff, court staff, or other persons who can verify that the attorney performed a service for a specific length of time on a specific day. Affidavits from employees of the attorney or the attorney's firm, family members of the attorney, or other attorneys within the same law firm as the attorney are not independent documentation and are insufficient to confirm a claim for a service performed or expense incurred.

(2) Court orders or other documents in the court file that verify the attorney's attendance at a court proceeding, as well as the date, time, duration, and location of the proceeding.

(3) Deposition transcripts and other records of the certified shorthand reporter that verify the attorney's attendance at a deposition, as well as the date, time, duration, and location of the deposition.

(4) Records of a jail or correctional facility that document the date, time, and duration of visits, telephone calls, or videoconferencing sessions with clients or witnesses in custody in the facility.

(5) Records of a telecommunication provider that verify the length of telephone calls, long-distance expenses, or fax expenses.

(6) Records of an online legal research service that document the date, time, duration, and nature of legal research performed.

(7) Calculations from mapping software, such as MapQuest or Google Maps, of the distance traveled to a location where a verified service was provided.

(8) Original printed receipts for expenses incurred.

*b. Pending claims.* Any claims submitted by an attorney that have not yet been approved by the state public defender when the attorney's contract with the state public defender is terminated for improper billing practices shall be returned to the attorney. The attorney may resubmit any claim returned in its entirety, or a portion thereof, within the time required by paragraph 12.2(3) "d," with the additional documentation required by this subrule confirming all time and expenses claimed on the itemization. The resubmitted claim shall be reviewed consistent with the requirements of this subrule. Any claim not resubmitted within the time required by paragraph 12.2(3) "d" shall be denied.

*c. Court review.* An attorney whose claim is denied or reduced pursuant to this subrule may seek court review of the state public defender's action on that claim by filing a motion for court review as provided for by rule 493—12.9(13B,815). But if the attorney has sought review of the state public defender's decision to terminate the attorney's contract for improper billing practices, the court shall stay proceedings on the attorney's motion until the attorney has exhausted all administrative remedies, final judgment has been entered in any judicial review action under Iowa Code chapter 17A, and any appeal of such judgment is decided. The final judgment of any judicial review action under Iowa Code chapter 17A regarding the termination of the attorney's contract conclusively determines the applicability of this subrule. If the attorney fails to seek judicial review of the state public defender's decision to terminate the attorney's contract, the state public defender's notice to the attorney that the state public defender is terminating the attorney's contract for improper billing practices is conclusive evidence that this subrule applies, and the attorney may not challenge the termination decision or the applicability of this subrule in the motion for review of the state public defender's action on the fee claim under rule 493—12.9(13B,815).

**12.2(9) Approval of claims.** Claims shall be forwarded to the department for final processing and payment only after the state public defender has determined that payment of the claim is appropriate under this chapter and under Iowa law. No payments shall be made from the indigent defense fund except with the authorization of the state public defender.

[ARC 8090B, IAB 9/9/09, effective 9/15/09; ARC 8372B, IAB 12/16/09, effective 1/20/10; ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 9938B, IAB 12/28/11, effective 2/1/12; ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 2378C, IAB 2/3/16, effective 3/9/16; ARC 2783C, IAB 10/26/16, effective 11/30/16; ARC 2926C, IAB 2/1/17, effective 3/8/17; ARC 4872C, IAB 1/15/20, effective 3/1/20; ARC 6799C, IAB 1/11/23, effective 2/15/23]

**493—12.3(13B,815) Interim claims.** Claims will be paid at the earlier of the conclusion of the case or when legal representation of the client under the original court appointment is concluded, except as provided for in subrule 12.3(1), 12.3(2), 12.3(3), or 12.3(4).

**12.3(1) Juvenile cases.** An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing that is a date of service held in the case. A court hearing does not include family drug court, family team meetings, staffings or foster care review board hearings.

**12.3(2) Appellate cases.** A claim for work performed may be submitted in appellate cases after the filing of the attorney's proof brief. A subsequent claim may be submitted after the procedendo is filed.

**12.3(3) Class A felonies.** Interim claims in Class A felony cases may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

**12.3(4) Other cases.** In all other cases, claims filed prior to the conclusion of the case will not be paid except with prior written consent of the state public defender.

**12.3(5) Change of employment.** A change of employment is not a basis for submitting an interim claim. An attorney changing firms must wait to submit a claim until the conclusion of the case unless the attorney withdraws from the case or subrule 12.3(1), 12.3(2), or 12.3(3) applies. Because indigent defense contracts are with the attorney and not with the law firm, the state public defender shall send payments to whatever person or law firm the departing attorney directs.

**12.3(6) Approval of interim claims.** Approval of any interim claims shall not affect the right of the state public defender to review subsequent claims or the aggregate amount of the claims submitted.  
[ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 4872C, IAB 1/15/20, effective 3/1/20]

**493—12.4(13B,815) Rate of compensation.**

**12.4(1)**

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007, and before July 1, 2019:

Attorney time:	Class A felonies	\$70/hour
	Class B felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$60/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2019, and before July 1, 2021:

Attorney time:	Class A felonies	\$73/hour
	Class B felonies	\$68/hour
	All other criminal cases	\$63/hour
	All other cases	\$63/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2021, and before July 1, 2022:

Attorney time:	Class A felonies	\$76/hour
	Class B felonies	\$71/hour
	All other criminal cases	\$66/hour
	All other cases	\$66/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2022:

Attorney time:	Class A felonies	\$78/hour
	Class B felonies	\$73/hour
	All other criminal cases	\$68/hour
	All other cases	\$68/hour
Paralegal time:		\$25/hour

**12.4(2)** Payable paralegal time is limited in rule 493—7.1(13B,815).

**12.4(3)** As used in this rule, the term “all other cases” includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief

cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

[ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 4872C, IAB 1/15/20, effective 3/1/20; ARC 6055C, IAB 11/17/21, effective 12/22/21; ARC 6799C, IAB 1/11/23, effective 2/15/23]

**493—12.5(13B,815) Payable attorney time.**

**12.5(1) *Maximum daily hours.*** An attorney appointed as counsel or guardian ad litem must not perform services for indigent persons or submit claims to the state public defender for payment for such services for more than 12 hours of the attorney's time in any calendar day except as provided in this subrule.

*a.* An attorney may perform services for indigent persons and submit claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day if and only if the attorney is in trial or other contested court hearing lasting more than one day or the attorney is preparing for such a trial or hearing that will be occurring within the next seven days.

*b.* If an attorney performs services for indigent persons and submits claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day, the attorney shall include with each claim form submitted to the state public defender that claims time for that date a letter specifying the total hours worked for private clients on that date or certifying that no other time was billed to any private client, and explaining the need to work more than 12 hours.

*c.* Any time claimed by an attorney appointed as counsel or guardian ad litem in excess of 12 hours on a calendar day, except as permitted by this subrule, and any time claimed in excess of 16 hours on a calendar day, shall not be paid. If the time is claimed on multiple claims, the most recently submitted claim claiming time on a particular calendar day shall be reduced so as not to pay more than the maximum authorized daily hours. If more than the maximum authorized amount is inadvertently paid by the state public defender, the attorney shall reimburse the state public defender upon written notice of the improper payment.

**12.5(2) *Standardized and estimated billing prohibited.*** All time submitted on the itemization of services must be the actual time worked providing services to the client. Attorneys are prohibited from using standardized billing estimates for tasks, such as billing 0.1 for every page of a document reviewed or 0.2 for every email sent or received, or 1.0 hour for every court proceeding. Attorneys must also not use standardized billing for cases, such as billing the same set of standard tasks in every case regardless of whether the task was actually performed.

**12.5(3) *Nonbillable time.*** The following activities are not reasonable and necessary legal services for the indigent client, and therefore time and expenses for such activities are not payable under the attorney's appointment and shall be denied:

*a.* Clerical work, including but not limited to opening and closing files; making photocopies; opening or sending mail; sending cover letters; transmitting copies of documents to a client, another party or clerk of court; sending faxes; picking up or delivering documents; drafting internal file memos; giving instructions to support staff; or billing;

*b.* Preparation of motions to withdraw from a case, and other time related to withdrawing from a case, when the withdrawal is made in order to retire from the practice of law, discontinue or reduce indigent defense representation, pursue another job, or is otherwise for the attorney's personal benefit;

*c.* Overhead, including time spent managing the operations of the attorney's law practice, office lease payments, or support staff salaries;

*d.* Preparation of the fee claim, itemization of services, or other time-keeping activities;

*e.* Preparation of an application or proposed order to exceed the fee limitations, court time obtaining such an order, or review of the order granting or denying the application;

*f.* Preparation of a motion for judicial review of the state public defender's action on an attorney fee claim, preparation for or attendance at a hearing on such a motion, review of an order granting or denying the motion, preparation of appellate briefs or other documents in an appeal of such a court

order, preparation for or participation in oral arguments in the appeal, or review of an appellate decision regarding such a court order.

**12.5(4) *Travel time.*** Time spent by an attorney or guardian ad litem traveling is only payable when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

- a.* To and from the scene of a crime in a criminal case or juvenile delinquency proceeding;
- b.* To and from the location of a pretrial hearing, trial, or posttrial hearing in a criminal case if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed, without changing venue, to a different county for the convenience of the court;
- c.* To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
- d.* To and from the place of detention of a client in a juvenile delinquency or criminal case if the place of detention is located outside the county in which the action is pending;
- e.* To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
- f.* To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute and court order to visit the placement and the placement is outside the state of Iowa;
- g.* To and from the location of a family team meeting, if the place of the meeting is located outside the county in which the action is pending and the court approves that the location of the meeting is appropriate;
- h.* To and from a court of appeals or supreme court argument;
- i.* To and from the location where the deposition of an expert witness is being taken; or
- j.* To other locations for which travel authorization is obtained from the state public defender.

**12.5(5) *Substitute counsel time.*** Work performed by substitute counsel on behalf of an attorney appointed as counsel or guardian ad litem is payable only as provided for under this subrule. The appointed attorney is at all times personally responsible for the representation of the client and must ensure that substitute counsel is qualified to perform the work directed and that the client is effectively represented at all times. The appointed attorney is responsible for compensating substitute counsel. Claims for payment directly by substitute counsel or claims for payment by the appointed attorney that are inconsistent with this subrule shall be denied.

*a. Court time.* An attorney appointed as counsel or guardian ad litem must handle all court appearances unless the appointed attorney has a scheduling conflict, an illness, or other personal emergency, in which case the matter may be covered by substitute counsel. Substitute counsel may never cover for oral arguments in appellate cases.

*b. Out-of-court time.* Substitute counsel may perform out-of-court legal services, except that time spent by substitute counsel that duplicates work performed by the appointed attorney and time spent receiving direction from or conferencing with the appointed attorney are not payable.

*c. Exceptional circumstances.* Substitute counsel may be used in situations that would otherwise be impermissible if the state public defender concludes that use of such substitute counsel would be in the best interest of the client and the administration of justice and provides prior written consent to the appointed attorney.

*d. Supervisory time.* Time spent by the appointed attorney directing, reviewing, or correcting the work of substitute counsel is not payable.

*e. Qualification of substitute counsel.* Unless the state public defender has given prior written consent to use the attorney as substitute counsel, substitute counsel must have an active contract with the state public defender to perform indigent defense services, although the contract need not cover the type of case or county of the case for which the claim is submitted.

*f. Inapplicability to co-counsel in Class A felonies.* The previous paragraphs of this subrule do not apply to a co-counsel who is separately appointed in a Class A felony. Each separately appointed co-counsel in a Class A felony shall submit a separate indigent defense fee claim that claims only the

work actually performed by the appointed attorney submitting the claim. The use of substitute counsel is not permissible in a Class A felony in which co-counsel has been separately appointed.

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 2378C, IAB 2/3/16, effective 3/9/16; ARC 6799C, IAB 1/11/23, effective 2/15/23]

**493—12.6(13B,815) Attorney fee limitations.**

**12.6(1) Adult cases.** The state public defender establishes attorney fee limitations for the number of hours of combined attorney time and paralegal time that may be claimed for the following categories of adult cases:

Class A felonies	258
Class B felonies	56
Class C felonies	30
Class D felonies	20
Aggravated misdemeanors	20
Serious misdemeanors	10
Simple misdemeanors	5
Simple misdemeanor appeals to district court	5
Contempt/show cause proceedings	5
Proceedings under Iowa Code chapter 229A	167
Probation/parole violation	5
Extradition	5
Postconviction relief—the greater of 17 hours or one-half of the fee limitation for the conviction from which relief is sought.	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be 30 hours even if there were more than one separate occurrence. Similarly, if the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations. As a further example, multiple probation revocation proceedings pending at the same time, involving the same client, and arising from the same transaction or occurrence are still a single “case” for purposes of this rule, and the five-hour fee limitation applies.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

**12.6(2) Juvenile cases.** The state public defender establishes attorney fee limitations for the number of hours of attorney time that may be claimed for the following categories of juvenile and adoption cases:

Delinquency (through disposition)	20
Child in need of assistance (CINA) (through disposition)	20
Termination of parental rights (TPR) (through disposition)	30
Juvenile court review and other postdispositional court hearings	8
Judicial bypass hearings	3
Juvenile commitment hearings	3
Juvenile petition on appeal	10
Motion for further review after petition on appeal	5
Representation of adopting party in adoption following Iowa Code chapter 232, termination of parental rights	5

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is 20 hours for all four proceedings, not 20 hours for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to 20 hours for the child in need of assistance case and up to 30 hours for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

**12.6(3) Appellate cases.** Except as otherwise provided in this rule with respect to simple misdemeanor appeals to the district court and juvenile petitions on appeal, there is no fee limitation established for appellate cases. Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

**12.6(4) Claims in excess of fee limitations.** A claim in excess of the attorney fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the attorney fee limitations prior to exceeding the attorney fee limitations. If authorization is granted, payment in excess of the attorney fee limitations shall be made only for services performed after the date of submission of the request for authorization.

**12.6(5) Retroactivity of authorization.** Authorization to exceed the attorney fee limitations shall be effective only as to services performed after a request for authorization to exceed the attorney fee limitations is filed with the court unless the court enters an order before submission of the claim to the state public defender specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the attorney fee limitations. "Good cause" as used in this subrule means a sound, effective and truthful reason. "Good cause" is more than an excuse, plea, apology, extenuation, or some justification. Inadvertence

or oversight does not constitute good cause. Retroactive court orders entered after the date of the state public defender's action on a claim are void. See Iowa Code section 13B.4(4).

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 4872C, IAB 1/15/20, effective 3/1/20; ARC 6055C, IAB 11/17/21, effective 12/22/21; ARC 6799C, IAB 1/11/23, effective 2/15/23]

#### **493—12.7(13B,815) Reimbursement for specific expenses.**

**12.7(1)** The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts if the following conditions are met:

*a.* The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

*b.* A copy of each of the following documents is attached to the claim:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert. If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order and the application and order shall be in compliance with that rule, the other requirements of 493—Chapter 13, and this rule.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1) “*b*”(2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(3) “*b*” when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

*c.* The expenses would be payable if the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or an expert submitted such claim directly pursuant to 493—Chapter 13, except for the requirement that the claim be submitted on the miscellaneous claim form promulgated by the state public defender.

*d.* The certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert does not submit a claim for the same services.

*e.* In claims for the cost of an evaluation requested by an appointed attorney, the attorney shall be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form. Claims for the cost of an evaluation to be used for any other purpose, such as sentencing or placement, will not be reimbursed.

**12.7(2)** Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order, except the notice to the state public defender expressly required in rule 493—13.7(13B,815) if the reimbursement is for expenses incurred by privately retained counsel representing an indigent person, or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

**12.7(3)** In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, subrule 12.7(1) shall apply.

**12.7(4)** Claims for expenses that do not meet these conditions are not payable under the attorney's appointment or rule 493—13.7(13B,815) and will be denied.

[ARC 0137C, IAB 5/30/12, effective 7/11/12; ARC 4872C, IAB 1/15/20, effective 3/1/20; ARC 6800C, IAB 1/11/23, effective 2/15/23]

**493—12.8(13B,815) Reimbursement of other expenses.**

**12.8(1)** The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

*a.* Mileage for automobile travel at the rate of 50 cents per mile. The number of miles driven each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney may be reimbursed only with prior approval from the state public defender.

*b.* The actual cost of lodging, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with the lodging and the attorney is required to be away from home overnight. An itemized receipt showing the expenses incurred must be attached to the claim form.

*c.* The actual cost of meals, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with these meals. An itemized receipt showing the expenses incurred must be attached to the claim form.

*d.* Necessary photocopying at the attorney's office at the rate of 10 cents per copy. The number of copies made each day must be separately itemized in the itemization of services. The total number of copies must also be listed on the claim form.

*e.* Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt for the actual cost of the toll or collect call must be attached to the claim form. A statement from a correctional facility or jail detailing a standard rate for such calls shall constitute a receipt for purposes of this paragraph. For parking expenses in excess of \$5, a receipt must be attached to the claim form. Claims for the cost of a parking ticket shall be denied. Unless a receipt is provided, any postage, toll calls, collect calls, or parking expenses shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

*f.* Receiving faxes in the attorney's office at the rate of 10 cents per page. There is no direct cost reimbursement for sending a fax unless there is a toll charge associated with it. Any fax charges claimed shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

*g.* The actual cost of photocopying or faxing for which the attorney must pay an outside vendor. A receipt for the actual cost must be attached to the claim form.

*h.* Other claims for expenses such as process service, medical records, DVDs, CDs, videotapes, and photographic printing will be reimbursed for the actual cost. A receipt or invoice from an outside vendor must be attached to the claim form.

*i.* Other specific expenses for which prior approval by the state public defender is obtained.

None of the expenses specified in this rule shall be reimbursed to a privately retained attorney representing an indigent person unless there is prior approval by the state public defender upon a showing of reasonable necessity.

**12.8(2)** If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order, the application and order allowing reimbursement of these expenses

shall be in compliance with that rule in addition to the requirements of this rule, and a copy of the application and order entered pursuant to rule 493—13.7(13B,815) shall be attached to the claim.

**12.8(3)** Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney’s appointment or under rule 493—13.7(13B,815) and will be reduced or denied.

[ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 2378C, IAB 2/3/16, effective 3/9/16; ARC 4872C, IAB 1/15/20, effective 3/1/20; ARC 6799C, IAB 1/11/23, effective 2/15/23]

**493—12.9(13B,815) Court review.** An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

**12.9(1) Motions for court review.** Court review of the action of the state public defender is initiated by the filing of a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

*a.* The motion must be filed with the court within 20 days of the action of the state public defender. This time limit is jurisdictional and will not be extended by the filing of another claim, submitting a letter or email requesting reconsideration, or obtaining a court order affecting the amount of the claim.

*b.* The motion must set forth each and every ground on which the attorney intends to rely in challenging the action of the state public defender.

*c.* The motion must have attached to it a complete copy of the claim, together with the notice of action or returned fee claim letter that the attorney seeks to have reviewed.

*d.* A copy of all documents filed must be provided to the state public defender.

*e.* It is unnecessary for the state public defender to file any response to the motion.

**12.9(2) Hearings.** The following shall apply to hearings on motions for court review:

*a.* The motion shall be set for hearing by the court. Notice of the hearing on the attorney’s request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

*b.* Unless the state public defender appears or specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call. If the attorney intends to participate by telephone, the attorney shall notify the state public defender of this intent and provide a telephone number for the hearing at least two business days prior to the date scheduled for the hearing.

*c.* The burden shall be on the attorney requesting the review.

*d.* The court shall consider only the issues raised in the attorney’s motion.

*e.* The court shall issue a written ruling on the issues properly presented in the request for review.

*f.* If a ruling is entered modifying the state public defender’s action on the claim, the attorney must file a new claim with the state public defender within 45 days of the date of the court’s order modifying the state public defender’s action on the claim. A copy of the court’s ruling and the original claim form and supporting documents must be attached to the claim form. The “date of service” for such a claim is the date of the court’s order.

**12.9(3) Failure to seek review.** Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender’s action.

**12.9(4) Other court orders.** Any court order entered after the state public defender has taken action on a claim that affects that claim is void unless the state public defender is first notified and given an opportunity to be heard.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—12.10(13B,815) Payment errors.** If an error resulting in an overpayment or double payment of a claim is discovered by the attorney, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment shall be paid by check. The check, made payable to the “Treasurer, State of Iowa,” together with a copy

of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. [ARC 0137C, IAB 5/30/12, effective 7/11/12; ARC 1512C, IAB 6/25/14, effective 7/30/14]

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.



CHAPTER 13  
CLAIMS FOR OTHER PROFESSIONAL SERVICES

**493—13.1(13B,815) Scope.** This chapter sets forth the rules for submission, payment and court review of claims for other professional services. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—13.2(815) Claims for other professional services.** The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

**13.2(1) Claims for investigative services.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

*a.* Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

*b.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the investigator.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the investigative services pursuant to rule 493—13.7(13B,815).

(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, the hourly rate, and the manner in which the amount of the claim for services was calculated. Except in exceptional circumstances and with the prior approval of the state public defender upon a showing of reasonable necessity, an investigator's rate shall not exceed \$75 per hour. Itemized receipts for expenses must be attached.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.

*c.* Reasonable and necessary investigative services include, but are not limited to, locating witnesses, interviewing witnesses, process service, viewing the crime scene, reviewing documents or photographs, meeting with attorneys, meeting with clients, and creating investigative reports. Clerical work or running errands for the attorney or defendant is not considered investigative work.

*d.* Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of the most recent date that investigative services were performed for the case. Claims that are not timely shall be denied.

**13.2(2) Claims for expert witnesses.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

*a.* Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

*b.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the expert witness pursuant to rule 493—13.7(13B,815).

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

(5) If the expert charges a “minimum” amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

**13.2(3) Claims for certified shorthand reporters.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters only in accordance with the requirements of this subrule.

*a. Claim form.* When a written claim form for certified shorthand reporting is required under these rules, the certified shorthand reporter shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which the transcript was ordered.
- (4) The date on which the transcript was delivered.
- (5) The total amount of the claim.
- (6) The claimant’s name; address; social security number, federal tax identification number or vendor identification number; email address, if any; and telephone number.

*b. Required documentation.* One copy of each of the following documents must be attached to the claim:

- (1) The court order granting authority to hire the certified shorthand reporter at state expense.
- (2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the certified shorthand reporter pursuant to rule 493—13.7(13B,815).
- (3) If expedited transcript rates are claimed under subparagraph 13.2(3)“d”(10), an email or other written statement from the attorney explaining that expedited delivery is required.
- (4) If a cancellation fee is claimed under subparagraph 13.2(3)“d”(6), documentation of the date and time that notice of cancellation was given.
- (5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

*c. Rates for court transcripts.* If the certified shorthand reporter is a judicial branch employee, claims for certified shorthand reporter services for preparation of court transcripts will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

*d. Rates for other transcripts.* Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment or the certified shorthand reporter submits a claim for a lesser amount, claims for certified shorthand reporter services for a non-judicial branch employee will be paid only at the rates set forth in this paragraph:

(1) Hourly rate when no transcript ordered. Fees for attending depositions when no transcript is ordered will be paid at the rate of \$45 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. If multiple witnesses are deposed in a deposition session on a single day, this hourly rate shall only apply if no transcript is ordered for any of the witnesses. If the transcript is ordered for some of the witnesses, the hourly rate when a transcript is ordered shall apply for the entire deposition session.

(2) Hourly rate when transcript ordered. Fees for attending depositions when a transcript is ordered will be paid at the rate of \$35 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. Fees for performing a transcription of an audio or video recording will be paid at the rate of \$35 per hour for the actual length of the recording transcribed.

(3) Travel time. Fees for travel time will be paid at the rate of \$15 per hour for travel outside of the county of the certified shorthand reporter’s office location. Travel time within the county of the certified shorthand reporter’s office location will not be paid. No travel time is payable for the delivery of a transcript or related to the transcription of an audio or video recording.

(4) Transcripts. Unless expedited delivery is requested, fees will be paid at the rate of \$3.50 per page for an original, one copy, and an electronic version of the transcript. Copies of a transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(5) Exhibits. A rate of \$0.10 per page for black and white and \$0.30 per page for color copies will be paid.

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. Weekends and state holidays shall not be included when calculating the 24-hour prior notice of cancellation contained in this subparagraph. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(3) "d"(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the email address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message. No cancellation fee will be paid related to the transcription of an audio or video recording.

(7) Minimum time. One hour minimum, exclusive of travel time, will be paid for a deposition or transcription of an audio or video recording that takes less than one hour.

(8) Other time. Except for the initial one hour minimum, all time billed at an hourly rate shall be billed in 15-minute increments.

(9) Postage. Actual postage costs that are reasonable and necessary will be paid.

(10) Expedited transcripts. Expedited transcripts are those that are required to be delivered within five business days of the date requested. Fees of \$6 per page for an original, one copy, and an electronic version of the transcript will be paid for expedited transcripts. Copies of an expedited transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(11) Other expenses. Any additional expenses or fees for certified shorthand reporting services not set forth above will only be paid with the prior written consent of the state public defender obtained before the services are provided.

*e. Timely claims required.* Claims for services are timely if submitted to the state public defender for payment within 45 days of the date on which services are completed. For depositions, services are completed on the date the deposition transcript is delivered or on the date of disposition of the case if no transcript is ordered, whichever date is earlier. For trial transcripts or transcripts of an audio or video recording, services are completed on the date the transcript is delivered. Claims that are not timely shall be denied.

*f. Designation of preferred certified shorthand reporter.* The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge of the judicial district for the respective counties and shall be summarized on the website of the state public defender, [spd.iowa.gov](http://spd.iowa.gov). Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

**13.2(4) Claims for court-ordered evaluations.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed attorney only if the purpose of the evaluation is to establish a defense, to determine whether an indigent is competent to stand trial, or to evaluate a defendant at sentencing or resentencing who has been charged as an adult for a felony alleged to have been committed while a juvenile, if the offense has a potential mandatory minimum sentence of imprisonment, and not for any other purpose nor in any other

circumstance for sentencing or placement. Additionally, a claim for a court-ordered evaluation will be approved only if the following conditions are met:

*a.* Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

*b.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is for a permissible purpose under this subrule.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the evaluation pursuant to rule 493—13.7(13B,815).

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

**13.2(5)** The state public defender may reimburse services and expenses not specifically listed in this chapter that are payable pursuant to rules 493—12.7(13B,815) and 493—12.8(13B,815).

**13.2(6)** *Submission of claims.*

*a.* With the exception of judicial branch certified shorthand reporters, claims submitted on or after March 1, 2020, shall be submitted electronically via the online claims website: [spdclaims.iowa.gov](http://spdclaims.iowa.gov). Effective March 1, 2020, with the exception of judicial branch certified shorthand reporter claims, any reference in these rules to forms or to claims submissions shall refer to the respective claims submission page for miscellaneous claims on the online claims website. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website. Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

*b.* Claims for the payment of services to public defenders provided either by judicial branch certified shorthand reporters or by claimants granted an exception to online claim submission, must be submitted to the local public defender office for which the services were provided. Other judicial branch certified shorthand reporter claims, claimants granted an exception to online claim submission, or claims submitted prior to March 1, 2020, must be submitted on a form, promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

**13.2(7)** *Claims from state employees.* Claims submitted by state of Iowa employees must be submitted on a form promulgated by the state public defender and on a state travel voucher form.

[ARC 0137C, IAB 5/30/12, effective 7/11/12; ARC 1512C, IAB 6/25/14, effective 7/30/14; ARC 2378C, IAB 2/3/16, effective 3/9/16; ARC 4872C, IAB 1/15/20, effective 3/1/20; ARC 6800C, IAB 1/11/23, effective 2/15/23]

**493—13.3(13B,815) Court review.** A claimant whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

**13.3(1)** *Motions for court review.* Court review of the action of the state public defender is initiated by filing a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

*a.* The motion must be filed with the court within 20 days of the action of the state public defender.

*b.* The motion must set forth each and every ground on which the claimant intends to rely in challenging the action of the state public defender.

*c.* The motion must have attached to it a complete copy of the claim, together with the notice of action that the claimant seeks to have reviewed.

*d.* A copy of all documents filed must be provided to the state public defender.

It is unnecessary for the state public defender to file any response to the motion.

**13.3(2) Hearings.** The following shall apply to hearings on motions for court review:

*a.* The motion shall be set for hearing by the court. Notice of the hearing on the claimant's request for review shall be provided to the claimant and the state public defender at least ten days prior to the date and time set by the reviewing court.

*b.* Unless the state public defender specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call.

*c.* The burden shall be on the claimant requesting the review.

*d.* The court shall consider only the issues raised in the claimant's motion.

*e.* The court shall issue a written ruling on the issues properly presented in the request for review.

*f.* If a ruling is entered allowing additional fees, the claimant must file a new claim with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

**13.3(3) Failure to seek review.** Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

**493—13.4(13B,815) Processing and payment.** The state public defender will submit claims to the department for processing and payment. The department will submit claims that are not approved in the current fiscal year to the state appeal board for processing and payment.

**493—13.5(13B,815) Payment errors.** If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083.

[ARC 0137C, IAB 5/30/12, effective 7/11/12; ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—13.6(815) Claims submitted by a county.** Rescinded IAB 1/3/07, effective 2/7/07.

**493—13.7(13B,815) Payment of costs incurred by privately retained attorney representing indigent person.** No payment of state funds for the costs incurred in the legal representation of an indigent person shall be authorized or paid unless the requirements of this rule are satisfied.

**13.7(1) Application for payment.** An application or motion for the payment of state funds for the costs incurred in the legal representation of an indigent person that is submitted by the privately retained attorney shall be filed with the court in the county in which the case was filed and include all of the following:

*a.* A copy of the attorney's fee agreement for the representation, including hourly rate, amount of retainer or other moneys received, and number of hours of work completed by the attorney to date.

*b.* A showing that the costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.

*c.* An itemized accounting of all compensation paid to the attorney including the amount of any retainer.

*d.* The amount of compensation earned by the attorney.

*e.* Information on any expected additional costs to be paid or owed by the indigent person to the attorney for the representation.

*f.* A signed financial affidavit completed by the indigent person.

**13.7(2) *Copy of application to state public defender.*** The privately retained attorney shall submit a copy of the application or motion and all attached documents to the state public defender.

**13.7(3) *Response of state public defender.*** If the state public defender resists the motion in whole or in part, the state public defender shall file a response to the application or motion within ten days of the state public defender's receipt of the application or motion.

**13.7(4) *Requirements for authorization and payment.*** The court shall not grant the application or motion authorizing all or a portion of the payment to be made from state funds unless the court determines, after reviewing the application, any supporting documents, and any response from the state public defender pursuant to subrule 13.7(3), that all of the following apply:

- a. The represented person is indigent and unable to pay for the costs sought to be paid.
- b. The costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.
- c. The moneys paid or to be paid to the privately retained attorney by or on behalf of the indigent person are insufficient to pay all or a portion of the costs sought to be paid from state funds.

(1) In determining whether the moneys paid or to be paid to the attorney are insufficient for purposes of this paragraph, the court shall add the hours previously worked to the hours expected to be worked to finish the case and multiply that sum by the hourly rate of compensation specified in rule 493—12.4(13B,815) for the type of case in which the costs are requested.

(2) If the product calculated in subparagraph 13.7(4)“c”(1) is greater than the moneys paid or to be paid to the attorney by or on behalf of the indigent person, the moneys shall be considered insufficient to pay all or a portion of the costs sought to be paid from state funds.

(3) If the private attorney is retained on a flat fee agreement and a precise record of hours worked is not available, the attorney shall provide the court a reasonable estimate of the time expended to allow the court to make the calculation pursuant to this paragraph.

**13.7(5) *Opportunity to request a hearing and hearing on the application.*** The state public defender shall be afforded reasonable notice and opportunity to respond to the motion and participate in any hearing on the application or motion. Either the privately retained attorney for the indigent person or a representative from the office of the state public defender may participate in a hearing on the application or motion by telephone.

**13.7(6) *Protection of defense strategy and work product.*** In considering and ruling on the application or motion, the court shall order appropriate procedures to protect against disclosure of defense strategy and defense work product to the prosecution, including but not limited to allowance of information or filings, or portions thereof, to be submitted in camera, ex parte hearings, sealing of any transcript or order to avoid such disclosure, protective orders, or other safeguards to protect defense strategy and work product from disclosure to the prosecution.

**13.7(7) *Order on the application.*** If the court finds the payment of the costs incurred or to be incurred by a privately retained attorney are reasonable and necessary, the order of the court shall specify the maximum amount of costs which the attorney may incur without further court order, and that the actual amount of such costs to be allowed are subject to review by the state public defender for reasonableness.

**13.7(8) *Submission of claim for payment to state public defender.*** Following entry of an order allowing costs to be incurred by a privately retained attorney representing an indigent person, the attorney or the service provider may seek payment or reimbursement for costs. The attorney shall submit a claim in accordance with rules 493—12.7(13B,815) and 493—12.8(13B,815). The service provider shall submit a claim in accordance with 493—Chapter 13.

**13.7(9) *Denial of application for noncompliance.*** If the privately retained attorney or claimant seeking payment or reimbursement for costs pursuant to this rule fails to comply with the requirements of this rule, the state public defender may deny all or a part of the costs requested.

**13.7(10) *Applicability of rule.*** This rule applies to payments to witnesses under Iowa Code section 815.4, evaluators, investigators, and certified shorthand reporters, and to other costs incurred by a

privately retained attorney in the legal representation of the indigent person. This rule does not apply to payment of costs on behalf of an indigent person represented on a pro bono basis.

[ARC 4872C, IAB 1/15/20, effective 3/1/20]

These rules are intended to implement Iowa Code chapters 13B and 815.

[Filed emergency 6/4/04—published 6/23/04, effective 7/1/04]

[Filed 11/3/04, Notice 6/23/04—published 11/24/04, effective 12/29/04]<sup>1</sup>

[Filed 1/13/06, Notice 10/26/05—published 2/1/06, effective 3/8/06]

[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]

[Filed emergency 8/6/07—published 8/29/07, effective 9/1/07]

[Filed 10/3/07, Notice 8/29/07—published 10/24/07, effective 12/1/07]

[Filed 4/3/08, Notice 2/27/08—published 4/23/08, effective 5/28/08]

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[Filed ARC 1512C (Notice ARC 1437C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]

[Filed ARC 2378C (Notice ARC 2233C, IAB 11/11/15), IAB 2/3/16, effective 3/9/16]

[Filed ARC 4872C (Notice ARC 4778C, IAB 11/20/19), IAB 1/15/20, effective 3/1/20]

[Filed ARC 6800C (Notice ARC 6671C, IAB 11/16/22), IAB 1/11/23, effective 2/15/23]

<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.



CHAPTER 9  
GROUNDWATER HAZARD DOCUMENTATION

**561—9.1(558) Authority, purpose and application.**

**9.1(1) Authority.** Pursuant to Iowa Code section 558.69, the department is required to adopt rules pertaining to a statement to be submitted to the recorder when recording instruments transferring real property regarding the existence and location of wells, disposal sites, underground storage tanks, and hazardous wastes on the property.

**9.1(2) Purpose.** The purpose of these rules is to provide the necessary forms, instructions, and explanation of this requirement. It is the purpose of the statute to give notice to the transferee of real property of the condition of the wells, disposal sites, underground storage tanks, hazardous waste disposal, and private burial sites existing on the real estate.

**9.1(3) Applicability.** These rules shall apply to all persons, corporations, and other legal entities who are transferors or transferees of real property within the state of Iowa as well as all county recorders who are called upon to record instruments transferring real property in Iowa.

**9.1(4) When groundwater hazard statement is required.** A groundwater hazard statement shall be presented to the county recorder along with the real estate transaction documents only when required by Iowa Code section 558.69 or when otherwise required by Iowa law.

[ARC 7588B, IAB 2/25/09, effective 4/1/09; ARC 7973B, IAB 7/29/09, effective 6/29/09; ARC 6790C, IAB 1/11/23, effective 2/15/23]

**561—9.2(558) Form.**

**9.2(1)** The department hereby adopts by reference Form 542-0960, “Groundwater Hazard Statement” (February 1, 2023), which may be obtained from the department or local county recorder.

*a.* When a groundwater hazard statement is required to be presented to a county recorder pursuant to subrule 9.1(2), the transferor or the transferor’s agent or attorney shall complete and present Form 542-0960. The transferor’s agent or attorney may sign the form on behalf of the transferor, but in doing so the agent or attorney represents that a good-faith inquiry of the transferor has been made regarding the information contained in the form and that the information is correct.

*b.* For all real estate transactions where a groundwater hazard statement is required to be submitted to a county recorder pursuant to subrule 9.1(4) and where the real estate transaction is dated after February 1, 2023, a county recorder shall accept only the currently adopted form. The department authorizes the reproduction of Form 542-0960 by any person through photocopying or electronic means so long as the general format and wording are not altered in the reproduction thereof.

**9.2(2)** The form shall be submitted to the county recorder, in the form prescribed by the recorder, at the time that a real estate transaction document with which a groundwater hazard statement is required by 9.1(4) is filed with the county recorder.

**9.2(3)** In all cases, the county recorder shall return or present the statement with the recorded instrument when the instrument is returned or presented to the transferee or the transferee’s designee.

**9.2(4)** When a county recorder accepts a groundwater hazard statement for recording, the county recorder shall transmit the groundwater hazard statement form to the department through one of the following methods:

*a.* Upon written agreement between the department and the custodian of the county land record information system, recorded groundwater hazard statement forms shall be presented to the department through a browser interface provided through the county land record information system for so long as such an agreement remains in place. Any agreement shall include, but not be limited to, a requirement that each form be posted to the system within 15 days of recording and a requirement that each form remain on the system for at least five years.

*b.* In the absence of such an agreement, or if the county land record information system is inoperable, a county recorder shall submit to the department via email a scanned or digital copy of each groundwater hazard statement form within 15 days of its recording. All emails shall be directed to the department’s records division. Forms in the custody of the department shall be retained for a period of at least five years.

**9.2(5)** Nothing in these rules shall be construed as requiring any party to submit to the department the first page of any document that transfers a property on which no conditions are present.

[**ARC 7588B**, IAB 2/25/09, effective 4/1/09; **ARC 7973B**, IAB 7/29/09, effective 6/29/09; **ARC 8950B**, IAB 7/28/10, effective 9/1/10; **ARC 0167C**, IAB 6/13/12, effective 7/18/12; **ARC 6790C**, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement Iowa Code section 558.69.

[Filed emergency 7/1/87—published 7/29/87, effective 7/1/87]

[Filed emergency 7/31/87—published 8/26/87, effective 7/31/87]

[Filed 12/23/87, Notice 9/9/87—published 1/13/88, effective 2/17/88]

[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]

[Filed 3/14/01, Notice 1/10/01—published 4/4/01, effective 5/9/01]

[Filed 1/28/05, Notice 12/8/04—published 2/16/05, effective 3/23/05]

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[Filed Emergency ARC 7973B, IAB 7/29/09, effective 6/29/09]

[Filed ARC 8950B (Notice ARC 8776B, IAB 6/2/10), IAB 7/28/10, effective 9/1/10]

[Filed ARC 0167C (Notice ARC 0045C, IAB 3/21/12), IAB 6/13/12, effective 7/18/12]

[Filed ARC 6790C (Notice ARC 6629C, IAB 11/2/22), IAB 1/11/23, effective 2/15/23]

**ENERGY AND GEOLOGICAL RESOURCES  
DIVISION[565]**

Created by 1986 Iowa Acts, chapter 1245, §1806, under the "umbrella" of Department of Natural Resources  
Rules of Energy and Geological Resources Division[565] rescinded in **ARC 6826C**, IAB 1/11/23,  
effective 2/15/23



## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

Former Water, Air and Waste Management[900], renamed by 1986 Iowa Acts, chapter 1245, Environmental Protection Commission under the “umbrella” of the Department of Natural Resources.

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#### CHAPTER 2

##### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

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- 2.1(17A,22) Adoption by reference

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- 4.1(17A) Adoption by reference

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#### CHAPTER 8

##### CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

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##### DELEGATION OF CONSTRUCTION PERMITTING AUTHORITY

- 9.1(455B) Scope
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CHAPTER 107  
BEVERAGE CONTAINER DEPOSITS  
[Prior to 7/1/83, DEQ Ch 34]  
[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—107.1(455C) Scope.** Rescinded **ARC 6791C**, IAB 1/11/23, effective 12/16/22.

**567—107.2(455C) Definitions.** For the purpose of this chapter, the following terms shall have the meaning indicated in this rule. The definitions set out in Iowa Code section 455C.1 shall be considered to be incorporated verbatim in this rule.

“*Act*” means Iowa Code chapter 455C.

“*Approved redemption center*” means a redemption center approved by the department pursuant to 107.4(1).

“*Carbonated*” means charged under pressure with carbon dioxide.

“*Distributor redemption center*” means a redemption center that satisfies the requirements of Iowa Code section 455C.14.

“*Emboss*” means to raise the surface in relief.

“*Exempt beverage container*” means a beverage container that is not marked with the words “Iowa Refund 5¢” because it is a refillable glass beverage container having a brand name permanently marked on it and having a refund value of 5 or more cents or because it is a refillable metal or plastic beverage container that has been exempted, in accordance with the procedure of subrule 107.3(7), from the requirement of having the refund value marked on the container. An exempt beverage container is exempt from having the words “Iowa Refund 5¢” indicated on the container but is not necessarily exempt from the minimum deposit and redemption requirements of this chapter.

“*Handling fee*” or “*fee*” means the amount reimbursed by a distributor, in addition to the return of the 5 cent refund value, in an amount that is 1 cent per beverage container for containers accepted from a dealer agent or 3 cents per beverage container accepted from a participating dealer or redemption center. Only one fee shall be charged per container.

“*High-contrasting color*” in reference to labeling requirements means a clear differentiation in hue, value, and intensity with the background on which the redemption message appears, surrounding artwork, and other nearby printed information.

“*Incise*” means to scratch the surface to produce legible letters or characters at a precise width and depth.

“*Indelibly*” means that the refund value is permanently affixed on the beverage container and cannot be smeared or removed during regular use from the point of being offered for sale until the point of redemption.

“*Mineral water*” means water naturally or artificially infused with mineral salts or gases. Mineral water may be carbonated or uncarbonated.

“*Soda water*” means water that has been carbonated.

“*Soft drink*” means any nonalcoholic liquid other than mineral water or soda water intended for human consumption.

“*Unapproved redemption center*” means a redemption center that is not an approved redemption center.

This rule is intended to implement Iowa Code sections 455C.1 and 455C.9.  
[**ARC 1956C**, IAB 4/15/15, effective 5/20/15; **ARC 6791C**, IAB 1/11/23, effective 12/16/22]

**567—107.3(455C) Labeling requirements.**

**107.3(1)** All beer, wine, alcoholic liquor, mineral water, soda water and similar carbonated soft drink containers (other than exempt containers) sold or offered for sale in Iowa by a dealer shall have the words “Iowa Refund 5¢” or “IA 5¢” clearly, indelibly and legibly indicated on the container. Any abbreviation of the words “Iowa Refund” other than as provided in this subrule shall be submitted to and approved by the department.

**107.3(2)** The minimum size of the words “Iowa Refund 5¢” or “IA 5¢” and all approved abbreviations shall be a minimum of 9-point type (approximately .125 inch or 3 millimeters) if the words are embossed or incised and 18-point type (approximately .25 inch or 6 millimeters) if the words are otherwise affixed to the container. A stamp or label may have the words “Iowa Refund 5¢” or “IA 5¢” in less than 18-point type if the label is submitted to the department and the department determines that the high-contrasting color or the characteristics of the stamp or label make the stamp or label as easy to discern as a stamp or label with 18-point type.

**107.3(3)** The words “Iowa Refund 5¢” or “IA 5¢” shall be indicated by embossing (raised letters), by incising, by printing in high-contrasting color, by a stamp or label of high-contrasting color, or other method approved by the department securely and permanently affixed to the container.

**107.3(4)** Reserved.

**107.3(5)** The words “Iowa Refund 5¢” or “IA 5¢” shall be on the top or on the cylindrical portion of a metal beverage container. The words “Iowa Refund 5¢” or “IA 5¢” shall be on the conical portion of a glass or plastic beverage container so that the words are visible from above or shall be on the product label. The placement of refund information solely on the bottom of the beverage container is prohibited.

**107.3(6)** An example of the label or labeled container may, but need not, be submitted to the department for informal approval.

**107.3(7)** An application for exemption from the requirement of having the words “Iowa Refund 5¢” or “IA 5¢” indicated on the container shall be submitted to the department and shall contain:

- a. The name, address and telephone number of the applicant;
- b. The refund value of the container; and
- c. A statement of why the container can be readily and permanently identified by consumers as subject to a deposit.

**107.3(8)** An example of the container for which the exemption is being requested shall be sent to the department along with the application required in subrule 107.3(7). The example may consist of photographic images or empty containers. Examples submitted to the department shall not contain any liquid.

**107.3(9)** The department may exempt the container if the department determines that the container is subject to a deposit of 5 or more cents and that consumers can readily and permanently identify the container as one subject to a deposit.

**107.3(10)** Automatic exemption. Beverage containers sold in Iowa containing alcoholic liquor as defined in Iowa Code section 123.3(5) where the total capacity of the container is not more than 50 milliliters are automatically exempted from the labeling requirement of rule 567—107.3(455C). However, such beverage containers remain subject to the remainder of this chapter.  
[ARC 6791C, IAB 1/11/23, effective 12/16/22]

**567—107.4(455C) Redemption centers.** The Act provides for both approved and unapproved redemption centers. Both approved and unapproved redemption centers redeem empty beverage containers and pay the refund value to consumers. Only approved redemption centers can satisfy the requirements of Iowa Code sections 455C.4(2)“a”(2) and 455C.4(2)“a”(3) and 2022 Iowa Acts, Senate File 2378, section 19.1(a) or 19.1(b). Additionally, only approved redemption centers will be listed on the department’s electronic database pursuant to Iowa Code section 455C.4(2)“c.”

**107.4(1)** *Approved redemption centers.*

- a. Any person may file with the department an application for approval of a redemption center.
- b. An annual application for approval of a redemption center shall be submitted to the department electronically.

(1) Initial application. All redemption centers in existence prior to January 1, 2023, that wish to be considered approved under this chapter must apply for approval pursuant to the requirements of subrule 107.4(1) by January 31, 2023. This will ensure that the approved redemption center list published by the department is accurate and includes existing redemption centers. All other redemption centers that wish to be considered approved under this chapter (i.e., new redemption centers established any time after January 1, 2023) should file their application within 30 days of starting their business.

(2) Annual renewals. All redemption centers should file their annual renewal application by January 31 of each subsequent year to allow the department to update its approved redemption center list in a timely manner.

(3) Application requirements. A redemption center must submit a separate application for each facility, including if a redemption center is operating a mobile redemption system for a dealer or dealers. The information on the application will be included in an electronic database for consumers to locate the nearest approved redemption center; as such, applications must be resubmitted annually to ensure that contact information remains accurate. There is no fee to submit the application. The application shall include the following information:

1. Name, address and telephone number of the redemption center;
2. Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center;
3. A statement that the operator of the redemption center understands it must accept all redeemable containers, except for those containers exempted in rule 567—107.13(455C);
4. Whether the redemption center will be operating a mobile redemption system and the location(s) where the system will be operated.

c. The department will issue an electronic order of approval once a complete application is received.

d. The department may at any time rescind the order approving a redemption center if the department determines, after notice and hearing, that the redemption center is in violation of the Act or this chapter or that the redemption center is no longer meeting the above criteria.

e. An approved redemption center shall accept from consumers and shall pay the refund value for all beverage containers that bear an Iowa refund value and those containers exempted from the labeling requirement pursuant to subrule 107.3(10).

f. When an approved redemption center is closing permanently, it shall give to the department notice that includes the redemption center's final date of operation. As of the final date of operation, the redemption center's approval as a redemption center shall be terminated and a dealer it was approved to serve shall no longer be an exempt dealer. An approved redemption center must notify the department and any dealers or distributors with which the redemption center has agreements 30 days prior to the redemption center's closing.

**107.4(2) *Unapproved redemption centers.*** Nothing in the Act or this chapter prevents a person from establishing a redemption center that has not been approved by the department. These facilities are not approved redemption centers as required by some sections of the Act.

**107.4(3) *Distributor redemption centers.***

a. Each beer distributor selling nonrefillable metal beverage containers in this state shall provide individually or collectively by contract or agreement with a dealer, person operating a redemption center or another person, at least one facility in the county seat of each county where refused empty nonrefillable metal beverage containers, refused pursuant to rule 567—107.13(455C), having a readable refund value indication as required by this chapter may be accepted and redeemed. In cities having a population of 25,000 or more, the number of the facilities provided shall be one for each 25,000 population or a fractional part of that population.

b. Distributor redemption centers may be either "approved" or "unapproved." To be "approved," the facility must submit an application pursuant to subrule 107.4(1), which includes the requirement to accept more than just metal beverage containers.

[ARC 6791C, IAB 1/11/23, effective 12/16/22]

**567—107.5(455C) Redeemed containers—use.** Rescinded ARC 6791C, IAB 1/11/23, effective 12/16/22.

**567—107.6** Reserved.

**567—107.7(455C) Redeemed containers must be reasonably clean.** Rescinded ARC 6791C, IAB 1/11/23, effective 12/16/22.

**567—107.8(455C) Miscellaneous requirements.**

**107.8(1)** Beverage containers “sold” on interstate carriers, such as trains, planes, or buses that travel through Iowa, are not subject to the deposit and labeling requirements of the Act.

**107.8(2)** Transfer tanks, premix tanks and beer kegs are not subject to the deposit and labeling requirements of the Act.

**107.8(3)** Return limits. Dealers may limit the number of containers returned by an individual to 120 containers in a 24-hour period. Redemption centers may limit the number of containers returned by an individual to 500 containers in a 24-hour period.

**107.8(4)** A redemption center or participating dealer must have the written consent of the applicable distributor or manufacturer prior to crushing cans or containers.

[ARC 6791C, IAB 1/11/23, effective 12/16/22]

**567—107.9(455C) Pickup and acceptance of redeemed containers by distributor.**

**107.9(1)** *Pickup and acceptance from participating dealers.* A distributor shall accept and pick up from a participating dealer served by the distributor empty beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers at least weekly, or when the distributor delivers the beverage product to the dealer if deliveries are less frequent than weekly, unless otherwise agreed to by both the distributor and the dealer.

**107.9(2)** *Pickup and acceptance from approved redemption centers.* A distributor shall accept and pick up from an approved redemption center all empty beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers at least weekly unless otherwise agreed to by both the distributor and the approved redemption center.

**107.9(3)** *Acceptance of redeemed containers from dealer agents.* A distributor shall accept delivery of empty beverage containers from a dealer agent provided that the containers were picked up by the dealer agent within the distributor’s geographic service area and that they bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor.

**107.9(4)** *Notification of frequency.* A distributor shall notify each participating dealer served by the distributor of the intended frequency of pickup. A distributor shall notify each redemption center from which the distributor is required to pick up containers of the intended frequency of pickup.

**107.9(5)** *Partial pickup.* A distributor which picks up containers more often than the required frequency shall not be required to pick up all available containers from a participating dealer or redemption center at each pickup provided that all available containers are picked up from the dealer or redemption center within the required frequency.

[ARC 6791C, IAB 1/11/23, effective 12/16/22]

**567—107.10(455C) Dealer agent lists.** A dealer agent shall provide to a distributor upon request a list of the dealers that the dealer agent is serving.

**567—107.11(455C) Refund value stated on containers—exceptions.** Rescinded ARC 6791C, IAB 1/11/23, effective 12/16/22.

**567—107.12(455C) Education.** Rescinded ARC 6791C, IAB 1/11/23, effective 12/16/22.

**567—107.13(455C) Refusing payment of the refund value.** A distributor, participating dealer, or redemption center may refuse to pay the refund value and, if applicable, the handling fee in the following situations:

**107.13(1)** *Nonparticipating dealers.* A dealer may refuse to accept any beverage container and pay the refund value on a container if the dealer is in compliance with one of the requirements of Iowa Code

section 455C.4 that allows the dealer not to participate in the bottle redemption program established in Iowa Code chapter 455C, and the dealer has complied with those provisions requiring proper notification to consumers of the approved redemption centers where the containers may be redeemed.

**107.13(2) *Refusal of certain brands (e.g., store brands).***

*a.* For any beverage container subject to the Iowa beverage container control law, all distributors and manufacturers must charge a 5-cent deposit for each container delivered by that distributor or manufacturer to a dealer and must pick up, or facilitate the pickup of, the container from a participating dealer or an approved redemption center. This includes, at a minimum, reimbursing the participating dealer or approved redemption center for the refund value and the applicable handling fee. The requirements of this paragraph apply regardless of the relationship between the distributor or manufacturer and the dealer.

*b.* Any approved redemption center may refuse to accept containers for redemption if there is no distributor or manufacturer providing reimbursement and paying the requisite fee for the given container. In such cases, the redemption center shall notify the department and must post a notice of the brands it will not accept.

**107.13(3) *Redeemed containers must be reasonably clean and intact.*** Consumers shall return containers in a reasonably clean and intact condition. For a refillable beverage container, the container must hold liquid, be able to be resealed and be in its original shape. A nonrefillable glass container may be chipped, but it may not have the bottom broken out or the neck broken off. A nonrefillable metal container may be dented or partially crushed but may not be crushed flat. In order to be redeemed, an empty beverage container shall be dry and free of foreign materials other than the dried residue of the beverage. Redemption centers and participating dealers may refuse to redeem containers that are not reasonably clean and intact, as well as containers that do not have an Iowa 5-cent redemption label and containers that have had the Iowa 5-cent label removed or if the label is illegible for any reason.

[ARC 6791C, IAB 1/11/23, effective 12/16/22]

**567—107.14(455C) Payment of refund value by distributors.**

**107.14(1) *Payment to participating dealers.*** A distributor shall issue to a participating dealer payment of the refund value and handling fee within one week following pickup or when the dealer pays the distributor for the beverages, if payment is less frequent than weekly pursuant to an agreement between the distributor and participating dealer.

**107.14(2) *Payment to approved redemption centers.*** A distributor shall issue to an approved redemption center payment of the refund value and handling fee within one week following pickup unless otherwise agreed to by both the distributor and the redemption center.

**107.14(3) *Payment to redemption centers and dealer agents delivering containers to distributors.*** A distributor shall issue to a redemption center or dealer agent payment of the refund value and handling fee within one week of delivery and acceptance of empty beverage containers, unless otherwise agreed to by both the redemption center and the distributor or by both the dealer agent and the distributor, as the case may be.

[ARC 6791C, IAB 1/11/23, effective 12/16/22]

**567—107.15(455C) Sales tax on deposits.** The department of revenue has determined that the payment of the deposit by a consumer is not a sale subject to the payment of additional sales tax.

These rules are intended to implement Iowa Code chapter 455C.

[Filed 12/8/78, Notice 9/6/78—published 12/27/78, effective 1/31/79]<sup>1</sup>

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[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]

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[Filed Emergency After Notice ARC 6791C (Notice ARC 6632C, IAB 11/2/22), IAB 1/11/23, effective  
12/16/22]

- <sup>1</sup> The Administrative Rules Review Committee at their January 4, 1979, meeting delayed [DEQ 34.8(1)] 107.8(1) under provisions of 67 GA, SF 244, §19.
- <sup>2</sup> Effective date of amendments to 567—107.1(455C) to 567—107.15(455C) adopted as ARC 1538B delayed 70 days by the Administrative Rules Review Committee at its meeting held May 15, 2002. At its meeting held July 9, 2002, the Committee delayed the effective date until adjournment of the 2003 Session of the General Assembly. At its meeting held August 13, 2002, the Committee lifted the delay, with the exception of 107.4(3)“d,” 107.4(4), 107.9(2), 107.9(3) and the second paragraph of 107.14, which were placed under Session Delay and remained delayed until December 17, 2002, when amendments published January 8, 2003, became effective.

**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]

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CHAPTER 23  
WILDLIFE HABITAT PROMOTION WITH LOCAL ENTITIES PROGRAM  
[Prior to 12/31/86, Conservation Commission[290]]

**571—23.1(483A) Purpose and definitions.** The purpose of this rule is to designate procedures for allotments of wildlife habitat stamp revenues to local entities. These funds must be used specifically for the acquisition of whole or partial interests in land from willing sellers for use as wildlife habitats, and the development and enhancement of wildlife lands and habitat areas. The department of natural resources will administer the stamp funds for the purposes as stated in the law at both the state and local levels. The following definitions apply in these rules:

“*Commission*” means the natural resource commission.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department or a designee.

“*Waiver of retroactivity*” means approval by the department for an applicant to purchase land prior to the next round of wildlife habitat fund application reviews. The waiver allows the applicant to remain eligible for the next round of wildlife habitat funds when extenuating circumstances exist that require an immediate purchase of the subject property by the applicant or a third party that will hold the property until funds become available to the applicant.

[ARC 8885B, IAB 6/30/10, effective 8/18/10]

**571—23.2(483A) Availability of funds.** Habitat stamp funds are dependent on stamp sales. The amount of moneys available at any time will be determined by revenues received by the department. Final stamp sales for each calendar year will be determined by July 1 of the following year.

**23.2(1) Local share.** Funds available for local entities shall be specified in the department’s budget in accordance with legislative appropriations. At least 50 percent of the stamp revenues will be apportioned to local entities. Funds will be made available during a fiscal year of July 1 to June 30.

**23.2(2) Distribution.** After deducting 5 percent to be held for contingencies, the remaining local share will be available on a semiannual basis each year.

**571—23.3(483A) Eligibility.** Only those public agencies authorized by law to spend funds for wildlife habitat shall be eligible to participate in this program.

**571—23.4(483A) Project limitations.** Because of administrative costs, no application for assistance totaling less than \$3,000 (total project cost—\$4,000) will be considered.

**571—23.5(483A) Eligibility for cost-sharing assistance.** No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the director, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, such as waterfowl refuges. Fees charged for recreational purposes will not be allowed on land purchased or developed with wildlife habitat funds. Wildlife habitat promotion funds shall not be used to fund mitigation lands or banks, or other lands, to satisfy mitigation requirements. Only the following types of project expenditures will be eligible for cost-sharing assistance.

**23.5(1) Acquisition projects.** Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the department staff. Applicants whose applications have been approved for funding must submit an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions. The appraisal requirements may be waived when the staff determines that they are impractical for a specific project. Cost sharing will not be approved for more than 75 percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.12(7) or by reimbursement to local entities.

When a county receives or will receive financial income directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action, 75 percent of that income will be transferred to the department unless the grantee has demonstrated and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee must recommend, and the director and commission must approve, plans for the expenditure of income. In the absence of acceptable wildlife habitat development or acquisition plans, the county will transfer 75 percent of income received to the department as it is received. The department will credit that income to the county apportionment of the wildlife habitat stamp fund as described in subrule 23.2(1). The schedule of those reimbursements from a county to the state will be included in the project agreement.

**23.5(2) *Development projects.*** Eligible expenditures for development projects shall include seeding and planting of habitat to support or enhance the wildlife area. Requests to purchase equipment will not be approved. Donated labor, materials and equipment use, and force account labor and equipment use shall not be eligible for cost-sharing assistance. (Force account means the agency's own labor and equipment use.) Development projects are limited to lands legally controlled by the grantee for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the public agency.

**23.5(3) *Enhancement projects.*** For purposes of this rule, "enhancement" shall be considered to be synonymous with "development."

This rule is intended to implement the provisions of Iowa Code section 483A.3.  
[ARC 8885B, IAB 6/30/10, effective 8/18/10]

**571—23.6(483A) Application for assistance.** Applications shall provide sufficient detail as to clearly describe the scope of the project and how the area will be managed.

**23.6(1) *Form.*** Applications shall be submitted on forms provided by the department.

**23.6(2) *Time of submission.*** Applications for funds shall be reviewed and selected for funding at least twice per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Changes to grant applications must be submitted to the department no later than 4 p.m. the day prior to the committee review date. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of these funds. In emergencies, local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

**23.6(3) *Local funding.*** By signing the application, the applicant agency is certifying that all required match has been identified and is committed and available for the project. An applicant shall certify in writing that it has the 25 percent match committed and available, by signing on the signature block provided on the form, and shall state the means of providing for the local share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action will be completely documented in the application.

**23.6(4) *Development projects.*** An application for development project assistance may include development on more than one area if the development is of a like nature (e.g., planting trees and shrubs).

This rule is intended to implement the provisions of Iowa Code section 483A.3.  
[ARC 8885B, IAB 6/30/10, effective 8/18/10; ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—23.7(483A) Project review and selection.**

**23.7(1) *Review and selection committee.***

*a.* A review and selection committee, hereinafter referred to as the committee, composed of one person appointed by the director to represent the department and designated by the director as chairperson and four persons appointed by the director to represent county conservation boards shall determine which grant applications and amendment requests shall be selected for funding. Additionally, there shall be at

least two alternates designated by the director to represent the county conservation boards in the event of a conflict of interest.

*b. Conflict of interest.* An individual who is a member, volunteer, or employee of a county conservation board that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

**23.7(2) Consideration withheld.** The committee will not consider any application which, on the date of the selection session, is not complete, or for which additional pertinent information has been requested and not received.

**23.7(3) Application rating system.** The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	2
Existing or potential habitat quality	3
Cost-effectiveness	1 if at least 35 percent less than appraised amount 2 if at least 45 percent less than appraised amount
Species diversity	1

Each criterion will be given a score of from 0 to 10 which is then multiplied by the weight factor. Three additional criteria will be considered in the rating system:

*a. Prior assistance.* Any applicant who has never received a prior grant for acquisition of land will be given a bonus of 5 points.

*b. Active projects.* Any applicant who has one or more active projects at the time of application rating will be assessed 5 penalty points for each one that has not been completed by the date specified in the project agreement. A project is deemed closed after the project has had a final inspection, all funds have been paid and, in the case of acquisition, the title has been transferred from the seller.

*c. Urgency.* Projects may be given 1 or 2 bonus points if there is a strong urgency to acquire lands which might otherwise be lost.

All points will be totaled for each application, and those applications receiving the highest scores will be selected for fund assistance to the extent of the allotment for each semiannual period, except that any project scoring a total of not more than 45 points will not be funded.

**23.7(4) Applications not selected for fund assistance.** All applications not selected for fund assistance will be retained on file for consideration and possible funding during subsequent review periods or until a request for withdrawal is received from the applicant. Applications which have been considered and not selected for funding during three consecutive review periods will be returned to the applicant.

**23.7(5) Rating system not used.** The rating system will not be applied during any semiannual period in which the total grant request, including backlogged applications, is less than the allotment. Applications will be reviewed only to determine eligibility and overall desirability, and to ascertain that they meet minimum scoring requirements.

**23.7(6) Rating of scores for tie breakers.** If two or more projects receive the same score, the committee shall use the points awarded to existing or potential habitat quality to determine which project has a higher rank. If after considering the existing or potential habitat quality points the project scores remain tied, the committee will then consider the points awarded for species diversity. If after considering the species diversity points the project scores remain tied, the committee will then consider the points awarded for wildlife habitat needs.

[ARC 8885B, IAB 6/30/10, effective 8/18/10; ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—23.8(483A) Commission review.** The natural resource commission will review and act upon all committee recommendations semiannually at the next following commission meeting. The commission may reject any application selected for funding.

**571—23.9(483A) Grant amendments.** Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and fund assistance. Project changes must be approved by the director prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns will not be approved where funds have already been committed or the work already performed.

**571—23.10(483A) Timely commencement of projects.** Grant recipients are expected to carry out their projects in an expeditious manner. Projects for which grants are approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission.

**571—23.11(483A) Project period.** A project period which is commensurate with the work to be accomplished will be assigned to each project. Project period extensions will be granted only in a case of extenuating circumstances.

**571—23.12(483A) Payments.**

**23.12(1) Grant amount.** Grant recipients will be paid 75 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

**23.12(2) Project billings.** Grant recipients shall submit billings for reimbursements or cost-sharing on forms provided by the commission.

**23.12(3) Project billing frequency.** Project billings for development shall be submitted on the following basis:

- a. Up to \$10,000 total project cost—one billing.
- b. Over \$10,000 total project cost—no more than two billings.

**23.12(4) Final project billing.** A final project billing shall be submitted within 90 days following the end of a project period. Failure to do so may be cause for termination of the project with no further reimbursement to the grant recipient.

**23.12(5) Documentation.** Grant recipients shall provide documentation as required by the department to substantiate all costs incurred on a project.

**23.12(6) Reimbursement withheld.** Ten percent of the total reimbursement due any grant recipient for a development project will be withheld pending a final site inspection or until any irregularities discovered as a result of a final inspection have been resolved.

**23.12(7) Acquisition projects.** If clearly requested in the project application and the applicant has shown good cause for such procedure, the department may approve direct payment to the seller of the state's share provided that marketable fee simple title, free and clear of all liens and encumbrances or material objections, is obtained by the local entity at the time of payments and state funds are then available.

**23.12(8) Development projects.** On approved development projects, payment will be made by the state only as reimbursement for funds already expended by the local entity.

**571—23.13(483A) Record keeping and retention.** A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income from other sources that normally would have been paid to the previous landowner resulting from a purchase agreement or other title transfer action. A copy of the county's audits particularly showing such income and disbursements for the grant period will be submitted to the department of natural resources' budget and grants bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state laws.

**571—23.14(483A) Penalties.** Whenever any property, real or personal, acquired or developed with habitat stamp fund assistance passes from the control of the grantee or is used for other purposes which

conflict with the project purpose, it will be considered an unlawful use of the funds. The department shall notify the local entity of any such violation.

**23.14(1) *Remedy.*** Funds thus used unlawfully must be returned to the department for inclusion in the wildlife habitat stamp fund, or a property of equal value at current market prices and with commensurate benefits to wildlife must be acquired with local, non-cost-shared funds to replace it. Such replacement must be approved by the commission. The local entity shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this rule are in addition to others provided by law.

**23.14(2) *Land disposal.*** Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with habitat stamp fund assistance is no longer of value for the project purpose, or that the local entity has other good cause, the land, with the approval of the commission, may be disposed of and the proceeds thereof used to acquire or develop an area of equal value, or 75 percent of the proceeds shall be returned to the state for inclusion in the wildlife habitat stamp fund.

**23.14(3) *Ineligibility.*** Whenever a local agency shall be in violation of this rule, it shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

[ARC 8885B, IAB 6/30/10, effective 8/18/10]

These rules are intended to implement Iowa Code section 483A.3.

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[Filed ARC 6789C (Notice ARC 6630C, IAB 11/2/22), IAB 1/11/23, effective 2/15/23]

<sup>1</sup> Effective date of rule 23.1(7/31/91) delayed until adjournment of the 1992 Session of the General Assembly by the Administrative Rules Review Committee (ARRC) at its meeting held July 12, 1991. Delay lifted at the ARRC meeting held November 13, 1991.



CHAPTER 27  
LANDS AND WATERS CONSERVATION FUND PROGRAM  
[Prior to 12/31/86, Conservation Commission[290] Ch 72]

**571—27.1(456A) Purpose.** The purpose of the Federal Land and Water Conservation Fund, hereinafter referred to as the LWCF, is stated in Section 1(b) of the Land and Water Conservation Fund Act of 1965, as amended (78 stat. 897):

“The purposes of this Act are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas.”

Section 6 of the Act contains the basic requirements and conditions for fulfilling the above:

“The Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to provide financial assistance to the States from monies available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this Act, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interest in land or waters, or (3) development.”

Section 6 of the Act further provides that:

“If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency.”

The Iowa department of natural resources, hereinafter referred to as the department, acting through its director, will administer the LWCF for the same purpose at the state and local levels.

**571—27.2(456A) Apportionment distribution.**

**27.2(1) Iowa apportionment.** The state expects to receive an annual apportionment from the LWCF. This annual apportionment, after deducting any amount necessary to cover the department’s costs of administering the program and state outdoor recreation planning costs shall be divided into two shares for state and local entity grants with the local entity share being not less than 50 percent.

**27.2(2) Local share.** The local share of the annual LWCF apportionment shall be available for local entity grants on an annual basis.

**571—27.3(456A) Eligibility requirements.** The following eligibility requirements shall apply to local entities:

**27.3(1)** Participation in the LWCF shall be limited to county conservation boards and incorporated cities.

**27.3(2)** A local entity shall have assessed outdoor recreation supplies, demands and needs and shall have allowed for input by affected citizens within the service area of any proposed project and project applications shall include documentation of these planning processes.

**571—27.4(456A) Assistance ceiling.** Local entities are eligible to receive annual assistance from the LWCF in accordance with the following schedule:

Population of Area of Jurisdiction	LWCF Assistance Ceiling
0-1,000	\$ 50,000
1,001-5,000	75,000
5,001-10,000	100,000
10,001-25,000	125,000

Population of Area of Jurisdiction	LWCF Assistance Ceiling
25,001-50,000	150,000
50,001-75,000	175,000
over 75,000	200,000

Exceptions to the above limits: The maximum grant for local entities with populations in excess of 25,000 shall be \$125,000 for any swimming pool or golf course project. The maximum grant limit for local entities with populations of up to and including 10,000 shall be \$125,000 for any land acquisition project.

The assistance ceiling may be waived upon approval by the director under the following circumstances:

1. The project being proposed for LWCF assistance is regional in nature or is expected to serve a minimum of 100,000 people.
2. The proposed project cannot be staged over a multiyear period so that a separate grant application might be submitted each year.

No grant shall be approved which exceeds the allotment for the review period.

#### **571—27.5(456A) Grant application submission.**

**27.5(1) Form of application.** Grant applications for both state and local projects shall be on forms and follow guidelines provided by the department. Projects selected for funding with land and water conservation assistance must be in accordance with state comprehensive outdoor recreation plan (SCORP) priorities.

**27.5(2) Application timing.** The following information applies to local projects only. Grant applications and amendment requests which increase the existing grant amount shall be reviewed and selected for funding on an annual basis as provided in subrule 27.2(2). The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website.

**27.5(3) Local funding.** An applicant shall certify that it has committed its share of project costs. Cash donations must be on deposit and a bond issue must have been passed by the electorate if such passage is necessary if either or both is a source of local funding.

**27.5(4) Development project application.** An application for a development project grant shall include development on only one project site or area with the exception that an application may include development of a like nature only on several sites (e.g., tennis courts).

**27.5(5) Application timing.** The following applies only to state projects. Grant applications and amendments to existing approved projects which exceed 10 percent of the original grant amount will be reviewed, evaluated and submitted to the National Park Service for approval as soon as practicable upon notification of Iowa's apportionment.

**27.5(6) Application acceptance.** Applications for state projects will be accepted from the Iowa department of natural resources and any other state agency which submits an eligible project application. [ARC 6789C, IAB 1/11/23, effective 2/15/23]

#### **571—27.6(456A) Project review and selection.**

##### **27.6(1) Review and selection committee.**

a. A five-member review and selection committee, hereinafter referred to as the committee, shall be composed of three staff members of the department as appointed by the director of the department, one member appointed by the director with input from the Iowa association of county conservation boards, and one member appointed by the director of the department with input from the Iowa league of cities and the Iowa parks and recreation association. Additionally, there shall be at least two alternates designated by the director with input from both associations and the league of cities. The committee shall determine which grant applications and amendment requests shall be selected for funding at the local level. A review and selection committee for state projects shall be composed of four staff members of the department as appointed by the director.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual’s place.

**27.6(2) Consideration withheld.** The committee will not consider any application which, on the date of the selection session, is not complete, or for which additional pertinent information has been requested and not received.

**27.6(3) Application rating system for local projects.** The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor for each, will be considered:

Criteria	Weight Factor
Relationship to SCORP priorities	5
Direct recreation benefits	1
Local need	1
Quality of site	1

Each criterion will be given a score of from 1 to 10 which is then multiplied by the weight factor. The following additional criteria will be considered in the rating system:

a. Prior assistance. Any applicant who has never received a grant will be given a bonus of five points. Any applicant who has received prior assistance which is more than its fair share will be assessed penalty points. Fair share will be computed by dividing 50 percent of Iowa’s total apportionment from the LWCF by the total state population and multiplying this amount by the population of the applicant agency. Penalty points will be assessed in accordance with the following schedule:

Prior Assistance in Excess of Fair Share	Penalty Points
0 to \$2.50 per capita	0
\$ 2.51 to 12.50 per capita	1
12.51 to 22.50 per capita	2
22.51 to 32.50 per capita	3
32.51 to 42.50 per capita	4
over 42.50 per capita	5

b. Bonus points. Additional points will be added to the total score for the following:

- (1) Projects which have special features for the elderly and handicapped above the normal access requirements for this population will receive three points.
- (2) Projects which include the use of recycled content materials will receive two points.
- (3) Projects which serve an area of greater minority population than the state average of 2.6 percent will receive points as follows:

Minority population greater than:	3.5 percent	1 point
	4.0 percent	2 points
	4.5 percent	3 points

(4) Projects which show evidence that the specific project has been through the normal channels of review and approval by proper local decision makers, thereby ensuring that public support and a commitment to develop and operate the facility are present and that the project under consideration is a part of (or does not conflict with) broader plans which exist, may receive up to three bonus points.

All points will be totaled for each application and those applications receiving the highest scores will be selected for fund assistance to the extent of the allotment for each review period. However, no application shall be selected which has received a score of less than 60. Such applications shall be returned to the applicant.

**27.6(4) Application rating system for state projects.** The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor assigned for each, will be considered:

Criteria	Weight Factor
SCORP priority	4
Quality of site	1
Renovation/rehabilitation project	1
Direct recreation benefits	1

Each criterion will be given a score from 0 to 10, which is then multiplied by the weight factor. Additional points will be added to the total score for the following:

Projects which have special features for the elderly and handicapped above the normal access requirements for this population will receive three points.

Projects which include the use of recycled content materials will receive two points.

Projects which serve an area of greater minority population than the state average of 2.6 percent will receive points as follows:

Minority population greater than:	3.5 percent	1 point
	4.0 percent	2 points
	4.5 percent	3 points

**27.6(5) Applications not selected for fund assistance.** Rescinded IAB 12/8/04, effective 1/12/05.  
[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—27.7(456A) Public participation.** All regional planning agencies will be advised of the time and place of review sessions. Written comments will be accepted prior to each review session. A time period for public comment will be allowed immediately prior to each review session.

Potential applicants will be advised of any changes in the project evaluation and selection processes and criteria; but in any event, state agencies, regional planning agencies, county conservation boards and the Iowa League of Cities will be advised of the availability of program funding at least once every two years.

**571—27.8(456A) Commission review.** The natural resource commission will review all committee recommendations each review period at the next following commission meeting. The commission may reject any application selected for funding or approve any application not selected by the committee.

**571—27.9(456A) Federal review.** All applications selected for fund assistance shall be submitted to the administering federal agency for final review and grant approval.

**571—27.10(456A) Grant amendments.** Projects for which grants have been approved may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. Amendments to increase project costs and fund assistance due to cost overruns will not be approved. A percentage of each year's appropriation may be reserved for amendments.

**571—27.11(456A) Timely commencement of projects.** Grant recipients are expected to carry out their projects in an expeditious manner. Projects for which grants are approved by the administering federal agency between January 1 and May 31 shall be commenced during the same calendar year. Projects for which grants are approved by the administering federal agency between June 1 and December 31 shall be commenced by June 1 of the following year. Failure to do so may be cause for termination of the project and cancellation of the grant.

**571—27.12(456A) Project period.** A project period which is commensurate with the work to be accomplished will be assigned to each project. Project period extensions will be granted only in a case of extenuating circumstances.

**571—27.13(456A) Reimbursements.**

**27.13(1) Grant amount.** Grant recipients will be reimbursed 50 percent of all eligible costs incurred on a project up to the amount of the grant.

**27.13(2) Project billings.** Grant recipients shall submit billings for reimbursements on forms provided by the department.

**27.13(3) Project billing frequency.** No more than two project billings plus a final project billing shall be allowed.

**27.13(4) Final project billing.** A final project billing shall be submitted within 90 days following the end of a project period. Failure to do so may be cause for termination of the project with no further reimbursement to the grant recipient.

**27.13(5) Documentation.** Grant recipients shall provide documentation as required by the department to substantiate all costs incurred on a project.

**27.13(6) Reimbursement withheld.** Ten percent of the total reimbursement due any grant recipient for a development project will be withheld pending a final site inspection or until any irregularities discovered as a result of a final inspection have been resolved.

**571—27.14(456A) Ineligible items.** The following items are ineligible for assistance from the LWCF:

**27.14(1)** Donated labor, materials, and equipment use.

**27.14(2)** Force account labor and equipment use. (A grant recipient's own personnel and equipment.)

**27.14(3)** Donated real property.

**571—27.15(456A) Record keeping and retention.** A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the department, the state auditor's office and the U.S. Department of the Interior.

These rules are intended to implement Iowa Code sections 456A.27 to 456A.35.

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[Editorial change: IAC Supplement 4/13/16]<sup>1</sup>

[Filed ARC 6789C (Notice ARC 6630C, IAB 11/2/22), IAB 1/11/23, effective 2/15/23]

<sup>1</sup> 27.6(3) "b"(3) and 27.6(4) editorially corrected IAC Supplement 4/13/16.



CHAPTER 30  
WATERS COST-SHARE AND GRANT PROGRAMS  
[Prior to 12/31/86, Conservation Commission[290] Ch 79]

DIVISION I  
WATER RECREATION ACCESS COST-SHARE PROGRAM

**571—30.1(452A) Title and purpose.** This division shall provide rules for the water recreation access cost-share program. The purpose of this division is to define procedures for cost sharing between state and local public agencies to provide for the acquisition or development of public recreational boating accesses to Iowa waters.

**571—30.2(452A) Availability of funds.** Moneys derived from the excise tax on the sale of motor fuel used in watercraft under Iowa Code section 452A.79 are deposited as a “marine fuel tax” and are subject to appropriation by the general assembly to the department of natural resources. Each year, as part of its approval of the department’s capital improvement plan, the commission shall designate an amount to be available for this program.

**571—30.3(452A) Eligibility of development projects.** Development projects may include, but are not necessarily limited to, the following:

1. Construction of boat ramps or other conveyances by which recreational boaters are provided a means of placing boats in the water and removing them.
2. Docks as necessary to provide loading and off-loading of equipment and passengers.
3. Boat slips or other on-water boat storage facilities when available to the general public.
4. Parking lots for vehicles and trailers of boaters utilizing public ramps.
5. Roads to provide access to ramp(s) and parking.
6. Rest rooms designed and located so as to primarily serve needs of recreational boaters.
7. Localized dredging required to provide boat access to boatable waters.
8. Shoreline protection measures judged necessary to provide for safety and longevity of boating waters.
9. Signs and markers as needed to direct recreational boaters on use and regulations of access areas.
10. Fencing as needed to establish boundaries, prevent encroachments and control trespass.
11. Lights to provide for safe utilization of ramps and parking areas.
12. Support facilities such as sidewalks, utilities, landscaping, etc., which are necessary for safe and appropriate public use.
13. Canoe/small boat access sites/parking.
14. Renovation projects when they meet all other criteria as specified in this rule.
15. Contractual services for survey and engineering necessary for the design and construction of access facilities.
16. Diagnostic feasibility studies of basin restoration and watershed protection needs of public-owned lakes where water quality, water-based recreation and sport fishing have been diminished and when the lake is included in the department’s first or second priority lists for restoration.
17. Watershed protection and lake basin restoration measures of those lakes for which a diagnostic feasibility study has been completed and that meet the criteria of paragraph “16” of this rule. Measures funded shall be limited to those recommended in the diagnostic feasibility study.

**571—30.4(452A) Eligibility of acquisition projects.** Lands acquired with water access funds must be used for recreational boating/canoeing access. Costs for a department-approved appraisal report and the cost of surveys necessary to determine acreage and establish boundaries are also eligible for assistance on those projects approved for funding. Acquisitions of five acres in size for motorboat access sites and two acres in size for canoe access sites are considered typical. Applicant must provide specific justification to demonstrate how larger acreages relate to boat access needs.

**571—30.5(452A) Projects not eligible.** The following types of projects are not eligible for assistance from the water access fund:

1. Acquisition of land when the principal use of the land will be for something other than recreational boating access.
2. Any type of development which will not provide for improved or increased public access to or safety and longevity of boating waters.
3. The cost of land in excess of the approved appraised valuation.
4. Donated labor, materials, and equipment use, except as specified in rule 571—30.9(452A).
5. Force account labor and equipment use (sponsor's own labor and equipment), except as specified in 571—30.9(452A).
6. Any portion of a facility, as determined by area or time of usage, that is of a commercial nature and does not provide a direct service to recreational boaters.
7. Projects with a total grant request of less than \$1,000.
8. Any project or project costs incurred prior to notification of the sponsoring agency by the director that a grant had been approved. The only exception to this is when a waiver of retroactivity has been granted on a land acquisition project under 571—30.6(452A).

**571—30.6(452A) Waiver of retroactivity.** In case of extreme urgency involving land acquisition, a grant applicant may formally request a written “waiver of retroactivity” which, if granted by the director of the department of natural resources, will permit the applicant to acquire the real property immediately without jeopardizing its chances of receiving a grant. However, the granting of the waiver in no way implies or guarantees that any subsequent grant application covering the acquisition will be selected for funding by the planning committee. The request for the waiver must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a county map on which the land to be acquired is located. Acceptable justification would include situations in which land is to be sold at auction or by sealed bids or when the landowner requires immediate purchase.

**571—30.7(452A) Establishing project priorities.** The director shall appoint a six-member water access committee representing a cross section of department responsibilities for the purpose of reviewing and establishing priorities for cost sharing.

**571—30.8(452A) Application procedures.** Applications for funds shall be reviewed and selected for funding at least once per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website.

[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—30.9(452A) Cost-sharing rates.** All projects approved for assistance will normally be cost-shared at a 75 percent state/25 percent local ratio, except as provided in exceptions listed below.

Exceptions to the normal funding formula may occur under the following conditions:

1. Where a local public agency agrees under terms of a long-term agreement to assume maintenance and operation of a department of natural resources water access facility, the approved development or improvements needed on that facility will be funded at 100 percent.
2. Where feasible and practical, the department will provide funds to cover 100 percent of materials needed for a development project if the local subdivision agrees to provide 100 percent of the labor and equipment to complete that development.
3. Where joint use will be made of a project by commercial interests as well as by recreational boaters, only that portion of a project attributable to the use by recreational boaters will be cost-shared through this program.
4. When, at the discretion of the director, some alternate funding level is deemed appropriate.

**571—30.10(452A) Joint sponsorship.** Two or more local public agencies may join together to carry out a water access project. However, for the purposes of the grant program, the committee will accept

only one local agency as the prime project sponsor. Any written agreements between the local agencies involved in any joint venture will be made a part of any grant application. The application rating system will be applied only to the prime sponsor. The project agreement will be negotiated with the prime sponsor and reimbursements will be paid to it.

**571—30.11(452A) Control of project site.** In order for a project site to be eligible for a development grant, it must be under the physical control of the grant applicant, either by fee title, lease, management agreement, or easement. The term of a lease, management agreement, or easement must be commensurate with the life expectancy of the proposed development.

**571—30.12(452A) Project agreements.**

**30.12(1)** A cooperative agreement approved by the director between the department and the local grant recipient describing the work to be accomplished and specifying the amount of the grant and the project completion date will be negotiated as soon as possible after a grant has been approved. Maximum time period for project completion shall be two years for acquisition or development projects, unless an extension approved by the director is authorized. However, agreements covering land acquisition will be dependent upon receipt of a department-approved appraisal report since assistance will be based on the approved appraised valuation or the actual purchase price, whichever is the lesser. Approved development projects costing over \$25,000 must have plans certified by a registered engineer before an agreement will be issued.

**30.12(2)** Cooperative agreements between the department and the local project sponsor may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. Any increase in fund assistance will be subject to the availability of funds. Amendments to increase scope or fund assistance must be approved by the director before work is commenced or additional costs incurred. A project sponsor may request amendment of the agreement for a previously completed project to allow commercial use under the conditions specified in rule 571—30.9(452A), paragraph “3.” The director shall have the authority to approve such amendments.

**30.12(3)** All approved projects, except those in which the project is owned by the state and managed by a local entity, having a grant request in excess of \$25,000 will be presented to the natural resource commission members for their information prior to project initiation. The commissioners may act to disapprove or modify projects.

**571—30.13(452A) Reimbursement procedures.** Financial assistance from the water access fund will typically be in the form of reimbursement grants which will be made on the basis of the approved percentage of all eligible expenditures up to the amount of the approved grant.

Reimbursement requests will be submitted on project billing forms provided by the department.

**30.13(1)** For acquisition projects, one copy each of the following additional documentation will be required.

- a. Deed.
- b. Invoices or bills for any appraisal or survey expense.
- c. All applicable canceled checks or warrants.
- d. A certificate of title prepared by the agency’s official legal officer.

**30.13(2)** For development projects, grant recipients shall provide documentation as required by the department to substantiate all project expenditures.

**30.13(3)** Reimbursements will be made on real estate contract payments using the following procedures:

a. The grant recipient will submit to the department a copy of the real estate contract which must stipulate that the grant recipient will get physical control of the property on or before the date the first contract payment is made.

b. The grant recipient will submit to the department a copy of any approval which it is required to obtain from any governing body to enter into a real estate contract.

c. The grant recipient will submit to the department an up-to-date title opinion from its official legal officer indicating that the landowner has and can convey clear title to the grant recipient.

d. The grant recipient will submit a project billing with photocopy of the canceled warrant when claiming reimbursement.

e. When final payment has been made and title obtained, the grant recipient will submit to the department a copy of the deed and a certificate of title from its official legal officer. Only one reimbursement request may be submitted if the total project cost is \$10,000 or less. If more than \$10,000, no more than two reimbursement requests may be submitted.

A final reimbursement request shall be submitted within 90 days following the completion date indicated on the cooperative agreement. Failure to do so may be cause for termination of the project with no further reimbursement to the grant recipient.

Ten percent of the total reimbursement due any grant recipient for a development project will be withheld pending a final site inspection or until any irregularities discovered as a result of a final inspection have been resolved. Final site inspections will be conducted by assigned department staff within 30 days of notification by project sponsor that a project is completed.

**571—30.14(77GA,SF2381) Implementation of pilot program for state and local cooperative lake rehabilitation.** Rescinded ARC 6789C, IAB 1/11/23, effective 2/15/23.

These rules are intended to implement Iowa Code section 452A.79.

**571—30.15 to 30.50** Reserved.

DIVISION II  
WATER TRAILS DEVELOPMENT PROGRAM AND LOW-HEAD DAM PUBLIC HAZARD PROGRAM

**571—30.51(455A,461A,462A) Definitions.** For purposes of this division, the following definitions shall apply:

“*Advisory committee*” means the water trails advisory committee.

“*Commission*” means the natural resource commission.

“*Coordinator*” means the staff person of the department responsible for implementing this division.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

“*Low-head dam*” means a uniform structure across a river or stream that causes an impoundment upstream, with a recirculating current downstream.

“*Navigable waters*” means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

“*Scoring committee*” means the water trails scoring committee, which consists of the coordinator, two department staff members appointed by the director, and two representatives and two alternates of the water recreation community selected by the director.

“*Sponsor*” means an eligible applicant, as described in these rules.

“*Water trail*” means a point-to-point travel system on a navigable water and a recommended route connecting the points.

[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—30.52(455A,461A,462A) Purpose and intent.** The water trails development program and the low-head dam public hazard program provide funds to assist development of local water trails on navigable waters of the state of Iowa and to support safety projects for low-head dams in the state of Iowa. The programs will be available to fund two types of projects: those that enhance water trails development and recreation and those that are limited to projects that primarily enhance dam safety in order to reduce drownings.

**571—30.53(455A,461A,462A) Program descriptions.**

**30.53(1) *Water trails development program.*** The department will provide funds to cities, counties and nonprofit organizations in the state of Iowa to develop water trails eligible for designation throughout the state. The goal of the water trails development program is to assist and encourage the development of community-driven water trails that provide features described herein and appropriate river management through the design and spacing of accesses. At the same time, the program shall discourage unnecessary impacts to natural resources through construction. Water trails development program projects may be eligible to become designated water trails, as determined by the department, and may be eligible for inclusion in the department's marketing materials.

**30.53(2) *Low-head dam public hazard program.*** The department will provide funds to dam owners, including counties, cities, state agencies, cooperatives, and individuals, within Iowa to undertake projects that warn the general public about drowning hazards related to low-head dams or that remove or otherwise modify low-head dams to create a safer experience on Iowa's navigable waters. Low-head dam removal and modification projects, when possible, shall enhance or restore ecological and recreational functions of rivers, including but not limited to fish passage, aquatic habitat, and navigation.

**571—30.54(455A,461A,462A) *Announcement of funding opportunity.*** The coordinator shall announce, at least annually, the availability of funds for the programs, designate a time and place for receiving proposals, identify any additional requirements to those enumerated in this division for successful applications, and provide at least 90 days for sponsors to submit such proposals. Not more than quarterly, the department shall provide for additional application cycles if additional funds are made available or otherwise become available.

**571—30.55(455A,461A,462A) *Grant requirements.*** By submitting a proposal pursuant to this division, a sponsor will agree to the following terms and conditions:

**30.55(1) *Maintenance and ownership.*** The sponsor will assume the overall maintenance of the integrity of the project or shall otherwise make agreements with landowners and other interested parties for such long-term maintenance as may be required.

**30.55(2) *Agreements.*** Before funds are disbursed, the sponsor will enter into a project agreement with the department. The agreement shall detail and further define the relationship of the parties.

**30.55(3) *Resource impacts.*** The sponsor will install safeguards and otherwise ensure that the proposed project will have minimum or negligible impacts on natural resources.

**30.55(4) *Timely commencement of projects.*** Funds must be completely expended within two years of the award. If the sponsor is not able to complete a project within the original time period, the sponsor must seek and receive an extension from the department to be eligible for funds beyond the original time period for completion.

**30.55(5) *Reports.*** The sponsor shall be responsible for the filing of a midterm report about the status of the project. The report shall include a description of funds expended and any issues encountered or problems that may delay or otherwise cause the project not to be completed. The sponsor shall submit a final report, which shall include the complete budget outlay for the completed project; samples of the completed project, if applicable; and a narrative of the project.

**30.55(6) *Expenditures.*** The sponsor shall expend all funds in accordance with the sponsor's governance documents, which may include applicable provisions of the Code of Iowa.

**30.55(7) *Record keeping.*** The sponsor shall keep all project records for three years after the final report is completed. These records are to be available for audit by the state.

**30.55(8) *Grant amendments.*** For any deviation from the project outlined in the original application, the sponsor must receive approval from the coordinator in advance via electronic mail or in writing.

**30.55(9) *Permits and licenses.*** The sponsor must obtain any and all required licenses and permits from federal, state, and local authorities before commencing any activity pursuant to a grant award.

**30.55(10) *Control of project site.*** The sponsor must demonstrate that the project site or sites are under the physical control of the sponsor or its partners, either by fee title, lease, management agreement,

or easement. The term of a lease, management agreement, or easement must be commensurate with the life expectancy of the proposed improvements.

**571—30.56(455A,461A,462A) Application procedures.** For proposals to be considered for funding, the sponsor shall submit them in the following manner:

**30.56(1)** The sponsor will submit an application on the forms provided by the department postmarked by the date provided in the grant opportunity announcement. The forms shall include in the project narrative a statement of grounds for eligibility.

**30.56(2)** The sponsor will support any claim of cost share through a signed letter from the organization providing the cost share.

**571—30.57(455A,461A,462A) Proposal evaluation.**

**30.57(1)** Proposals will be evaluated by the scoring committee. The scoring committee shall evaluate both water trails development program proposals and low-head dam public hazard program proposals.

**30.57(2)** Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—30.58(455A,461A,462A) Sponsor eligibility.**

**30.58(1)** *Water trails development program.* The water trails development program is limited to local divisions of Iowa government and to nonprofit organizations recognized and incorporated pursuant to the laws of Iowa.

**30.58(2)** *Low-head dam public hazard program.* The low-head dam public hazard program is available to dam owners, including counties, cities, state agencies, cooperatives, and individuals.

**571—30.59(455A,461A,462A) Project eligibility.**

**30.59(1)** *Water trails development program.* The scoring committee will evaluate proposals for water trails development projects to determine whether the projects will achieve, or achieve progress related to, the goal of creating water trails that may ultimately be eligible for designation on navigable waters in the state of Iowa. The following types of projects may be eligible:

*a. Accesses.* Construction of low-impact water access points or other conveyances by which recreational users are provided a means of legally placing vessels in the water and removing them.

*b. Land acquisition for water trail development.* Purchases of easements or fee title lands that will be used for water trail navigation, such as access, portage, camping, or other uses related to navigation on a water trail.

*c. Dam warning signage.* Warning signs, supporting structures, and navigational aids such as buoys at and near low-head dams.

*d. Navigation and interpretive signage.* Various water trail signs and markers, as needed, to instruct recreational users about safe uses, regulation of access areas, and surrounding area characteristics.

*e. Portages.* Construction of portage trails where a portage would aid navigation or around dangerous water areas, such as dams, unnavigable waters, or any other sections of water that are potentially dangerous or life-threatening.

*f. Related construction and development.* Construction and development of items related to water trail navigation, including dam modification/removal; amenities such as access roads or parking areas, canoe racks or bike racks for shuttling purposes, and restrooms, picnic areas, and campsites that are easily accessible from waterways of primary use by water travelers; and contracted costs of developing any of the water trails navigational amenities listed. Direct labor costs to the sponsor may count toward in-kind match according to prevailing local wages, up to \$10.50 per hour.

*g. Promotion.* Informational publications of water trails for public access and online materials available to the public.

*h. Education.* Education projects related to water safety and appropriate etiquette, with a primary focus on water trails recreation.

*i. Materials and equipment.* Actual material cost of trail maintenance tools, gravel, fencing supplies, gates, bridges, culverts, riprap, and other materials necessary for trail, portage and access maintenance.

**30.59(2) Low-head dam public hazard program.** The scoring committee will evaluate proposals for projects that enhance safety at low-head dams on or adjacent to navigable waters in Iowa. The scoring committee will evaluate the following three categories of proposals:

*a. Small projects.* Small projects shall include proposal requests of up to \$20,000. Eligible projects for consideration for award as small projects shall include: warning signage and supporting infrastructure; feasibility, environmental, or preliminary design or engineering studies related to removal of hazardous structures; and construction costs related to portage trails and modification or removal of hazardous dams.

*b. Medium-sized projects.* Medium-sized projects shall include proposal requests of \$20,001 to \$50,000. Eligible projects for consideration of award as medium-sized projects shall include: warning signage and supporting infrastructure; and construction and engineering costs related to portage trails and modification or removal of hazardous dams.

*c. Large projects.* Large projects shall include proposal requests of more than \$50,000. Eligible projects for consideration of award as large projects shall include construction and engineering costs related to modification or removal of hazardous dams.

**571—30.60(455A,461A,462A) Cost-share requirements.**

**30.60(1) Water trails development program.** Grant proposals for water trails development projects do not require cost share; however, cost share is strongly encouraged through the selection criteria. Any claim of cost share shall be supported through a signed letter from the organization providing the cost share.

**30.60(2) Low-head dam public hazard program.** Proposals requesting funds to be used for warning signs, supporting structures, and navigational aids such as buoys at and near low-head dams shall receive priority and shall be selected pursuant to the dam owner's contribution of at least 20 cents for every 80 cents awarded by the department. For the remainder of funds, proposals for other low-head dam public hazard projects shall provide at least 50 percent of the funds required to complete small, medium-sized, and large projects. Cost-share funds may include local, private, federal or other state funds. Any claim of cost share required by this subrule shall be supported through a signed letter from the organization providing the cost share. The department strongly encourages sponsors to provide more cost share than is required by these rules, and the scoring committee will provide additional consideration to those proposals that exceed cost-share requirements.

**571—30.61(455A,461A,462A) Evaluation criteria.**

**30.61(1) Water trails development program.**

*a.* The scoring committee shall evaluate grant proposals for water trails development program projects based on the following criteria:

- (1) Feasibility of the proposed project;
- (2) Level of private resources or local resources or both available to the project; and
- (3) The project's contribution to developing a designated water trail or designated wilderness water trail.

*b.* The scoring committee shall publish its ranking system, which shall be based on the criteria described above, with the application forms. The department shall post this ranking system on its website, [www.iowadnr.gov](http://www.iowadnr.gov), at least 30 days prior to proposal due dates.

*c.* Designated water trails.

(1) For purposes of this rule, designated water trails shall include those bodies of water with the following minimum treatment:

1. Provide signs to users about possible dangers and portages;

2. Possess adequate portage around obstructions and dams, or have modified obstructions and dams to make them safe to navigate, or ensure that the water trail begins or ends a safe distance upstream and downstream from the obstruction or dam;

3. Have accesses spaced and developed appropriately to the natural resource integrity of the water body from public roadways to the water trails;

4. Provide periodic kiosks with information for users;

5. Identify access to camping, lodging or other overnight accommodations; and

6. Have adequate promotion through maps, brochures and other media, which include information about the access points, difficult areas, distance between accesses, nearby cities, ADA amenity information, safety information, and other information related to use of the water trail.

(2) For purposes of this rule, designated wilderness water trails, because they are located in areas of special scenic, ecological, geological, habitat or wildlife value, shall be a type of designated water trail that encourages only low-impact human uses and keeps signage and accesses to a minimum, but still provides critical information and access.

**30.61(2) *Low-head dam public hazard program.*** The scoring committee shall consider the following criteria when evaluating cost-share proposals for low-head dam public hazard program projects:

a. Improvements to public safety;

b. Demonstrated beneficial impacts to the overall stream health, fish migration and habitat, aesthetics, and recreational impacts; and

c. Contribution of private resources or local resources or both beyond the minimum requirements provided by these rules.

**571—30.62(455A,461A,462A) Disbursement of awards.**

**30.62(1) *Water trails development program.*** Grants for water trails development projects will be announced not later than 90 days after the grant proposals are due. The earliest disbursement date is July 1 of the following state fiscal year.

**30.62(2) *Low-head dam public hazard program.*** Grants for low-head dam public hazard projects will be announced not later than 90 days after the grant proposals are due. All funds shall be obligated not later than July 1 of the next fiscal year.

**571—30.63(455A,461A,462A) Water trails advisory committee.** The advisory committee shall provide input to the water trails development program and the low-head dam public hazard program. The advisory committee appointed by the director shall be comprised of a minimum of six members of the water recreation community, including canoe and kayak enthusiasts and club leaders, interested conservation associations, canoe and kayak livery owners, and county conservation board staff in Iowa. Members of the advisory committee shall serve for two years.

The meetings of the advisory committee shall be held at least four times per calendar year and shall be arranged by the coordinator. The advisory committee will provide expertise to the scoring committee and assist the department in the development of any water trails or low-head dam public hazard master planning that the department may undertake.

These rules are intended to implement Iowa Code chapters 455A, 461A, and 462A and 2008 Iowa Acts, Senate File 2380 and House File 2700.

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CHAPTER 33  
RESOURCE ENHANCEMENT AND PROTECTION PROGRAM:  
COUNTY, CITY AND PRIVATE OPEN SPACES GRANT PROGRAMS

Part 1  
GENERAL PROVISIONS

**571—33.1(455A) Purpose.** The purpose of these rules is to define procedures for the administration of the private cost-sharing funds within the open spaces account, the county conservation account, and the city park and open spaces account of the resource enhancement and protection fund.

**571—33.2(455A) Resource enhancement policy.** The resource enhancement and protection program and its various elements shall constitute a long-term integrated effort to wisely use and protect Iowa's natural resources through the acquisition and management of public lands, the upgrading of public park and preserve facilities; environmental education, monitoring, and research; and other environmentally sound means. Expenditure of funds from the county conservation account, the city park and open spaces account and the private cost-sharing portion of the open spaces account shall be in accord with this policy.

**571—33.3(455A) Definitions.**

*"County resource enhancement committee"* means the county resource enhancement committee created in 1989 Iowa Acts, chapter 236, section 7 [Iowa Code section 455A.20].

*"Department"* means the department of natural resources created in Iowa Code section 455A.2.

*"Director"* means the director of the department of natural resources.

*"Natural resource commission"* means the natural resource commission of the department created in Iowa Code section 455A.5.

*"Open spaces"* means those natural or cultural resource areas that contain natural vegetation, fish, wildlife, or have historic, scenic, recreation and education value. Examples of open spaces in cities and towns include, but are not limited to, parks, riverfronts and town squares. In rural areas, open spaces include, but are not limited to, such areas as woodlands, prairies, marshlands, river corridors, lake shores, parks and wildlife areas.

**571—33.4(455A) Restrictions.** Funds allocated to cities and counties under this chapter shall not be used for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities.

**571—33.5(455A) Grant applications, general procedures.**

**33.5(1)** Any project submitted from a city or county for grant consideration or for the private cost-sharing program must first have been reviewed and commented on by the county resource enhancement committee from the county in which the project is located. Application must include documentation of that review and a summary of any comments made by the committee.

**33.5(2)** Applications for all grant programs shall be made on forms provided by the department.

**33.5(3)** Applications shall provide sufficient detail as to clearly describe the scope of the project. Any application which is not complete at the time of project review and scoring, or for which additional pertinent information has been requested and not received, shall not be considered for funding.

**33.5(4)** Application deadlines are the same for county, city, and private open space grant programs. Applications will be reviewed and projects selected for funding at least once per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Upon a 60-day notice to potential applicants, the department may schedule additional review and selection periods to expedite the distribution of grant funds.

**33.5(5)** Joint applications are permitted. One entity must serve as the primary applicant. Joint projects sponsored by entities competing for funds from different REAP accounts, e.g., a joint city/county project, are allowable. Applications must clearly spell out the respective shares of project costs to be

derived from various REAP accounts if the project is approved for funding. Any cooperative agreement between joint applicants must be provided as a part of the application.

[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—33.6(455A) Appraisals.** Appraisal reports must be approved or disapproved in writing by the director. Grants may include incidental costs associated with the acquisition, including, but not limited to, costs for appraisals, abstracts, prorated taxes, deed tax stamps, recording fees and any necessary surveys and fencing.

**571—33.7(455A) Groundwater hazard statements.** Grantees must obtain a properly completed groundwater hazard statement on all proposed acquisitions before the acquisition is completed. The statement must be filed with the department and county recorder pursuant to Iowa Code section 558.69. Prior to the acquisition of any property that has an abandoned or unused well, hazardous waste disposal site, solid waste disposal site, or underground storage tank the grantee must file with the department a plan that details how these conditions will be managed to best protect the environment. This plan must be approved in writing by the director before the land is acquired.

**571—33.8(455A) Rating systems not used.** During any funding cycle when total grant requests are less than the allotment available, the rating system need not be applied. All applications will be reviewed by the appropriate committee for eligibility to ensure they meet minimum scoring requirements and to ensure consistency with program policy and purposes.

**571—33.9(455A) Applications not selected for grants.** All applications for projects considered eligible but not scoring high enough to be awarded a grant immediately will be retained by the department until two months prior to the next regular submittal date during which time they may be funded. If not approved for funding by that time, applicants will be notified by the department in writing. The original application will be returned to applicants only upon request. The applicant may resubmit the project or an amended version of the project for scoring and consideration during the next application cycle by resubmitting an original or amended application and five copies by the respective deadline.

**571—33.10(455A) Similar development projects.** An application for a development project grant may include development on more than one area if that development is of a like type (e.g., tree and shrub plantings).

**571—33.11(455A) Commission review and approval.** The director will present the recommendations of the appropriate project review and selection committee in recommended funding order to the natural resource commission at its next meeting following the ranking of projects for funding. The commission may approve or disapprove funding for any project on the list. The commission may change the order of the list. Reasons for change or rejection of any recommended project must be included in the motion to change the order of the list or reject any project.

**571—33.12(455A) Timely commencement and completion of projects.** Grant recipients are expected to commence and complete projects in a timely and expeditious manner. A project period commensurate with the work to be accomplished will be established and included in the project agreement. Project sponsors may receive up to 90 percent of approved grant funds at the start of the project period. Failure to initiate the project or to complete it in a timely manner may be cause for termination of the project, return of unused grant funds at the time of termination, and cancellation of the grant by the department.

**571—33.13(455A) Waivers of retroactivity.** Normally grants for acquisitions or developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be granted in writing by the director and receipt of a waiver does not ensure funding, but only ensures that the project will be considered for funding along with all other applications.

**571—33.14(455A) Project amendments.** Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and grant amount. All amendments must be approved by the appropriate project review and selection committee and by the director. Amendments which result in an increase in the cost of the project in excess of \$25,000 or 25 percent of the approved cost, whichever is greater, or which involve a change in the project purpose also must be approved by the commission.

**571—33.15(455A) Payments.** Ninety percent of approved grant amounts may be paid to project sponsors when requested, but not earlier than start-up of the project. Ten percent of the grant total shall be withheld by the department pending successful completion and final inspection, or until any irregularities discovered as a result of a final site inspection have been resolved.

**571—33.16(455A) Record keeping and retention.** Grant recipients shall keep adequate records relating to the administration of a project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

**571—33.17(455A) Penalties.** Whenever any property, real or personal, acquired or developed with resource enhancement and protection funds passes from the control of the grantee or is used for purposes other than the approved project purpose, it will be considered an unlawful use of the funds. If a grantee desires to use the approved funds for a purpose other than the approved project purpose that is an approved use of funds under the provisions of Iowa Code chapter 455A and these rules, the grantee shall seek an amendment to the project purpose by following the provisions of 33.14(455A). The department shall notify the grantee of any such violation.

**33.17(1) Remedy.** Funds used without authorization, for purposes other than the approved project purpose, or unlawfully must be returned to the department for deposit in the account of the resource enhancement and protection fund from which they were originally apportioned. In the case of diversion of property acquired with resource enhancement and protection fund assistance, property of equal value at current market prices and with similar open space benefits may be acquired with local, nongrant funds to replace it. Such replacement must be approved by the appropriate review and selection committee and the director. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided in this subrule are in addition to others provided by law.

**33.17(2) Land disposal.** Whenever the department, and, if a city or county, the grantee, determine that land acquired or developed with resource enhancement and protection fund assistance is no longer of value for the program purposes, or that the grantee can show good cause why the land should no longer be used in accord with the approved project purpose; the land may be disposed of with the director's approval and the proceeds therefrom used to acquire or develop an area of equal value, or all grant funds shall be returned to the state for inclusion in the account from which the grant was originally made. If land acquired through the private grant program is determined to be no longer of interest by the state, the proposed dispersal of the property shall be reviewed by the grantee, and the grantee shall have the first right of refusal on an option to take title to the property in question.

**33.17(3) Ineligibility.** Whenever the director determines that a grantee is in violation of this rule, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

**571—33.18(455A)** Rescinded IAB 6/4/97, effective 7/9/97.

**571—33.19(455A) Property tax reimbursement.** Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions made under the private cost-sharing program specified in part 4 of these rules based on the reimbursement formula provided for in Iowa Code section 465A.4.

**571—33.20(455A) Public hearing.** Any project in excess of \$2 million must be the subject of a public hearing in the area of the state affected by the project before funds can be obligated to the project.

**571—33.21(455A) Conflict of interest.** If a project is submitted to a review and selection committee by a city, conservation board or private conservation interests, one of whose members or employees is on the review and selection committee, that individual shall not participate in discussion on and shall not vote on that particular project.

**571—33.22(455A) Public communications.** Grant recipients shall participate in public communications activities to inform the public of the REAP program and of their particular project. The project will not be considered successfully completed, for purposes of 571—33.15(455A), until evidence is provided to the department REAP coordinator that the following requirements have been met. The remaining 10 percent payment of the grant total will not be issued until such evidence has been provided. Evidence includes but is not limited to photographs showing sign placement, newspaper or magazine clippings, printed brochures or fliers available to the public, exhibits for public display and other related materials. Information gathered from site inspections by the department may also be considered acceptable evidence.

**33.22(1) Signs.** Grant recipients are required to adequately display the 12-inch by 12-inch REAP signs, provided by the department at no charge, on project locations where appropriate so that users of the project can readily see that REAP is at least partially responsible for the project. The REAP signs will be maintained and replaced as necessary as long as the department has signs available.

**33.22(2) Dedication ceremony.** Grant recipients shall hold a public meeting or event to dedicate the project. Information provided during the event shall include information in regard to the REAP program and its role in supporting the project. This information shall also be provided to local news media by use of a news release. Local and state elected officials shall be invited to attend and participate.

**33.22(3) Grants include public communications plan.** A description of the public communications plan shall be included in every project submitted as a grant request. Grant recipients shall carry out the plan if their project is funded.

**571—33.23 to 33.29** Reserved.

Part 2  
COUNTY GRANTS

**571—33.30(455A) County conservation account.** All funds allocated to counties under this program may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment; except as restricted by 571—33.4(455A).

**33.30(1) Allocation of funds.** The first \$350,000 in the resource enhancement and protection fund is allocated annually to the conservation education board and 1 percent of the revenues to the fund are allocated to the administration fund. Twenty percent of funds remaining after that allocation shall be allocated to the county conservation account. That 20 percent shall be distributed to counties as follows:

- a. Thirty percent equally to each county
- b. Thirty percent based on county population
- c. Forty percent on a competitive grant basis

In determining the amount to be allocated to each county based on population, the department will use the most current census data available from the department of economic development.

**33.30(2) Expenditure guidelines.** All expenditures shall be in accord with the policy stated in 571—33.2(455A) and subject to the restrictions stated in 571—33.4(455A). Expenditure of funds for personnel costs from 33.30(1) “a” and “b” is allowable, but only when personnel are clearly directed toward the purpose and policy of the resource enhancement and protection program. No personnel costs are allowable under 33.30(1) “c” grant program.

Up to 20 percent of a total project's cost under 33.30(1) "c" may be used to cover costs of engineering and design work or other consultant fees directly associated with the project.

**33.30(3) Project planning and review committee.**

a. The makeup of this committee is as follows: two representatives of the department appointed by the director; two county conservation board directors appointed by the director of the department with input from the Iowa association of county conservation boards; one member selected every three years by a majority vote of the director's appointees. Additionally, there shall be at least two alternates designated by the director with input from the Iowa association of county conservation boards. The members shall select a chairperson at the first meeting during each calendar year. Terms of appointment to the committee shall be on a three-year staggered term basis.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

**33.30(4) Project selection criteria.** Under the competitive grants program, a project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. Criteria and scoring systems must be distributed to all counties at least 90 days prior to project application deadline. Criteria will be reviewed at least annually to determine if amendments are needed. The committee shall evaluate and rank the resource enhancement and protection (REAP) county conservation grant applications, scoring each criterion from 1 to 10, low to high, and using the following multipliers for each criterion:

a. The committee shall use a multiplier of four for a demonstrated relationship to the state comprehensive outdoor recreation plan, the Iowa open spaces protection plan, the county resource enhancement plan, and other relevant local, state and federal plans.

b. The committee shall use a multiplier of three for the quality of the site or the project, or both.

(1) Quality of site. For land acquisition projects, the committee shall consider the following characteristics:

1. Level of significance. Relative rarity of the natural resources found on the project site, including but not limited to native vegetation, documented presence of species of greatest conservation need as defined by the Iowa Wildlife Action Plan developed by the department, which may be amended from time to time, or other uncommonly occurring but native resources.

2. Resource representation. Quality of the project site, including but not limited to the size and diversity of the project area and the vegetation and wildlife it supports.

3. Relation to public land. Proximity to existing wildlife management areas, existing parks and other public recreation areas, or other greenbelt areas already under public ownership and management.

(2) Quality of project. For construction projects, the committee shall consider plans that demonstrate the highest and best site-specific quality of design, including projects that use materials which incorporate energy savings and adhere to sustainable building principles, including waste minimizations and material reuse; plans for improvements that enhance the restoration or expansion of Iowa's natural resources or that use development principles which benefit the natural ecology of the proposed area; plans that include innovations or construction methods in the design and development of the project; and projects whose actual design and construction will exceed commonly accepted design and construction standards.

c. The committee shall use a multiplier of two for each of the following:

(1) Multiple benefits. The project provides the greatest number of public benefits/services to meet the public's diverse outdoor recreation interests.

(2) Public need. Demonstrated need for the project; increased public use of the project area as a result of the award, as documented through surveys and other testing methods; letters of support; and planning processes that consider social, demographic, ecological and economic considerations.

(3) Urgency of project. Specific factors or immediate threats to the project area that constitute urgency for acquisition or development, including but not limited to urban expansion, residential development, agricultural activities or clearing.

(4) Unique project characteristics. Documented relative rarity or uniqueness of the natural, cultural and historical resources found on the project site, including but not limited to the presence of rare or unique plant and animal species; rare, unique or protected ecosystems; and historical markers and other historically or culturally significant finds.

*d.* The committee shall use a multiplier of one for each of the following:

(1) Communication plan. Project sponsor's effort to inform and advise constituents and users about the importance of the proposed project and the plans to promote the proposed project to expected user groups.

(2) Economic benefit. Estimate of positive impact on local tourism, existing businesses, encouragement of new businesses, and values to nearby property owners.

**33.30(5) Availability of funds.** Those funds allocated on a per capita basis and those awarded in the competitive grant program shall be allocated only to counties dedicating property tax revenue at least equal to 22¢ per \$1000 of the assessed value of the county's taxable property to conservation purposes. Annual certification from the county auditor of each county shall be made on forms provided by the department. The certification shall include information on total assessed value of taxable property in the county; budget of the county conservation board, including a distinction of that which is derived from sources other than property taxes; a schedule of expenditures and staffing. A copy of this certification must be filed with the director. Resource enhancement and protection program funds received shall not reduce or replace county tax revenues appropriated for county conservation purposes.

*a.* The term "county conservation purposes" includes and is limited to the following activities and responsibilities:

(1) Operation and maintenance of real property and equipment under the jurisdiction and control of the county conservation board, and utilized by the public for museums, parks, preserves, parkways, playgrounds, recreational centers, county forests, county wildlife areas, establishment and maintenance of natural parks, multipurpose trails, rest room facilities, shelter houses and picnic facilities and other county conservation and recreational purposes as provided in Iowa Code section 350.4.

(2) The acquisition and development of real estate utilized for purposes authorized by Iowa Code chapter 350. The cost of planning, engineering or architectural services directly related to acquisition and development is allowable as a county conservation purpose.

(3) The county conservation board's share of joint operations of facilities and programs as described in Iowa Code section 350.7. The cost of the county's weed control program, as required by Iowa Code chapter 317, may specifically be included as a county conservation purpose if the county conservation board director or a member of the county conservation board staff is appointed county weed commissioner by the board of supervisors, and is given full authority to plan and accomplish an environmentally sound vegetative management program.

(4) The administration of the county conservation program including and limited to the expenses of board members, salary and expenses of the county conservation board director, and related clerical, technical and support costs charged directly to the county conservation board's budget.

(5) Any reimbursement from the county conservation board's budget for the actual expense of county-owned equipment, use of county equipment operators, supplies, and materials of the county, or the reasonable value of county real estate made available for the use of the county conservation board as provided by Iowa Code section 350.7. Such reimbursements shall be supported by daily time and activity records detailing the hourly charge for equipment and operator use, the specific quantities and cost of materials used, or a fee appraisal prepared by an independent fee appraiser and approved by the director.

(6) No other costs, including indirect costs as computed for purposes of federal grant programs or distribution of general county overhead, are allowable as a county conservation purpose.

*b.* Reserved.

**33.30(6) Certification procedures.** The annual certification that a county is dedicating property tax revenue at least equal to 22¢ per \$1000 of the assessed value of the county's taxable property to conservation purposes shall be submitted by the county auditor to the department on forms provided by the department. Certification is based upon actual expenditures for conservation purposes during

the previous fiscal year. Submission of a certification by October 1 of any year will qualify the county for per capita funds held in reserve for that county and establish eligibility for participation in the competitive grant program. The certification will remain in effect through June 30 of the following year. Counties that fail to meet this requirement for any given fiscal year are ineligible for that fiscal year. A county that is ineligible can reestablish eligibility for a future fiscal year through the certification process.

The levy of property taxes for county conservation board purposes shall be calculated in the following manner. First, the actual expenditures for all county conservation purposes for the fiscal year shall be determined. Next, the total of all receipts derived from county conservation activities and all grants and donations received or billed for from whatever source for county conservation purposes shall be determined. The total of all receipts and grants shall then be subtracted from the total expenditures. This result shall then be divided by the total taxable value of all county property to determine the amount per thousand utilized to support county conservation purposes.

Transfers of property tax receipts to the reserve account established under Iowa Code section 350.6 shall be included as expenditures in the fiscal year that transfers occur for purposes of the calculation of the certified levy. Withdrawals from the reserve account and expenditures and receipts reflected in the special resource enhancement account created as provided in Iowa Code section 455A.19 shall not be included in the calculation of the certified levy.

If a dispute arises over the appropriateness of a county expenditure as a county conservation purpose or the accuracy and correctness of the certified levy by the county auditor, the director shall notify the state auditor and request that a recommendation be included in the next audit report. Upon receipt of the audit report, the director shall make a final determination and adjust subsequent distributions to the county or request reimbursement from the county as necessary.

**33.30(7) *Fund distribution schedule.*** Funds from the county resource account which are distributed on a per capita and per county basis shall be distributed by the department to each eligible county quarterly.

**33.30(8) *Special account.*** Each county board of supervisors shall create a special resource enhancement account in the office of the county treasurer and the county treasurer shall credit all resource enhancement and protection funds from the state to that account.

REAP funds received by the county shall not be used to fund any program or activity that was funded in prior years by other county revenues. Expansion of previously funded programs is permitted. Each county board director, as part of financial documentation regarding the special resource enhancement and reserve accounts, shall document that county expenditures of REAP funds supported only programs and activities not funded in prior years by county revenues other than REAP funds. For purposes of this documentation, expenditures from the special resource enhancement account for land acquisition shall be viewed as a new program and not a continuation of previous land acquisition programs. Expenditures from the special resource enhancement account for routine maintenance of facilities must involve only facilities previously constructed or otherwise acquired with REAP funds. REAP funds may be used for renovation, expansion or upgrading of facilities regardless of the source of funding for the original facilities, except as prohibited by rule 571—33.4(455A). Likewise, expenditures from the special resource enhancement account for equipment, supplies, materials, or staff salaries must directly relate to the establishment or expansion of programs or activities with REAP funds, and such programs or activities shall not have been previously funded with other county revenues.

Failure to adequately document expenditures from the special resource enhancement account or to provide the documentation as previously described regarding these expenditures upon request by the state auditor or department staff will result in the county losing its eligibility to receive per capita and competitive grants from the REAP program for a period of one to three years. A county which loses its eligibility may reestablish its eligibility by certifying that the county tax dollars dedicated to county conservation purposes during the previous fiscal year were at least 22¢ per \$1000 of assessed taxable property.

**33.30(9) *Grant application schedule.*** Rescinded IAB 12/26/90, effective 1/30/91.  
[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—33.31 to 33.39** Reserved.

Part 3  
CITY GRANTS

**571—33.40(455A) Competitive grants to cities.** Fifteen percent of available funds in the resource enhancement and protection fund (after the \$350,000 annual allocation to the conservation education board and 1 percent of revenues to the fund are allocated to the administration fund) shall be allocated annually to the city park and open spaces grant account. That 15 percent shall be divided into three portions according to the percent of the state's urban population in each category, with each portion available on a competitive basis to cities falling within one of the following three size categories:

Cities of less than 2,000

Cities between 2,000 and 25,000

Cities larger than 25,000

Funds shall be initially apportioned to each category as per this rule. If at the time of project review and scoring there are funds available in any category which exceed the requests for grants in that category, those funds may, at the director's discretion, be transferred to another category where requests exceed the funds available.

**33.40(1) Eligible projects.** Grants for up to 100 percent of project costs made to cities may be used for the acquisition, establishment and maintenance of natural parks, preserves and open spaces.

Grants may include expenditures for multipurpose trails, rest room facilities, shelter houses and picnic facilities, museums, parks, preserves, parkways, city forests, city wildlife areas as well as other open space-oriented acquisition and development projects, subject to the restrictions in rule 571—33.4(455A).

**33.40(2) Eligible sponsors.** Any incorporated city or town in the state may make application for a grant.

**33.40(3) Grant ceilings.** Incorporated cities and towns are eligible to receive annual grants from the resource enhancement and protection fund in accordance with the following schedule:

Population	Maximum
0 — 1,000	\$ 50,000
1,001 — 5,000	75,000
5,001 — 10,000	100,000
10,001 — 25,000	125,000
25,001 — 50,000	150,000
50,001 — 75,000	200,000
over 75,000	300,000

The grant ceiling may be waived upon approval by the director if (1) the project is regional in nature or is projected to serve a minimum of 100,000 people; or (2) the project cannot be staged over a multiyear period so that a separate grant application might be submitted each year.

**33.40(4) Review and selection committee.**

*a.* The director shall appoint a five-member review and selection committee to evaluate project applications. This committee shall include one member representing each of the three size classes of cities (e.g., one from a city of less than 2,000, one from a city of 2,000 to 25,000, and one from a city of over 25,000). The director shall request a list of candidates from the Iowa league of cities and Iowa parks and recreation association. The remaining two members of the committee shall be a representative of the department and an at-large member. Additionally, there shall be at least two alternates designated by the director from the candidates list provided by the Iowa league of cities and the Iowa parks and recreation association. The committee shall elect its own chairperson from its members. Members shall serve three-year staggered terms.

*b.* Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

**33.40(5) *Project selection criteria.*** The committee shall evaluate and rank the resource enhancement and protection (REAP) city grant applications, scoring each criterion from 1 to 10, low to high, and using the following multipliers for each criterion:

*a.* The committee shall use a multiplier of four for the relationship to relevant regional and statewide programs based on the demonstrated relationship to the state comprehensive outdoor recreation plan, the Iowa open spaces protection plan, the county resource enhancement plan, and other relevant local, state and federal plans.

*b.* The committee shall use a multiplier of three for the quality of the site or the project, or both:

(1) Quality of site for land acquisition projects. The committee shall consider the following characteristics:

1. Level of significance. Relative rarity of the natural resources found on the project site, including but not limited to native vegetation, the documented presence of species of greatest conservation need as defined by the Iowa Wildlife Action Plan developed by the department, which may be amended from time to time, or other uncommonly occurring but native resources.

2. Resource representation. The quality of the project site, including but not limited to the size and diversity of the project area and the vegetation and wildlife it supports.

3. Level of threat. Specific factors or immediate threats to the project area that constitute urgency for acquisition and development, including but not limited to urban expansion, residential development, agricultural activities, or clearing.

4. Relation to public land. Proximity to existing wildlife management areas, existing parks, other public recreation areas or other greenbelt areas already under public ownership and management.

(2) Quality of project. For construction projects, the committee shall consider plans that demonstrate the highest and best site-specific quality of design, including projects that use materials which incorporate energy savings and adhere to sustainable building principles, including waste minimizations and material reuse; plans for improvements that enhance the restoration or expansion of Iowa's natural resources or that use development principles which benefit the natural ecology of the proposed area; plans that include innovations or construction methods in the design and development of the project; and projects whose actual design and construction will exceed commonly accepted design and construction standards.

*c.* The committee shall use a multiplier of two for each of the following:

(1) Environmental benefits. Projects that demonstrate a benefit to the surrounding environment, including but not limited to incorporation of land improvements that may have a positive impact on the larger ecosystem, such as timber or prairie establishment or wetland or filter strip development.

(2) Public benefit. A realistic estimate of the number of users of the project area and consideration of secondary benefits such as impacts on local tourism, surrounding businesses and adjacent property owners.

(3) Local support. Demonstrated need for the project and increased public use of the project area as a result of the award, as documented through surveys and other testing methods, letters of support, and planning processes that consider social, demographic, ecological and economic considerations.

*d.* The committee shall use a multiplier of one for a communication plan that identifies the project sponsor's effort to inform and advise constituents and users about the importance of the proposed project and plans to promote the proposed project to expected user groups.

**33.40(6) *Grant application schedule.*** Rescinded IAB 12/26/90, effective 1/30/91.  
[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—33.41 to 33.49** Reserved.

Part 4  
PRIVATE GRANTS

**571—33.50(455A) Private cost-sharing program.** At least 10 percent of the funds placed in the open spaces account shall be made available for cost sharing with private entities for cost sharing at a maximum level of 75 percent.

**33.50(1) Protection defined.** Protection is defined as the purchase of all or a portion of the rights associated with ownership of real property so as to ensure that open space values associated with that property are protected in perpetuity. Protection methods, in order of preference, include, but are not limited to, fee title acquisition, purchase of easements, or other mechanisms that provide long-term assurance of open space protection. Title for acquired properties shall be vested in the state of Iowa, and projects must be consistent with priorities established in the department of natural resources publication “Land Acquisition Programs and Priorities.”

**33.50(2) Eligibility to participate.** Any trust, foundation, incorporated conservation organization, private individual, corporation or other nongovernmental group able to provide funds or interest in land sufficient to equal at least 25 percent of a proposed protection project may submit or cause to have submitted a project for funding consideration. Except however, a private organization established to benefit a specific governmental entity is not eligible to submit a project. Governmental entities are also not eligible to submit a project.

**33.50(3) Grant amount.** The department will provide grants for up to 75 percent of the appraised cost of the land plus incidental acquisition costs. Costs in excess of these must be borne by the grantee.

**33.50(4) Project review and selection committee.**

*a.* The director shall appoint a committee to review and score projects. The committee shall include the following: three persons representing the private sector and two alternates selected from a pool of potential names as submitted to the director by the various private eligible groups; administrator of the conservation and recreation division of the department, or the administrator’s designee; and the bureau chiefs of the department’s wildlife bureau and parks, forests, and preserves bureau or their designees. The committee shall elect its own chairperson from its members. The committee will report to the director the order in which proposed projects were ranked using criteria as specified in 33.50(5).

*b.* Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual’s place.

**33.50(5) Project selection criteria.** The committee shall evaluate and rank the resource enhancement and protection (REAP) private cost-share grant applications, scoring each criterion from 1 to 10, low to high, and using the following multipliers for each criterion:

*a.* The committee shall use a multiplier of three for each of the following:

(1) Level of significance. The relative rarity of the natural resources found on the project site, including but not limited to native vegetation and the documented presence of species of greatest conservation need as defined by the Iowa Wildlife Action Plan developed by the department, which may be amended from time to time, or other uncommonly occurring but native resources.

(2) Resource representation. The quality of the project site, including but not limited to the size and diversity of the project area and the vegetation and wildlife it supports.

(3) Level of threat. Specific factors and immediate threats to the project area that constitute urgency for acquisition and development, including but not limited to urban expansion, residential development, agricultural activities, or clearing.

(4) Relation to public land. The proximity to existing wildlife management areas, existing parks, and other public recreation or greenbelt areas already under public ownership and management.

(5) Relationship to relevant regional and statewide programs. A demonstrated relationship to the state comprehensive outdoor recreation plan, the Iowa open spaces protection plan, or the county resource enhancement plan. The committee may evaluate other relevant local, state and federal plans at its discretion.

*b.* The committee shall use a multiplier of two for each of the following:

(1) Rare or unique species communities. The documented presence of species of greatest conservation need as defined by the Iowa Wildlife Action Plan developed by the department, which may be amended from time to time, in addition to subparagraph 33.50(5) “a”(1).

(2) Public benefits. A demonstrated benefit to the public, including but not limited to expanded recreational or educational opportunities and incorporation of land improvements that may have a positive impact on the ecosystem, such as bank stabilization, wetland development, or filter strips.

c. The committee shall use a multiplier of one for each of the following:

(1) Tourism and economic development potential. Impact on local tourism, including any enhancements to the economy in the vicinity of the project.

(2) Geographic distribution. Project site is located in a city or county that has not received a REAP grant.

(3) Multiple use potential. Project site provides more than one public use, e.g., the project provides hunting, fishing and hiking opportunities to the public.

(4) Additional funds. Level of funds obligated in excess of the minimum cost-share requirements.

(5) Quality of public communication plan. Project sponsor’s effort to inform and advise constituents and users about the importance of the proposed project and plans to promote the proposed project to expected user groups.

**33.50(6) *Department rejection of applications.*** The director may remove from consideration by the project review and selection committee any application for funding the acquisition of property that the department determines is not in the state’s best interest for the department to manage. The department’s basis for determining such interest may include, but not be limited to, inaccessibility to the project area, environmental contamination and unacceptable use restrictions, management cost, the proximity to other governmental entities which may impose use restrictions or special tax assessments on the area, or lack of conformance with priorities established in the department’s “Land Acquisition Programs and Priorities” document. Examples of use restrictions can include prohibitions on hunting, trapping, timber harvest, vegetation management, and easements which affect the range of public use and activities which could otherwise be allowed.

**33.50(7) *Certification of availability of funds.*** Applicants must certify at the time of application that sufficient funds, land, letter of credit, or other acceptable financial instrument is available from private sources to cover the private share of the project.

**33.50(8) *Project submission.*** Rescinded IAB 12/26/90, effective 1/30/91.

**33.50(9) *Acquisition responsibilities and process.*** The grantee is responsible for obtaining an appraisal that is approvable by the department and for obtaining the director’s written approval of that appraisal.

The grantee is responsible for negotiating an option to purchase the property with the seller. If the option contains any requirements for action by the department or restrictions on the use of the land, those requirements or restrictions must be approved by the director and the commission before they are incorporated into the option.

The grantee is responsible for closing the transaction, recording the transaction with the appropriate county recorder, and providing the department with a copy of the deed naming the department as owner and a title vesting certificate. The commission may, under special conditions, allow title to be vested in the name of a city or county. Necessary assurances may include the placement of special conditions on that title, the existence of an approved, long-term management agreement or other measures as deemed appropriate by the commission. The department may provide assistance at the request of the grantee, or at the director’s recommendation.

[ARC 6789C, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement Iowa Code chapter 455A.

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CHAPTER 35  
FISH HABITAT PROMOTION FOR COUNTY CONSERVATION BOARDS

**571—35.1(483A) Purpose and definitions.** The purpose of this chapter is to designate procedures for the allotment of fish habitat revenue to county conservation boards. These funds shall be used specifically to acquire from willing sellers whole or partial interest in land for use as or for protection of fish habitats and to develop and enhance fishable waters and habitat areas. The department shall administer the fish habitat funds for the purposes as stated in the law at both the state and county levels.

The following definitions apply in these rules:

“*Commission*” means the natural resource commission.

“*County*” means a county conservation board.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

“*District*” means a county conservation district.

**571—35.2(483A) Availability of funds.** Fish habitat funds are dependent on sales. Revenues received by the department shall determine the amount of moneys available at any time.

**35.2(1) Local share.** Funds available for county conservation boards shall be specified in the department’s budget in accordance with legislative appropriations. At least 50 percent of the fish habitat revenue shall be apportioned to county conservation boards.

**35.2(2) Distribution.** After deduction of 5 percent to be held for contingencies, the remaining local share shall be available on an annual basis. The department shall divide fish habitat funds equally among the districts. The districts shall have two years to obligate fish habitat funds once the funds are made available. After two years, the department shall apportion all unobligated funds equally among the districts.

**571—35.3(483A) Program eligibility.** All counties are eligible to participate in this program.

**571—35.4(483A) Eligibility for cost-sharing assistance.** A project shall not be eligible for cost sharing unless the commission specifically approves the project or the applicant has received a written waiver of retroactivity from the director prior to the project’s initiation. A project shall not be eligible for cost sharing unless public fishing is allowed; however, the review and selection committee as described in 35.6(1) may recommend for commission approval projects with restrictions on boating.

**35.4(1) Acquisition projects.** A licensed appraiser shall appraise lands or rights thereto to be acquired, and the appraisal shall be approved by department staff. The appraisal requirement may be waived when the staff determines that it is impractical for a specific project. The cost share shall not be approved for more than 90 percent of the approved appraised value. Acquisition projects are eligible for cost share either by direct payment as described in subrule 35.11(6) or by reimbursement to counties.

**35.4(2) Eligible acquisition activities.**

- a. Acquisition for pond and lake construction.
- b. Acquisition of fishable streams, ponds and lakes.
- c. Acquisition for watershed protection.

**35.4(3) Development projects.** Eligible expenditures for development projects shall include, but not be limited to, preliminary expenses; contracts; the purchase of materials and supplies; rentals; and extra labor that is hired only for the specific project. The purchase of equipment is not an eligible expenditure. Donated labor, materials and equipment-use and use of a county’s own labor and equipment are not eligible for cost-share assistance. Development projects are limited to lands legally controlled by the county for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the county.

**35.4(4) Enhancement projects.** For purposes of this rule, “enhancement” shall be considered to be synonymous with “development.” Eligible enhancement activities include:

- a. Physical placement of fish habitats in ponds, lakes, pits and streams.

- b. Armoring of pond, lake, pit and stream shores.
- c. Construction of aeration systems.
- d. Dredging of ponds or lakes.
- e. Construction of ponds and lakes.
- f. Construction of sediment-retaining basins.
- g. Repair of lake dam/outlets.
- h. Manipulation of fish populations and aquatic vegetation.
- i. Removal of dams.
- j. Construction of fish ladders.
- k. Construction of fish barriers.
- l. Construction of rock-faced jetties.

**35.4(5) *Project income.*** When, as a result of a purchase agreement or other title transfer action involving cost sharing with fish habitat funds, a county directly or indirectly receives financial income that would have been paid to the previous landowner, 90 percent of that income shall be transferred to the department unless the county has identified and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee shall recommend, and the director and commission shall approve, plans for the expenditure of income received pursuant to this subrule. In the absence of acceptable fish habitat development or acquisition plans, the county shall transfer to the department 90 percent of the income received as it is received. The department shall credit that income to the county's apportionment of the fish habitat fund as described in 35.2(1). The schedule of those reimbursements from a county to the state shall be included in the project agreement.

**571—35.5(483A) Application for assistance.** Applications must contain sufficient detail as to clearly describe the scope of the project and how the area shall be managed.

**35.5(1) *Form.*** Applications must be submitted on forms provided by the department.

**35.5(2) *Time of submission.*** Applications for funds shall be reviewed and selected for funding at least once per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of funds. In emergencies, a county may request a waiver so that an acquisition project may be approved for retroactive payments if funds are available and the project meets all other criteria.

**35.5(3) *Joint applications.*** Joint applications are permitted. One county shall serve as the primary applicant. A joint application shall clearly describe the respective share of project costs for each county named. Any cooperative agreement between the counties named shall be provided as a part of the application.

**35.5(4) *County funding.*** An applicant shall certify that it has committed its share of project costs and that these funds are available and shall state the means of providing for the county share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action shall be completely documented in the application.

**35.5(5) *Multiple development projects.*** An application for development project assistance may include development on more than one area if the development is of a like nature.

[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—35.6(483A) Project review and selection.**

**35.6(1) *Review and selection committee.***

a. Each district shall have a review and selection committee, hereinafter referred to as the committee. Each committee shall be composed of at least five county directors or their designees, with at least two designated alternates. Each district's committee shall determine which grant applications and amendment requests shall be selected for funding. For advisory purposes only, a department

biologist or designee shall be present during review and selection of grant applications and amendment requests.

*b. Conflict of interest.* An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

**35.6(2) Consideration withheld.** The committee shall not consider any application that on the date of the selection session is incomplete or for which additional pertinent information has been requested but not received.

**35.6(3) Application rating system.** The committee shall apply a rating system to each grant application considered for fund assistance. The department shall develop the rating system. The rating system shall be used to rate each application, and those applications receiving the highest ratings shall be selected for fund assistance to the extent of the allotment for each annual period. If the amount of grant moneys available exceeds that requested, applications shall be reviewed only to determine eligibility.

[ARC 6789C, IAB 1/11/23, effective 2/15/23]

**571—35.7(483A) Commission review.** The director shall present the committees' recommendations to the commission at its next meeting following the rating of projects for funding. The commission may approve or disapprove funding for any project on the list.

**571—35.8(483A) Grant amendments.** If funds are available, projects for which grants have been approved may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. The director shall approve project changes prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns shall not be approved if funds have already been committed or the work has already been performed.

**571—35.9(483A) Timely commencement of projects.** Grant recipients are expected to carry out their projects in an expeditious manner. A project for which a grant is approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission.

**571—35.10(483A) Project period.** A project period that is commensurate with the work to be accomplished shall be assigned to each project. Extensions shall be granted only in case of extenuating circumstances.

**571—35.11(483A) Payments.**

**35.11(1) Grant amount.** Grant recipients shall be paid 90 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

**35.11(2) Project billings.** Grant recipients shall submit billings for reimbursement or cost sharing on forms provided by the commission.

**35.11(3) Project billing frequency.** Project billings shall be submitted on the following basis:

*a.* Up to \$10,000 total project cost—one billing.

*b.* Over \$10,000 total project cost—no more than two billings.

**35.11(4) Documentation.** Grant recipients shall provide as required by the department documentation to substantiate all costs incurred on a project.

**35.11(5) Development projects.** Eighty percent of the approved local share may be paid to the county when requested, but not earlier than start-up of the project. The department, pending successful completion and final inspection of the project, shall withhold 20 percent of the local share until any irregularities discovered as a result of a final site inspection have been resolved.

**35.11(6) Acquisition projects.** The department may make payment directly to a property seller pursuant to the following criteria:

*a.* The county requests direct payment in the project application and shows good cause for such procedure;

- b. The seller provides to the county a marketable fee simple title, free and clear of all liens and encumbrances or material objections at the time of payment; and
- c. Sufficient program funds are available at the time of transfer.

**571—35.12(483A) Record keeping and retention.** A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income that normally would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action. A copy of the county's audits showing such income and disbursements for the grant period shall be submitted to the department's budget and grant bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state law.

**571—35.13(483A) Penalties.** Whenever any real or personal property acquired or developed with fish habitat fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it shall be considered an unlawful use of the funds. The department shall notify the county of any such violation.

**35.13(1) Remedy.** Funds thus used unlawfully shall be returned to the department for inclusion in the fish habitat fund, or local, non-cost-shared funds shall be used to acquire a replacement property of equal value at current market prices and with commensurate benefits to fish. The replacement property must be approved by the commission. The county shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this subrule are in addition to others provided by law.

**35.13(2) Land disposal.** Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with fish habitat fund assistance is no longer of value for the project purpose or that the county has other good cause, the commission may authorize that the land be disposed of and the proceeds thereof used to acquire or develop an area of equal value or that 90 percent of the proceeds be returned to the state for inclusion in the fish habitat fund.

**35.13(3) Ineligibility.** If the department determines that a county has unlawfully used fish habitat funds, the county shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code Supplement section 483A.3A.

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[Filed ARC 6789C (Notice ARC 6630C, IAB 11/2/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 98  
WILD TURKEY SPRING HUNTING  
[Prior to 12/31/86, Conservation Commission[290] Ch 111]

RESIDENT WILD TURKEY SPRING HUNTING

**571—98.1(483A) General.** Wild turkey may be taken during the spring season subject to the following:

**98.1(1) License.** When hunting wild turkey, all hunters must have in possession a wild turkey spring hunting license valid for the current year, the unused transportation tag issued with that license, a hunting license, and evidence of having paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No one, while hunting wild turkey, shall carry or have in possession any license or transportation tag issued to another hunter. No one who is issued a wild turkey license and transportation tag shall allow another person to use or possess that license or transportation tag while turkey hunting or tagging a turkey. A hunter having a license valid for one of the spring turkey seasons may accompany, call for, or otherwise assist any other hunter who has a valid turkey hunting license for any of the spring seasons. The hunter who is assisting may not shoot a turkey or carry a firearm or bow unless the hunter has a valid license with an unused tag for the current season.

*a. Two types of licenses will be issued.*

(1) Combination shotgun-or-archery license. Combination shotgun-or-archery licenses shall be issued by season and shall be valid statewide in the designated season only.

(2) Archery-only license. Archery-only licenses shall be valid statewide and shall be valid during all seasons open for spring turkey hunting, except the youth season.

*b. Number of licenses.* No one may apply for or obtain more than two paid spring wild turkey hunting licenses. A hunter may obtain no more than two combination shotgun-or-archery licenses, or two archery-only licenses, or one of each. If two paid combination shotgun-or-archery licenses are obtained, at least one must be for season 4. If one paid combination shotgun-or-archery license and one archery-only license are obtained, the combination shotgun-or-archery license must be for season 4.

**98.1(2) Daily bag and possession limit.** Season possession limit, including daily bag limit, is one bearded (or male) wild turkey per license.

**98.1(3) Shooting hours.** Shooting hours shall be from one-half hour before sunrise to sunset.

**571—98.2(483A) Means and method of take.**

**98.2(1) Permitted weapons.** Wild turkey may be taken in accordance with the type of license issued as follows:

*a. Combination shotgun-or-archery license.* Wild turkey may be taken by shotgun or muzzleloading shotgun not smaller than caliber .410 and shooting only shot sizes number 4 through 10 lead or nontoxic shot; and by bow and arrow as defined in paragraph 98.2(1)“b.” A person shall not have shotshells containing shot of any size other than number 4 through 10 lead or nontoxic shot on the person while hunting wild turkey.

*b. Archery-only license.* Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.22(481A), only longbow, compound, or recurve bows shooting broadhead arrows are permitted. Blunthead arrows with a minimum diameter of 9/16 inch may also be used. Arrows must be at least 18 inches long. No explosive or chemical devices may be attached to the arrow, broadhead, or blunthead.

**98.2(2) Prohibited devices.** The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait, crossbows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds are prohibited. Paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. “Paraplegic” means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. “Bait” means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food

products; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

**98.2(3) Zones.** A person with a resident wild turkey spring hunting license may take wild turkey statewide.

**98.2(4) Seasons.** Seasons will be established in accordance with the type of license issued.

*a. Combination shotgun-or-archery licenses.* Consecutive seasons are 4, 5, 7, and 19 days, respectively, with the first season beginning on the second Monday of April. These seasons shall be designated as seasons 1, 2, 3 and 4, respectively.

*b. Archery-only licenses.* The season shall be 35 days beginning on the second Monday of April. [ARC 9656B, IAB 8/10/11, effective 9/14/11; ARC 3832C, IAB 6/6/18, effective 7/11/18; ARC 5065C, IAB 7/1/20, effective 8/5/20; ARC 6787C, IAB 1/11/23, effective 2/15/23]

**571—98.3(483A) Procedures to obtain licenses.** All spring wild turkey hunting licenses will be sold using the electronic licensing system for Iowa (ELSI). Licenses may be purchased through ELSI license agents, by calling the ELSI telephone ordering system, or through the ELSI Internet license sales website.

**98.3(1)** Spring wild turkey hunting licenses will be sold beginning December 15 through the last day of the season for which the license is valid.

**98.3(2)** License quotas. There will be no quotas for combination shotgun-or-archery licenses or for archery-only licenses for resident hunters.

**98.3(3)** Landowner/tenant licenses. An eligible landowner or tenant may obtain a free combination shotgun-or-archery license or a free archery-only license. Nonresident landowners are not eligible for free turkey hunting licenses.

*a. Free combination shotgun-or-archery licenses.* A free combination shotgun-or-archery license will be issued by season and will be valid only on the farm unit of the landowner or tenant.

*b. Free archery-only licenses.* A free archery-only license will be valid for all seasons but only on the farm unit of the landowner or tenant.

*c. Number of licenses.* One paid combination shotgun-or-archery license or one paid archery-only license may be obtained in addition to the free shotgun-or-archery license or the free archery-only license. If a free archery-only license and a paid combination shotgun-or-archery license are obtained, the shotgun-or-archery license must be for season 4. If a free shotgun-or-archery license and a paid shotgun-or-archery license are obtained, one of the licenses must be for season 4.

**571—98.4(483A) Transportation tag.** Immediately upon the killing of a wild turkey, the transportation tag issued with the license and bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of the turkey. The hunter who shot the turkey must use the transportation tag issued to that hunter to tag the turkey. No one may tag a turkey with a transportation tag issued to another hunter. The tag must be attached in such a manner that it cannot be removed without mutilating or destroying the tag. The tag must be attached before the carcass can be moved in any manner from the place of kill. The transportation tag shall remain affixed to the leg of the turkey until the turkey is processed for consumption. The leg that bears the tag must be attached to the carcass of any wild turkey being transported within the state during any wild turkey spring hunting season. The tag shall be proof of possession of the carcass by the above-mentioned licensee.

**571—98.5(483A) Eligibility for free landowner/tenant turkey licenses.**

**98.5(1) Who qualifies for a free turkey hunting license.**

*a.* Owners and tenants of a farm unit and the spouse or domestic partner as defined by the Iowa department of administrative services and juvenile child of an owner or tenant who reside with the owner or tenant are eligible for free turkey licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

*b.* “Juvenile child” means a person less than 18 years of age or a person who is 18 or 19 years of age and is in full-time attendance at an accredited school pursuing a course of study leading to a

high school diploma or a high school equivalency diploma. A person 18 years of age or older who has received a high school diploma or high school equivalency diploma does not qualify.

**98.5(2) *Who qualifies as a tenant.*** A “tenant” is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner’s family, including in some circumstances the landowner’s spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

**98.5(3) *Definition of “actively engaged in farming.”*** Landowners and tenants are “actively engaged in farming” if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party that operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

**98.5(4) *Landowners who qualify as active farmers.*** These landowners:

- a. Are the sole operator of a farm unit (along with immediate family members); or
- b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work; or
- c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant; or
- d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements; or
- e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually; or
- f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

**98.5(5) *Landowners who do not qualify.*** These landowners:

- a. Use a farm manager or other third party to operate the farm; or
- b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

**98.5(6) *Where free licenses are valid.*** A free license is valid only on the farm unit of the landowner or tenant. “Farm unit” means all parcels of land that are at least two contiguous acres in size, that are operated as a unit for agricultural purposes, and that are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. “Agricultural purposes” includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

**98.5(7) *How many free licenses may be obtained.*** The maximum number of free licenses for the spring turkey season is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner’s family may obtain only one license. A tenant or the tenant’s family is entitled to only one free license even if the tenant farms land for more than one landowner.

**98.5(8) *Registration of landowners and tenants.*** Landowners and tenants and their eligible family members who want to obtain free spring wild turkey hunting licenses must register with DNR before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

#### **571—98.6(483A) Youth spring wild turkey hunt.**

**98.6(1) *Licenses.*** A special youth spring wild turkey hunting license valid statewide may be issued to any Iowa resident who is 15 years old or younger on the date the youth purchases the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth’s family is eligible. Each participating youth must be accompanied by an adult who possesses a valid wild turkey spring hunting license for one of the seasons and a hunting license, and has paid the habitat fee (if the adult is

normally required to have a hunting license and to pay the habitat fee to hunt). The accompanying adult must not possess a firearm or bow and must be in the direct company of the youth at all times. A person may obtain only one youth turkey hunting license but may also obtain one archery-only license or one combination shotgun-or-archery license for season 4.

**98.6(2) Youth season dates.** The youth turkey hunting license shall be valid during the three days immediately before the first turkey season. A person who is issued a youth spring wild turkey hunting license and does not take a wild turkey during the youth spring wild turkey hunting season may use the wild turkey hunting license and unused tag during any remaining spring wild turkey hunting season in the year in which the youth license was issued.

**98.6(3) Limits and license quotas.** An unlimited number of licenses may be issued. The daily and season bag and possession limit is one bearded (or male) wild turkey.

**98.6(4) Method of take and other regulations.** Wild turkeys may be taken with shotguns, muzzleloaded shotguns or bows as described in 571—98.2(483A). All other spring wild turkey hunting regulations for residents shall apply.

**98.6(5) Procedures for obtaining licenses.** Paid and free youth season licenses may be obtained through ELSI beginning December 15 through the last day of the youth season.

[ARC 9656B, IAB 8/10/11, effective 9/14/11; ARC 3832C, IAB 6/6/18, effective 7/11/18]

**571—98.7(481A) Harvest reporting.** Each hunter who bags a turkey must report that kill according to procedures described in 571—95.1(481A).

**571—98.8** Reserved.

#### NONRESIDENT WILD TURKEY SPRING HUNTING

**571—98.9(483A) General.** Wild turkey may be taken during the spring season subject to the following:

**98.9(1) License.** When hunting wild turkey, all hunters must have in possession a valid nonresident wild turkey spring hunting license, the unused transportation tag issued with that license, a valid nonresident hunting license, and proof of having paid the current year's habitat fee. No one, while hunting turkey, shall carry or have in possession any license or transportation tag issued to another hunter. No one who is issued a wild turkey license and transportation tag shall allow another person to possess that license or transportation tag while turkey hunting or tagging a turkey. Licenses will be issued by zone and season and will be valid in the designated zone and season only. No one shall obtain more than one nonresident wild turkey spring hunting license. A hunter having a license valid for one of the spring turkey seasons may accompany, call for, or otherwise assist any other hunter who has a valid turkey hunting license in that season and zone. The hunter who is providing assistance may not shoot a turkey or carry a firearm or bow unless that hunter has a valid license and an unused tag for the current season and zone. Two types of licenses will be issued:

*a. Combination shotgun-or-archery license.* Shotguns, muzzleloading shotguns and archery equipment as defined in subrule 98.12(1) may be used.

*b. Muzzleloading shotgun-only license.* Only muzzleloading shotguns as defined in subrule 98.12(1) may be used.

**98.9(2) Seasons.** Bearded (or male) wild turkey may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during the first, second, third or fourth seasons as defined in 98.2(4) "a."

**98.9(3) Daily bag, possession and season limits.** The daily bag limit is one bearded (or male) wild turkey; the possession and season limit is one bearded (or male) wild turkey.

**98.9(4) Shooting hours.** Shooting hours shall be from one-half hour before sunrise to sunset each day.

**98.9(5) Special licenses.** The commission shall issue licenses in conformance with Iowa Code section 483A.24(12) to nonresidents 21 years of age or younger who have a severe physical disability or who have been diagnosed with a terminal illness. A person applying for this license must provide a completed form obtained from the department of natural resources. The application shall be certified

by the applicant's attending physician with an original signature and declare that the applicant has a severe physical disability or a terminal illness using the criteria listed in 571—Chapter 15. A medical statement from the applicant's attending physician that specifies criteria met shall be on 8½" × 11" letterhead stationery. The attending physician shall be a currently practicing doctor of medicine, doctor of osteopathy, physician assistant or nurse practitioner.

[ARC 8253B, IAB 11/4/09, effective 12/9/09; ARC 3832C, IAB 6/6/18, effective 7/11/18]

**571—98.10(483A) Zones open to hunting.** Licenses shall be valid only in designated areas as follows:

1. Zone 4. Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59.
2. Zone 5. Zone 5 is that portion of Iowa bounded on the north by U.S. Highway 20 and on the east by U.S. Highway 59.
3. Zone 6. Zone 6 is that portion of Iowa lying east of U.S. Highway 63 and north of Interstate Highway 80.
4. Zone 7. Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80, and on the east by U.S. Highway 63.
5. Zone 8. Zone 8 is that portion of Iowa north of U.S. Highway 20 and west of U.S. Highway 63.

**571—98.11(483A) License quotas.** A limited number of wild turkey hunting licenses will be issued in each zone in each season as follows:

**98.11(1) Combination shotgun-or-archery licenses.**

- a. Zone 4. 262.
- b. Zone 5. 55.
- c. Zone 6. 165.
- d. Zone 7. 35.
- e. Zone 8. 20.

**98.11(2) Muzzleloading shotgun-only licenses.** 150 statewide. A hunter purchasing a muzzleloading shotgun license must declare a zone and season and hunt only in that zone and season.

**571—98.12(483A) Means and method of take.**

**98.12(1) Permitted weapons.** Wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than caliber .410 and shooting only shot sizes number 4 through 10 lead or nontoxic shot. No person may have shotshells containing shot of any size other than number 4 through 10 lead or nontoxic shot on the person while hunting wild turkey. Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.22(481A), only longbow, compound, or recurve bows shooting broadhead arrows are permitted. Blunthead arrows with a minimum diameter of 9/16 inch may also be used. Arrows must be at least 18 inches long. No explosive or chemical devices may be attached to the arrow, broadhead, or blunthead.

**98.12(2) Prohibited devices.** The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait, crossbows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds are prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. "Bait" means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

[ARC 3832C, IAB 6/6/18, effective 7/11/18; ARC 6787C, IAB 1/11/23, effective 2/15/23]

**571—98.13(483A) Application procedure.** Applications for nonresident wild turkey spring hunting licenses must be made through the electronic licensing system for Iowa (ELSI) telephone ordering system or the ELSI Internet license sales website. Applications will be accepted from December 15 through the last Sunday in January. No one may submit more than one application during the application period.

If applications have been sold in excess of the license quota for any license type, zone, or season, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees, Internet sales charges and telephone order charges will not be refunded. If any license quota has not been filled, the excess licenses will be sold first-come, first-served through the telephone ordering system or the Internet license sales website beginning at 6 a.m. the second Saturday after the close of the application period until the quota has been filled or the last day of the season for which the license is valid, whichever occurs first. No one may obtain more than one nonresident wild turkey spring hunting license. Hunters may apply individually or as a group of up to 15 applicants. All members of a group will be accepted or rejected as a group in the drawing. If a group is rejected, members of that group may purchase licenses individually if excess licenses are available.

Each individual applicant who is unsuccessful in the drawing will be assigned one preference point for each year in which the individual applies and is unsuccessful. If a person who was unsuccessful in the drawing purchases a leftover license within four weeks, the person will receive a refund for the cost of the preference point. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Once an applicant receives a license, all preference points will be erased. Preference points will apply to any zone or season for which a hunter applies. The first license drawing each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

[ARC 9656B, IAB 8/10/11, effective 9/14/11]

**571—98.14(483A) Transportation tag.** Immediately upon the killing of a wild turkey, the transportation tag issued with the license and bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of the turkey. The hunter who shot the turkey must use the transportation tag issued to that hunter to tag the turkey. No one may tag a turkey with a transportation tag issued to another hunter. The tag must be attached in such a manner that it cannot be removed without mutilating or destroying the tag. The tag must be attached before the carcass can be moved in any manner from the place of kill. The transportation tag shall remain affixed to the leg of the turkey until the turkey is processed for consumption. The leg that bears the tag must be attached to the carcass of any wild turkey being transported within the state during any wild turkey spring hunting season. The tag shall be proof of possession of the carcass by the above-mentioned licensee.

**571—98.15(481A) Harvest reporting.** Each hunter who bags a turkey must report that kill according to procedures described in 571—95.1(481A).

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.7 and 483A.24.

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†See HJR 5 of 2003 Session of Eightieth General Assembly.



CHAPTER 99  
WILD TURKEY FALL HUNTING

**571—99.1(481A) General.** When hunting wild turkey, all hunters must have in possession a fall wild turkey hunting license valid for the current year, the unused transportation tag issued with that license, a hunting license, and evidence of having paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person shall carry or have in possession a fall wild turkey hunting license or transportation tag issued to another person while hunting wild turkey. No one who is issued a wild turkey hunting license and transportation tag shall allow another person to use or possess that license or transportation tag while turkey hunting or tagging a turkey. Licenses for the fall turkey season will only be issued to Iowa residents except as specified in subrule 99.2(4).

[ARC 8254B, IAB 11/4/09, effective 12/9/09]

**571—99.2(481A) Licenses.**

**99.2(1) Paid combination shotgun-or-archery licenses.** Paid combination shotgun-or-archery licenses shall be valid for taking turkeys of either sex in the zone designated on the license.

**99.2(2) Paid archery-only licenses.** Paid archery-only licenses shall be valid statewide for taking turkeys of either sex.

**99.2(3) Number of licenses.** No one may apply for or obtain more than two wild turkey fall hunting licenses, whether free or paid. A hunter may obtain no more than two combination shotgun-or-archery licenses, or two archery-only licenses, or one of each. One license of either type may be free to eligible landowners or tenants.

**99.2(4) Special licenses.** The commission shall issue licenses in conformance with Iowa Code section 483A.24(12) to nonresidents 21 years of age or younger who have a severe physical disability or who have been diagnosed with a terminal illness. A person applying for this license must provide a completed form obtained from the department of natural resources. The application shall be certified by the applicant's attending physician with an original signature and declare that the applicant has a severe physical disability or a terminal illness using the criteria listed in 571—Chapter 15. A medical statement from the applicant's attending physician that specifies criteria met shall be on 8½" × 11" letterhead stationery. The attending physician shall be a currently practicing doctor of medicine, doctor of osteopathy, physician assistant or nurse practitioner.

[ARC 7920B, IAB 7/1/09, effective 8/5/09; ARC 8254B, IAB 11/4/09, effective 12/9/09; ARC 3832C, IAB 6/6/18, effective 7/11/18]

**571—99.3(481A) Seasons.** Wild turkey may be taken only during specified periods as follows:

**99.3(1) Combination shotgun-or-archery season.** The dates for the combination shotgun-or-archery season shall be from the Monday following the second Saturday in October through the Friday before the first Saturday in December of the same year.

**99.3(2) Archery-only season.** The dates for the fall archery-only wild turkey hunting season shall be the same as the dates for the bow season for deer as defined in 571—Chapter 106.

**571—99.4(481A) Zones.** Wild turkey may be taken with a combination shotgun-or-archery license only in the following zones:

**99.4(1) Zone 4.** Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59.

**99.4(2) Zone 5.** Zone 5 is that portion of Iowa bounded on the east by U.S. Highway 59 and on the north by U.S. Highway 20.

**99.4(3) Zone 6.** Zone 6 is that portion of Iowa bounded on the south by Interstate Highway 80 and on the west by U.S. Highway 63.

**99.4(4) Zone 7.** Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80, and on the east by U.S. Highway 63.

**99.4(5) Zone 8.** Zone 8 is that portion of Iowa bounded on the south by U.S. Highway 20, on the east by U.S. Highway 63, and on the west by U.S. Highway 69.

**99.4(6) Zone 9.** Zone 9 is that portion of Iowa bounded on the south by U.S. Highway 20 and on the east by U.S. Highway 69.

**571—99.5(481A) Quotas.**

**99.5(1) Combination shotgun-or-archery licenses.** A limited number of paid combination shotgun-or-archery licenses will be issued by zone as follows:

- a. Zone 4. 1,500
- b. Zone 5. 650
- c. Zone 6. 1,400
- d. Zone 7. 250
- e. Zone 8. 200
- f. Zone 9. 200

**99.5(2) Archery-only licenses.** The number of archery-only licenses shall not be limited.

**99.5(3) Free landowner-tenant licenses.** The number of free licenses shall not be limited.

**99.5(4) Additional licenses.** Additional combination shotgun-or-archery licenses may be added to zone quotas if turkey surveys indicate that annual brood production and turkey populations are high enough to warrant additional hunting opportunity. The licenses will be added at the discretion of the natural resource commission upon advice from the wildlife bureau.

[ARC 7920B, IAB 7/1/09, effective 8/5/09; ARC 5065C, IAB 7/1/20, effective 8/5/20]

**571—99.6(481A) Daily, season, and possession bag limits.** The daily, season, and possession bag limit is one wild turkey per license.

**571—99.7(481A) Shooting hours.**

**99.7(1) Combination shotgun-or-archery season.** Shooting hours shall be from one-half hour before sunrise to sunset each day.

**99.7(2) Archery-only season.** Shooting hours shall be from one-half hour before sunrise to one-half hour after sunset each day.

**571—99.8(481A) Means and method of take.**

**99.8(1) Permitted weapons.** In accordance with the type of license issued, wild turkey may be taken by shotgun and muzzleloading shotgun not smaller than caliber .410 and shooting only shot sizes number 4 through 10 lead or nontoxic shot; and by longbow, recurve, or compound bow shooting broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may carry or have in possession shotshells containing shot of any size other than number 4 through 10 lead or nontoxic shot while hunting wild turkey. Arrows with chemical or explosive pods are not permitted.

**99.8(2) Prohibited devices.** The use of live decoys, horses, motorized vehicles, aircraft, bait and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds are prohibited. Paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. "Bait" means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

[ARC 3832C, IAB 6/6/18, effective 7/11/18; ARC 6787C, IAB 1/11/23, effective 2/15/23]

**571—99.9(481A) Procedures to obtain licenses.** All paid and free resident fall turkey hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses may be purchased from ELSI license agents or by calling the ELSI telephone ordering system.

**99.9(1) Licenses with quotas.** All paid turkey hunting licenses for which a quota is established may be obtained from ELSI agents on a first-come, first-served basis beginning August 15 until the quota fills, or through the last day of the hunting period for which the license is valid.

**99.9(2) Licenses without quotas.** All paid and free turkey hunting licenses that have no quota may be obtained from ELSI agents beginning August 15 through the last day of the hunting period for which a license is valid.

**99.9(3) Providing false information.** If anyone provides false information when obtaining any fall turkey hunting license, that license and transportation tag and any other fall turkey hunting license and transportation tag obtained during the same year shall be invalid.

**571—99.10(481A) Transportation tag.** Immediately upon the killing of a wild turkey, the transportation tag issued with the license and bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of the turkey. The hunter who shot the turkey must use the transportation tag issued to that hunter to tag the turkey. No one may tag a turkey with a transportation tag issued to another hunter. The tag must be attached in such a manner that it cannot be removed without mutilating or destroying the tag. The tag must be attached before the carcass can be moved in any manner from the place of kill. The transportation tag shall remain affixed to the leg of the turkey until the turkey is processed for consumption. The leg that bears the tag must be attached to the carcass of any wild turkey being transported within the state during any wild turkey hunting season. The tag shall be proof of possession of the carcass by the above-mentioned licensee.

**571—99.11(481A) Eligibility for free landowner/tenant turkey licenses.**

**99.11(1) Who qualifies for free turkey hunting license.**

*a.* Owners and tenants of a farm unit and the spouse or domestic partner as defined by the Iowa department of administrative services and juvenile child of an owner or tenant who reside with the owner or tenant are eligible for free turkey licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

*b.* “Juvenile child” means a person less than 18 years of age or a person who is 18 or 19 years of age and is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma or a high school equivalency diploma. A person 18 years of age or older who has received a high school diploma or high school equivalency diploma does not qualify.

**99.11(2) Who qualifies as a tenant.** A “tenant” is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner’s family, including in some circumstances the landowner’s spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

**99.11(3) What “actively engaged in farming” means.** Landowners and tenants are “actively engaged in farming” if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

**99.11(4) Landowners who qualify as active farmers.** These landowners:

- a.* Are the sole operator of a farm unit (along with immediate family members), or
- b.* Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or
- c.* Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or
- d.* Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or
- e.* May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or
- f.* Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

**99.11(5)** *Landowners who do not qualify.* These landowners:

- a. Use a farm manager or other third party to operate the farm, or
- b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

**99.11(6)** *Where free licenses are valid.* A free license is valid only on the farm unit of the landowner or tenant. “Farm unit” means all parcels of land that are at least two contiguous acres in size, that are operated as a unit for agricultural purposes, and that are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. “Agricultural purposes” includes but is not limited to field crops, livestock, horticultural crops (e.g., nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

**99.11(7)** *How many free licenses may be obtained.* The maximum number of free licenses for the fall turkey season is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner’s family may obtain only one license. A tenant or the tenant’s family is entitled to only one free license even if the tenant farms land for more than one landowner.

**99.11(8)** *Registration of landowners and tenants.* Landowners and tenants and their eligible family members who want to obtain free fall wild turkey hunting licenses must register with DNR before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

**571—99.12(481A) Harvest reporting.** Each hunter who bags a turkey must report that kill according to procedures described in 571—95.1(481A).

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.7 and 483A.24.

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CHAPTER 106  
DEER HUNTING BY RESIDENTS  
[Prior to 12/31/86, Conservation Commission[290] Ch 106]

**571—106.1(481A) Licenses.** When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person. No one who is issued a deer hunting license and transportation tag shall allow another person to use or possess that license or transportation tag while that person is deer hunting or tagging a deer.

**106.1(1) Type of license.**

*a. General deer licenses.* General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, Humboldt, Ida, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, and Sioux Counties during the first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

*b. Antlerless-deer-only licenses.* Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler. Paid antlerless-deer-only licenses shall be valid in one county or in one deer population management zone and in one season as selected at the time the license is purchased. Free and reduced-fee antlerless-deer-only licenses shall be valid on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

**106.1(2) Bow season licenses.** General deer and antlerless-deer-only licenses, paid or free, shall be valid in both segments of the bow season.

**106.1(3) Regular gun season licenses.** Paid general deer and antlerless-deer-only licenses shall be valid in either the first or the second regular gun season, as designated on the license. Free general deer licenses and antlerless-deer-only licenses shall be valid in both the first and second regular gun seasons.

**106.1(4) Muzzleloader season licenses.** General deer and antlerless-deer-only licenses, paid or free, shall be valid in either the early or the late muzzleloader season, as designated on the license.

**106.1(5) November antlerless-deer-only licenses.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.1(6) January antlerless-deer-only licenses.**

*a. Population management season.* Licenses for the population management January antlerless-deer-only season may be issued for the following counties: Allamakee, Appanoose, Decatur, Monroe, Wayne, and Winneshiek. Population management January antlerless-deer-only licenses shall be issued for a county only when a minimum of 100 antlerless-deer-only licenses, as described in subrule 106.6(6), remain unsold in that county as of the third Monday in December. If 100 or more antlerless-deer-only licenses remain unsold for a given county as of the third Monday in December, those remaining antlerless-deer-only licenses shall be made available for the population management January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in subrule 106.6(6) is met.

*b. Excess tag season.* Licenses for the excess tag January antlerless-deer-only season may be issued in any county. Excess tag January antlerless-deer-only licenses shall be issued for a county only when a minimum of one antlerless-deer-only license, as described in subrule 106.6(6), remains unsold for a given county through January 10. Remaining antlerless-deer-only licenses shall be made available starting on January 11 for the excess tag January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in subrule 106.6(6) is met.

**106.1(7) Free and reduced-fee deer licenses for landowners and tenants.** A maximum of one free general deer license, two free antlerless-deer-only licenses, and two reduced-fee antlerless-deer-only licenses may be issued to a qualifying landowner or eligible family member and a qualifying tenant or

eligible family member. Eligibility for licenses is described in 571—106.12(481A). The free general deer license shall be available for one of the following seasons: the youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. One free antlerless-deer-only license shall be available for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. The second free antlerless-deer-only license shall be valid only for the January antlerless-deer-only season and will be available only if a portion of the farm unit lies within a county where paid antlerless-deer-only licenses are available during that season. Each reduced-fee antlerless-deer-only license shall be valid for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, first and second regular gun seasons, or January antlerless-deer-only season. January antlerless-deer-only licenses will be available only if a portion of the farm unit is located in a county where paid antlerless-deer-only licenses are available in that season.

**106.1(8) Antlerless-deer-only crossbow licenses for senior citizens.** Persons 65 years old or older may obtain one paid antlerless-deer-only license valid statewide for taking antlerless deer with a crossbow. The license will be valid only during the bow season.

**106.1(9) Deer hunting licenses for nonambulatory persons.** The commission shall issue licenses in conformance with Iowa Code section 483A.8C. A person applying for this license must provide a completed form obtained from the department of natural resources. The application shall be certified by the applicant's attending physician with an original signature and declare that the applicant is nonambulatory using the criteria listed in Iowa Code section 483A.8C(4). A medical statement from the applicant's attending physician that specifies criteria met shall be on 8½" × 11" letterhead stationery. The attending physician shall be a currently practicing doctor of medicine, doctor of osteopathy, physician assistant or nurse practitioner.

[ARC 7921B, IAB 7/1/09, effective 8/5/09; ARC 8255B, IAB 11/4/09, effective 12/9/09; ARC 8888B, IAB 6/30/10, effective 8/18/10; ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 3831C, IAB 6/6/18, effective 7/11/18; ARC 5066C, IAB 7/1/20, effective 8/5/20; ARC 5682C, IAB 6/16/21, effective 7/21/21; ARC 6354C, IAB 6/15/22, effective 7/20/22; ARC 6788C, IAB 1/11/23, effective 2/15/23]

**571—106.2(481A) Season dates.** Deer may be taken only during the following seasons:

**106.2(1) Bow season.** Deer may be taken in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year.

**106.2(2) Regular gun seasons.** Deer may be taken in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

**106.2(3) Muzzleloader seasons.** Deer may be taken in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

**106.2(4) November antlerless-deer-only season.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.2(5) Population management and excess tag January antlerless-deer-only seasons.** Deer may be taken in accordance with the type, season, and zone designated on the license from January 11 through the second Sunday following that date.

[ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 3831C, IAB 6/6/18, effective 7/11/18; ARC 5066C, IAB 7/1/20, effective 8/5/20; ARC 5682C, IAB 6/16/21, effective 7/21/21; ARC 6788C, IAB 1/11/23, effective 2/15/23]

**571—106.3(481A) Shooting hours.** Legal shooting hours shall be from one-half hour before sunrise to one-half hour after sunset in all seasons.

**571—106.4(481A) Limits.**

**106.4(1) Bow season.** The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

**106.4(2) Muzzleloader seasons.** The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

**106.4(3) Regular gun seasons.** The bag limit is one deer for each hunter in the party who has a valid deer transportation tag. The possession limit is one deer per license. "Possession" shall mean that the deer is in the possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

**106.4(4) November antlerless-deer-only season.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.4(5) Population management and excess tag January antlerless-deer-only seasons.** The bag limit is one deer per license. The possession limit is one deer per license.

**106.4(6) Maximum annual possession limit.** The maximum annual possession limit for a resident deer hunter is one deer for each legal license and transportation tag obtained.

[ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 3831C, IAB 6/6/18, effective 7/11/18; ARC 5066C, IAB 7/1/20, effective 8/5/20; ARC 5682C, IAB 6/16/21, effective 7/21/21; ARC 6788C, IAB 1/11/23, effective 2/15/23]

**571—106.5(481A) Areas closed to hunting.** There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

**571—106.6(481A) Paid deer license quotas and restrictions.** Paid deer licenses, including antlerless-deer-only licenses, will be restricted in the type and number that may be purchased.

**106.6(1) Paid general deer licenses.** Residents may purchase no more than two paid general deer licenses, one for the bow season and one for one of the following seasons: early muzzleloader season, late muzzleloader season, first regular gun season, or second regular gun season. No more than 7,500 paid statewide general deer licenses will be sold for the early muzzleloader season. Fifty additional paid early muzzleloader season licenses will be sold through and will be valid only for the Iowa Army Ammunition Plant. There will be no quota on the number of paid general deer licenses issued in the bow season, late muzzleloader season, first regular gun season, or second regular gun season.

**106.6(2) Paid antlerless-deer-only licenses.** Paid antlerless-deer-only licenses have quotas for each county and will be sold for each county until quotas are reached.

*a.* Paid antlerless-deer-only licenses may be purchased for any season in counties where licenses are available, except as outlined in 106.6(2) "b." A license must be used in the season, county or deer population management area selected at the time the license is purchased.

*b.* No one may obtain paid licenses for both the first regular gun season and second regular gun season regardless of whether the licenses are valid for any deer or antlerless deer only. Paid antlerless-deer-only licenses for the early muzzleloader season may only be purchased by hunters who have already purchased one of the 7,500 paid statewide general deer licenses. Hunters who purchase one of the 7,500 paid statewide general deer licenses for the early muzzleloader season may not obtain paid antlerless licenses for the first or second regular gun season.

*c.* Prior to September 15, a hunter may purchase one antlerless-deer-only license for any season for which the hunter is eligible. Beginning September 15, a hunter may purchase an unlimited number of antlerless-deer-only licenses for any season for which the hunter is eligible, as set forth in 106.6(2) "b," until the county or population management area quotas are filled. Licenses purchased for deer population management areas will not count in the county quota.

**106.6(3) November antlerless-deer-only season.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.6(4) Population management and excess tag January antlerless-deer-only seasons.** Only antlerless-deer-only licenses, paid or free, are available in counties pursuant to the conditions described in subrule 106.1(6). A license must be used during the population management or excess tag January antlerless-deer-only season as described in subrule 106.2(5) and in the county or deer population

management area selected at the time the license is purchased. Free antlerless-deer-only licenses shall be available only in the portion of the farm unit located in a county where paid antlerless-deer-only licenses are available during the population management or excess tag January antlerless-deer-only season.

**106.6(5) Free landowner/tenant licenses.** A person obtaining a free landowner/tenant license may purchase any combination of paid bow and paid gun licenses available to persons who are not eligible for landowner/tenant licenses as described in 571—106.12(481A).

**106.6(6) Antlerless-deer-only licenses.** Paid antlerless-deer-only licenses will be available by county as follows:

County	Quota	County	Quota	County	Quota
Adair	1200	Floyd	150	Monona	500
Adams	1000	Franklin	0	Monroe	2500
Allamakee	3800	Fremont	0	Montgomery	500
Appanoose	2700	Greene	100	Muscatine	900
Audubon	0	Grundy	0	O'Brien	0
Benton	325	Guthrie	2350	Osceola	0
Black Hawk	0	Hamilton	0	Page	300
Boone	400	Hancock	0	Palo Alto	0
Bremer	300	Hardin	0	Plymouth	0
Buchanan	400	Harrison	500	Pocahontas	0
Buena Vista	0	Henry	1050	Polk	1350
Butler	200	Howard	450	Pottawattamie	500
Calhoun	0	Humboldt	0	Poweshiek	200
Carroll	0	Ida	0	Ringgold	1600
Cass	300	Iowa	450	Sac	0
Cedar	775	Jackson	1100	Scott	200
Cerro Gordo	0	Jasper	400	Shelby	0
Cherokee	0	Jefferson	1500	Sioux	0
Chickasaw	375	Johnson	950	Story	150
Clarke	2400	Jones	1100	Tama	300
Clay	0	Keokuk	500	Taylor	1500
Clayton	4000	Kossuth	0	Union	1400
Clinton	400	Lee	1700	Van Buren	2300
Crawford	0	Linn	850	Wapello	1600
Dallas	2100	Louisa	775	Warren	3000
Davis	1900	Lucas	2500	Washington	1000
Decatur	2400	Lyon	0	Wayne	2700

County	Quota	County	Quota	County	Quota
Delaware	950	Madison	3300	Webster	0
Des Moines	900	Mahaska	475	Winnebago	0
Dickinson	0	Marion	2050	Winneshiek	2700
Dubuque	1200	Marshall	150	Woodbury	0
Emmet	0	Mills	150	Worth	0
Fayette	2500	Mitchell	100	Wright	0

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**571—106.7(481A) Method of take.** Permitted weapons and devices vary according to the type of season.

**106.7(1) Bow season.** Only longbow, compound, or recurve bows shooting broadhead arrows are permitted during the bow season. Arrows must be at least 18 inches long.

*a.* Crossbows, as described in 106.7(1) “*b*,” may be used during the bow season in the following two situations:

- (1) By persons with certain afflictions of the upper body as provided in 571—15.22(481A); and
- (2) By persons over the age of 65 with an antlerless-deer-only license as provided in Iowa Code section 483A.8B.

*b.* 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 trigger and a working safety. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

*c.* No explosive or chemical device may be attached to any arrow, broadhead or bolt.

**106.7(2) Regular gun seasons.** Only the following shall be used in the regular gun season: 10-, 12-, 16-, and 20-gauge shotguns shooting single slugs; any handgun or rifle as described in Iowa Code section 481A.48; and any muzzleloaders as described in subrule 106.7(3).

**106.7(3) Muzzleloader seasons.** Only muzzleloading rifles, muzzleloading muskets, muzzleloading pistols, and muzzleloading revolvers will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloading rifle, muzzleloading musket, muzzleloading pistol, muzzleloading revolver, any handgun as defined in 106.7(2), crossbow as described in 106.7(1) “*b*,” or bow as described in 106.7(1). All muzzleloaders as described in this subrule shall only shoot a single projectile between .44 and .775 of an inch.

**106.7(4) November antlerless-deer-only season.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.7(5) January antlerless-deer-only seasons.**

*a.* *Population management January antlerless-deer-only season.* Bows, crossbows, shotguns, muzzleloaders, and handguns, as each is described in this rule, and rifles as described in Iowa Code section 483A.8(9) as enacted by 2022 Iowa Acts, Senate File 581, section 4, may be used during the population management January antlerless-deer-only season.

*b.* *Excess tag January antlerless-deer-only season.* Only rifles as described in Iowa Code section 483A.8(9) as enacted by 2022 Iowa Acts, Senate File 581, section 4, shall be used during the excess tag January antlerless-deer-only season.

**106.7(6) Prohibited weapons and devices.** The use of dogs, domestic animals, bait, firearms except as provided for in this chapter, crossbows except as provided in 106.7(1), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. “Bait” means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials;

commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. “Paraplegic” means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.7(2) or 106.7(3). A person in possession of a valid permit to carry weapons may carry a handgun while hunting. However, only handguns as described in 106.7(2) may be used to hunt deer and only when a handgun is a lawful method of take.

**106.7(7) *Discharge of firearms from roadway.*** No person shall discharge a rifle, including a muzzleloading rifle or musket, or a handgun from a highway while deer hunting. In addition, no person shall discharge a shotgun shooting slugs from a highway north of U.S. Highway 30. A “highway” means the way between property lines open to the public for vehicle traffic, including the road ditch, as defined in Iowa Code section 321.1(78).

**106.7(8) *Hunting from blinds.*** No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 106.2(2), unless such blind exhibits a solid blaze orange marking which is a minimum of 144 square inches in size and is visible in all directions. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term “blind” is defined as an enclosure used for concealment while hunting, constructed either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122. [ARC 9717B, IAB 9/7/11, effective 10/12/11; ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 2086C, IAB 8/5/15, effective 9/9/15; ARC 3098C, IAB 6/7/17, effective 7/12/17; ARC 3831C, IAB 6/6/18, effective 7/11/18; ARC 5601C, IAB 5/5/21, effective 6/9/21; ARC 5682C, IAB 6/16/21, effective 7/21/21; ARC 6354C, IAB 6/15/22, effective 7/20/22; ARC 6788C, IAB 1/11/23, effective 2/15/23]

**571—106.8(481A) Procedures to obtain licenses.** All resident deer hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses may be purchased from ELSI license agents, or online at [www.iowadnr.com](http://www.iowadnr.com), or by calling the ELSI telephone ordering system.

**106.8(1) *Licenses with quotas.*** All paid deer hunting licenses for which a quota is established may be obtained from the ELSI system on a first-come, first-served basis beginning August 15 until the quota fills, or through the last day of the hunting period for which the license is valid.

**106.8(2) *Licenses without quotas.*** All deer hunting licenses that have no quota may be obtained from the ELSI system beginning August 15 through the last day of the hunting period for which a license is valid.

**106.8(3) *Providing false information.***

*a.* Any person who provides false information about the person’s identity or eligibility for any paid or free landowner/tenant deer license and tag and who attests that the information is correct by accepting and signing the license or tag shall have the person’s hunting license revoked as a part of the sentencing for such criminal conviction, and the person shall not be issued a hunting license for one year pursuant to the authority of Iowa Code section 483A.24(2) “f” and rule 571—15.6(483A).

*b.* In addition to any legal penalties that may be imposed, the obtaining of a license in violation of this rule shall invalidate that deer license and transportation tag and any other deer hunting license and transportation tag obtained during the same year.

**571—106.9(481A) Transportation tag.** A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is located after being taken or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person

or with a tag that was purchased after the deer was taken. During the youth/disabled hunter season, bow season, early muzzleloader season and late muzzleloader season, the hunter who killed the deer must tag the deer by using the transportation tag issued in that person's name. During the first and second regular gun seasons and the January antlerless-deer-only season, anyone present in the hunting party may tag a deer with a tag issued in that person's name. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

[ARC 9717B, IAB 9/7/11, effective 10/12/11; ARC 0189C, IAB 7/11/12, effective 8/15/12]

## **571—106.10(481A) Youth deer and severely disabled hunts.**

### **106.10(1) Licenses.**

*a. Youth deer hunt.* A youth deer license may be issued to any Iowa resident who is not over 15 years old on the day the youth obtains the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free general deer license for which the youth's family is eligible.

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in the direct company of the youth at all times.

A person may obtain only one youth general deer license but may also obtain any other paid or free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner with which other hunters obtain them, as described in 106.6(2).

*b. Severely disabled hunt.* Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one general deer license to hunt deer during the youth season. A person applying for this license must either possess a disability parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). The attending physician shall be currently practicing medicine and shall be a medical doctor, a doctor of osteopathy, a physician assistant, or a nurse practitioner. Forms are available online at [www.iowadnr.gov](http://www.iowadnr.gov), by visiting the DNR office at the Wallace State Office Building, Des Moines, Iowa, or any district office, or by calling (515)725-8200. A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain any other paid and free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner by which other hunters obtain them, as described in 106.6(2).

**106.10(2) Season dates.** Deer of either sex may be taken statewide for 16 consecutive days beginning on the third Saturday in September. A person who is issued a youth deer hunting license and does not take a deer during the youth deer hunting season may use the deer hunting license and unused tag during any subsequent deer seasons. The license will be valid for the type of deer and in the area specified on the original license. The youth must follow all other rules specified in this chapter for each season, including method of take. If the tag is filled during any of the seasons, the license will not be valid in subsequent seasons.

**106.10(3) Shooting hours.** Legal shooting hours will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

**106.10(4) Limits and license quotas.** An unlimited number of licenses may be issued. The daily and season bag and possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

**106.10(5) Method of take and other regulations.** Deer may be taken with shotguns, bows, handguns, rifles, or muzzleloaders as permitted in 571—106.7(481A). Youth hunters using a handgun must be accompanied and under direct supervision throughout the hunt by a responsible person with a valid hunting license who is at least 21 years of age, with the consent of a parent or guardian. The responsible person with a valid hunting license who is at least 21 years of age shall be responsible for the conveyance of the pistol or revolver while the pistol or revolver is not actively being used for hunting. “Direct supervision” means the same as defined in Iowa Code section 483A.27A(4). All participants must meet the deer hunters’ orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

**106.10(6) Procedures for obtaining licenses.** Paid and free youth season licenses and licenses for severely disabled hunters may be obtained through ELSI beginning August 15 through the last day of the youth season.

[ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 2086C, IAB 8/5/15, effective 9/9/15; ARC 3098C, IAB 6/7/17, effective 7/12/17; ARC 3831C, IAB 6/6/18, effective 7/11/18; ARC 5601C, IAB 5/5/21, effective 6/9/21]

**571—106.11(481A) Deer depredation management.** The deer depredation management program provides assistance to producers through technical advice and additional deer licenses and permits where the localized reduction of female deer is needed to reduce damage. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

**106.11(1) Method of take and other regulations.** Legal weapons and restrictions will be governed by 571—106.7(481A). For deer shooting permits only, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93. The producer or designee must meet the deer hunters’ orange apparel requirement in Iowa Code section 481A.122.

**106.11(2) Eligibility.** Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nursery stock, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

- a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.
- b. Excessive damage is defined as crop losses exceeding \$1,000 in a single growing season, or the likelihood that damage will exceed \$1,000 if preventive action is not taken, or a documented history of at least \$1,000 of damage annually in previous years.
- c. Producers who lease their deer hunting rights are not eligible for the deer depredation management program.

**106.11(3) Depredation management plans.** Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by depredation biologists in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, and temporary fencing, as well as allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of the measures in (1) above, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds \$1,000.

(3) Depredation permits to shoot deer may be issued to Iowa residents to reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

*b.* Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the depredation biologist and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

**106.11(4)** *Depredation permits.* Two types of permits may be issued under a depredation management plan.

*a.* Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for a fee of \$5 for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued up to the number specified in the management plan.

(2) The landowner or an eligible family member, which shall include the landowner's spouse or domestic partner and juvenile children, may obtain one depredation license for each season established by the commission. No other individual may initially obtain more than three depredation licenses per management plan. When a deer is reported harvested on one of these licenses, then another license may be obtained.

(3) Depredation licenses will be valid only for hunting antlerless deer, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(4) Hunters may keep any deer legally tagged with a depredation license.

(5) All other regulations for the hunting season specified on the license will apply.

(6) Depredation licenses will be valid only on the land where damage is occurring and the immediately adjacent property unless the land is within a designated block hunt area as described in subparagraph (7). Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

(7) Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation licenses issued to producers within the block hunt area are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt area boundaries. Creation of a given block hunt area does not authorize trespass.

*b.* Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers who have an approved DNR deer depredation plan, and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued for a fee of \$5 to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops or agricultural crops may be valid for taking deer outside of a hunting season depending on the nature of the damage. The number and type of deer to be killed will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved signs an agreement with the department.

(5) All deer killed must be recovered and processed for human consumption.

(6) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(7) Antlers from all deer recovered must be turned over to the conservation officer within 48 hours. Antlers will be disposed of according to department rules.

(8) For out-of-season shooting permits, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93.

c. Depredation licenses and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

d. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd. This restriction does not apply in situations where shooting permits are issued for public safety concerns.

e. A person who receives a depredation permit pursuant to this paragraph shall pay a \$1 fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger (HUSH) program administered by the commission and a \$1 writing fee for each license to the license agent.

**106.11(5) Disposal.** Rescinded IAB 7/16/08, effective 8/20/08.

[ARC 7921B, IAB 7/1/09, effective 8/5/09; ARC 6788C, IAB 1/11/23, effective 2/15/23]

### **571—106.12(481A) Eligibility for free landowner/tenant deer licenses.**

#### **106.12(1) Who qualifies for free deer hunting licenses.**

a. Owners and tenants of a farm unit and the spouse and juvenile child of an owner or tenant who reside with the owner or tenant are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

b. Juvenile child defined. “Juvenile child” means a person less than 18 years of age or a person who is 18 or 19 years of age and is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma or a high school equivalency diploma. A person 18 years of age or older who has received a high school diploma or high school equivalency diploma does not qualify.

**106.12(2) Who qualifies as a tenant.** A “tenant” is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner’s family, including in some circumstances the landowner’s spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

**106.12(3) What “actively engaged in farming” means.** Landowners and tenants are “actively engaged in farming” if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

#### **106.12(4) Landowners who qualify as active farmers.** These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

#### **106.12(5) Landowners who do not qualify.** These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

**106.12(6) *Where free licenses are valid.*** A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. “Farm unit” means all parcels of land in tracts of two or more contiguous acres that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. “Agricultural purposes” includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

**106.12(7) *Registration of landowners and tenants.*** Landowners and tenants and their eligible family members who want to obtain free deer hunting licenses must register with the department before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

**571—106.13(481A) Harvest reporting.** Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

**571—106.14(481A) Extension to the regular gun seasons.** Rescinded IAB 7/16/08, effective 8/20/08.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.8, 483A.8B, 483A.8C, 483A.24 and 483A.24B.

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